

**Central Administrative Tribunal
Lucknow Bench, Lucknow.**

Original Application No.113/2008
This the day of 18th March, 2009

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)

Grish Chandra Shukla, aged about 35 years, S/o Sri Rameshwar Nath Shukla, Resident of Village Pure Dhani, Post Laxmanpu, Tehsil Lalganj Ajhara District Pratapgarh.

... Applicant.

By Advocate: Shri D.K. Awasthi.

Versus.

1. Union of India through Secretary, Ministry of Communication, Department of Post, New Delhi.
2. The Chief Post Master General, Lucknow.
3. Senior Superintendent of Post Office, Pratapgarh.
4. Sub Divisional Inspector (Post) Lalganj, Pratapgarh.

... Respondents.

By Advocate: Shri S.P. Singh for Dr. Neelam Shukla.

ORDER

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

The applicant has filed the OA with a prayer to quash the impugned rejection order dt.01.91.1008 (Ann-A-1) and issue direction for the respondents for regularization of the service of the applicant and for payment of arrears / dues on the following grounds.

(i). The claim of the applicant for regularization of his services is covered by the circular dt. 23.2.1987 (Ann-A-6) issued by Respondent No.2 and as such he is entitled for his claim.

(ii). He worked continuously but the authorities have shows artificially break with malafide intention.

(iii). Similarly situated persons have been appointed and as such his claim is justified.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the applicant was engaged to work temporarily as substitute for short period on the responsibility of regular incumbent and such a substitute is not entitled for regularization of services.

3. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and reiterated the pleas taken in the OA.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

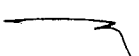
6. The admitted facts of the case are that the applicant was engaged as substitute in the place of Murli Dhar Shukla GDS DA, Laxmipur, Pratapgarh District w.e.f. 13.10.2004 to 3.12.2004 during his absence when he discharged the officiating duty as village post man Babuganj, Pratapgarh and on return of Shri Murli Dhar Shukla the applicant was put off from his substitute duty. Subsequently from 14.1.1005 to 11.4.2005 and from 1.5.2005 to 27.7.2005 the applicant was engaged as substitute on the post of GDS Packer Pratapgarh City. Thereafter, from 8.10.21005 to 20.1.2006 the applicant was engaged in the work of GDS MP, Handuar thus, the applicant was engaged as substitute during the year 2004 and 2005 with break. The applicant made representation claiming regularization of his services and when

there was no response from respondent authorities, he filed W.P.No.2588 (SS) of 2006 on the file of Hon'ble High Court Lucknow Bench and it was disposed of on 31.10.2007 (Ann-A-2) with a direction to the respondent authorities to decide pending representation of the applicant within three months. In pursuance of such direction of the Hon'ble, High Court the respondents authorities have considered the claim of the applicant and passed impugned order dt. 1.1.2008 (Ann-A-1) rejecting his claim of regularization, which is under challenge in this OA.

7. It is an undisputed fact that the applicant completed intermediate in the year 1990 and thereafter enrolled his name in the Employment Exchange in the year 2004.

8. It is the case of the applicant that he worked continuously during the year 2004 to 2005 as Substitute GDS and he is having requisite qualification for the post of GDS but the respondents did not consider his claim and simply rejected it illegally and in support of his claim he mainly relied on the circular dt. 23.2.1987 (Ann-A-7) issued by Respondent No.2.

9. Admittedly, the applicant was engaged as substitute during the absence of regular incumbent on the post of GDS DA, Laxmipur, Pratapgarh and GDS Packer Pratapgarh City and GDS MP, Handur in different spells during the year 2004 and 2005. It is also not in dispute that the name of the applicant was not sponsored through employment exchange for his engagement as substitute Ann-A-6 dt. 23.2.1987 is the circular issued by Respondent No.-2 which shows that preference be given to the substitutes whose names have been



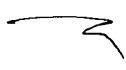
sponsored through the Employment Exchange. While considering their respective claims for regularization, this circular also says that preference be given to long working of substitutes in continuous service.

10. But in the instant case, through the applicant worked during the year 2004 and 2005, admittedly, it was not continuous engagement and further, his name was not sponsored through Employment Exchange at the time of his initial engagement and in such circumstances the said circular dt. 23.2.1987 (AnnA-6) is not at all helpful to the applicant since he failed to satisfy the requirement as mentioned therein.

11. The learned counsel for the applicant relied on the following decisions stating that similar claims of substitutes have been allowed in O.A.No.688/1993 dt. 27.3.1997 between Baldevo Pd. Bharti Vs. Union of Indian 2. 2001 SCC (L&S) page 90 in between U.O.I & Ors. Vs. Devika Guha and Others.

12. In the case Devika Guha the Hon'ble Apex Court issued direction to the department in respect of absorption of ED Agents of postal department who have worked 180 days or more in one calendar year continuously to consider such claims if they have worked for long period continuously.

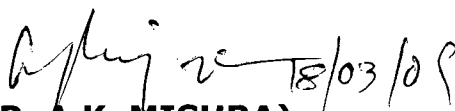
13. But in the instant case, it is not the case of the applicant that he worked continuously for 180 days or more in one calendar year continuously and as such the above citation is not helpful to the applicant.




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14. In respect of the decision of CAT, