

Central Administrative Tribunal , Lucknow Bench,

Lucknow

O.A. No. 305/2006

this the 24th day of January, 2007

Hon'ble Shri A.K. Singh, Member (A)

Hon'ble Shri M. Kanthaiah, Member (J)

Mahendra Vikram Singh aged about 31 years, son of Shri Raj Naayan Singh, resident of 172, Chhota Chandgaj, Lucknow.

..Applicant

By Advocate: Shri Praveen Kumar.

Versus

1. Union of India through the Chief Post Master General, UP Circle, Lucknow.
2. The Assistant Superintendent of Post Offices, North Sub Division, Lucknow.

..Respondents

By Advocate: Shri S. K. Singh.

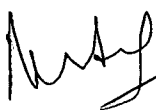
ORDER

By Hon'ble Shri A.K. Singh, Member (A)

Original Application No. 305/2006 has been filed by the applicant, Mahendra Vikram Singh (of the address given in the O.A.) against order dated 22.6.2006 passed by Assistant Superintendent of Post Offices, North Sub Division, Lucknow terminating the services of the applicant.

2. The applicant submits that he was engaged as a substitute on the post of E.D. Stamp Vender at New

Haidrabad Post Office, Lucknow on 3.7.98 and has continued to work on the post till 31.3.2001. He was again re-engaged on 4.6.2001 and continued on the post till 11.7.2001. He was again engaged by the respondents as Stamp Vender w.e.f. 26.11.2002 at Golaghat Post office, Lucknow vide order dated 25.11.2002 and he continued to work on the post till 9.4.2003. The applicant submits that he was once again engaged as E.D. Stamp Vender at Nadwa attached to Aliganj Post Office, vide order dated 25.8.2003. Thus, he has completed a total service of six years with the respondents. He filed a representation dated 21.2.2005 to the Chief Post Master General, U.P. Circle, Lucknow i.e. respondent No 1 to regularize his service on the post in view of 6 years long service on the post. Instead of considering his case for regularization, his services were terminated by the Assistant Superintendent of Post Offices, North Sub Division, Lucknow vide order dated 22.6.2006. The order of termination reads as under:-

 "Sh. Mahendra Vikram Singh working as substitute vice Post of GDS Nadwa (attached with Aliganj) is hereby ordered to be relieved at once. Charge report should be submitted to all concerned. The work of the post will be managed on alternative arrangement."

3. Being aggrieved by this order, the applicant has filed the Original Application 305/2006 before us, on the following grounds:-

a) That he had completed more than 6 years of service in the Department as Extra Departmental Stamp Vender.

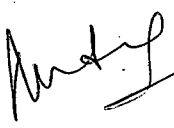
b) That as per rules applicable to a Gramin Dak Sevak (GDS), a GDS can be adjusted on a vacant post after completion of 3 years of service.

c) That a casual /temporary/adhoc employee cannot be replaced by another adhoc employee hence the order of termination deserves to be quashed and set aside.

d) That the post of E.D. Stamp Vender, Nadwa is not being filled up by a regular employee to the best of his knowledge.

e) That he has not been relieved so far and he is still continuing the post of E.D. Stamp Vender, Nadwa Post Office.

4. The applicant, accordingly, prays for the following reliefs in the Original Application:-

 i) To quash the order dated 22.6.2006 annexed as Annexure No.1 to the O.A.

ii) To direct the respondents to regularise services of the applicant on the post of E.D. Stamp Vender Nadwa Post office with consequential benefits.

iii) To grant any other relief, which this Hon'ble Tribunal may deem, just and proper, under the circumstances of this case.

5. The respondents on their part have opposed the Original Application on the following grounds:-

i) That the present Original Application has been filed against the order dated 22.6.2006 passed by Assistant Superintendent of Post offices, North Sub Division, Lucknow who is respondent No. 2 in the O.A.

ii) That the applicant was engaged as substitute on the post of E.D. Stamp Vender, hence his claim is not sustainable in the eyes of law.

iii) A substitute has no right for absorption /appointment on the post as a regular candidate

iv) A substitute has also no legal claim for regularisation on the post even after working continuously on a post.

6. Counsel for respondents cited the decision of Full Bench of Central Administrative Tribunal, Bangalore which was also upheld by Hon'ble High Court of Karnataka, Bangalore in the case of Devika Guha Vs. Union of India.

Hon'ble Apex Court has also held that a substitute had no vested right for regularization even after working for long years on a post.

7. On the basis of the above respondents placed that the Original Application is devoid of any merit and hence deserves to be dismissed.

8. Both the applicants as well as respondents, duly represented by their counsels, were heard in person on 13.12.2006. The applicant was represented by Shri Praveen Kumar and respondents by Shri S.K.Singh. In their oral submissions, both sides reiterated their stand as stated above.


9. We have carefully considered the submissions made by both the parties through their respective counsels and also perused the records.

10. The first point to be determined by us is whether the applicant was appointed as a temporary/ adhoc employee or a substitute. If the applicant's status is that of a substitute and not of a temporary employee, he will not have any vested right to hold the post and in consequence thereof, no right for regularization on the post he has been working. It is a trite law that a substitute has no vested right for regularization on the post he has been working, even after long years of service. While examining the actual status of the applicant, we will like to refer to para 4 of the counter reply filed by the respondents on 14.11.2006 which reads as under:-

"That Shri Mahendra Vikram Singh was engaged as substitute on the post of GDSV Nadwa (attached to Aliganj P.O.) on the responsibility of Shri S.P.Singh the then ASPO (West) Lucknow by ASPO (North) Lucknow vide letter No. B-6/GDSV Nadwa dated 25.8.2003 in which it was mentioned that this arrangement is purely temporary and will work till further order. Since such person are engaged as substitute for short term arrangement and cannot be allowed to continue for a longer period. As such to terminate the substitute arrangement the order No.B-6/Nadwa dated 22.6.2006 has been passed and in compliance of which Shri Mahendra Vikram Singh was relieved /discharged of duty on 5.7.2006 by the SPM, Aliganj PO Lucknow. It is further submitted that Shri Mahendra Vikram Singh was also previously worked on various posts of EDAs as substitute the services rendered as substitute are not liable to be given any weight age in regular appointment.

11. Literal meaning of the word "substitute" as per Oxford Dictionary is "Any person or thing in place of another."

12. From the respondent's averment in para 4 above, it clearly transpires that the applicant was not working as a substitute to some one, already working on the post. The appointment letter of the applicant dated 25.8.2003 only mentions that he was working on a 'vacant post' on the personal responsibility of Shri S.P.Singh, Assistant Superintendent of Post Offices, North Sub Division, Lucknow. It is, therefore, clearly established that Shri Mahdram Vikram Singh was engaged by the Assistant Superintendent of Post Offices, North Sub Division, Lucknow on a vacant post and no else was holding



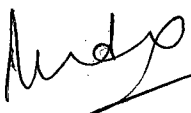
substantive charge of the post on a regular basis at the material point of time. The relevant extract of the letter of engagement which is reproduced below, also confirms this fact:

"कृपया उपरोक्त रिक्त पदों पर श्री महेन्द्र विक्रम सिंह को लगाकर वर्तमान कार्यरत व्यक्ति को कार्यमुक्त कर दें। श्री महेन्द्र विक्रम सिंह अगले आदेश तक श्री एच.जी. सिंह, सहायक अधीक्षक (पश्चिमी) के उत्तरदायित्व पर कार्य करेंगे। उक्त पद पर वर्तमान में कार्यरत श्री रमेश चन्द्र गुप्ता अपने पूर्व पद G.D. Porter पद पर कार्य करें।

यह व्यवस्था पूर्णतया अस्थायी है। "

13. All the documentary evidences on record thus clearly suggest that the applicant was working on a vacant post not as a substitute to some one already working on regular basis but as a temporary or adhoc employee. In para 4 of their counter reply dated 14.11.2006, the respondents have also confirmed that Shri Mahendra Vikram Singh had previously worked on the post of EDA. They have also not contested the point that the applicant rendered a service of six years with occasional breaks. Since the applicant worked on a regular post of E.D. Stamp Vender in a temporary or adhoc capacity and not as a substitute to any other regular employee, the services of six years rendered by him will obviously merit consideration. This fact thus, materially changes the entire complexion

of the case. Both the applicant as well as respondents have misinterpreted the term "substitute" in their respective submissions. The word substitute obviously means a person who holds the post in lieu of a regular employee and his engagement on the post is on the responsibility of the aforesaid employee or some one else. From the perusal of the record as well as the submissions made by the rival sides, we are of the opinion that the applicant was not holding the post of Stamp Vender as a substitute to any regular employee but is on independent capacity even though the appointment was only temporary or adhoc even though the Assistant Superintendent of Post Offices, North Sub Division, Lucknow had undertaken the responsibility for any lapses on the part of the applicant consequent to his appointment on the aforesaid post. The mere taking of responsibility for any lapses on the post of the employee by another senior employee who was not holding this post on a regular basis does not alter the status of the appointment of the applicant as a temporary/ adhoc employee. That he worked on this post for nearly 6 years, though with occasionally breaks has not been contested by the respondents. His case accordingly merits consideration for absorption on a regular basis. Hence the Hon'ble Apex Court decision in the case of Devika Guha (Supra) cited by



the respondents in support of their say will not apply to the facts of this case. In the case of **Menka Gandhi Vs. UOI and Others, AIR , 1978 SC 597**, the Apex Court has held that "keeping a person on casual or daily wage basis for several years, is wholly illegal." The Apex Court has also held that no government can act arbitrarily as an arbitrariness is violative of Article 14 of the Constitution of India. In the case of **State of Haryana Vs. Piara Singh and others (1992) 4 Supreme Court Cases, 118**, the Apex Court has held that "In the case Adhoc/ Temporary Govt. employees- those eligible and qualified and continuing in service satisfactorily for long period have a right to be considered for regularisation. Long continuance in service gives rise to a presumption about need for a regular post." The Apex Court has also held as under:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. Security of tenure is necessary for an employee to give his best to the job."

14. In the present case, we find that the applicant has passed intermediate examination and also fulfills all other



conditions prescribed for regularization under the rules. In the circumstances, we are of the view the applicant has acquired a vested right to hold the post as he fulfills the necessary qualification and is eligible to hold the post as per rules. Besides he has the experience of six years of working on the post.

15. From the above, it is clearly established that even though the applicant was not appointed on a regular basis, nonetheless, a vested right has accrued to him in view of the above and hence the termination of his services, without any just and valid grounds is clearly not maintainable in law. Moreover, the impugned order has been passed in violation of Principle of Natural Justice as no show cause notice was issued to the applicant nor he was heard in person before termination of his service. Hence, the order dated 22.6.2006 deserves to be quashed and set aside even on this ground. In the third place, it has been held by the apex Court in State of Haryana Vs. Piara Singh and others (1992) 4 SCC 118 that a casual or temporary employee can be replaced only by a regular employee and not by another casual or temporary employee. The order of termination dated 22.6.2006

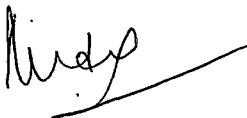
 reads as under:-

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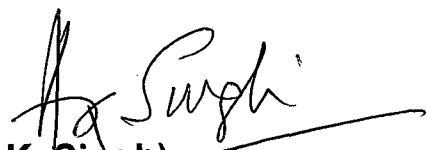
report should be submitted to all concerned. The work of the post will be managed on alternative arrangement."

16. From the above it clearly transpires that the applicant who is a temporary employee is being replaced by another temporary employee which is not maintainable in law. The impugned order dated 22.6.2006 of respondent No. 2 is also non speaking. As held by the Apex Court in Satyen Mukherjee's case, a non speaking order is no order at all in the eye of law. Hence the aforementioned order is also not maintainable in law even on this ground too and hence deserves to be quashed and set aside. On all accounts, discussed above, we quash and set aside the impugned order dated 22.6.2006 passed by the respondent No. 2 and direct the respondents No.1 and 2 to reinstate the applicant on the post he was holding and to consider his case for regularization in view of his long experience of six years on the post and also in view of the fact that he fulfills the necessary academic qualifications for the post.

17. In consequence, the O.A. is allowed with consequential benefits in favour of the applicant. The parties to bear their own cost.


(M. Kanthaiah)
Member (J) u-1-07

HLS/


(A. K. Singh)
Member (A)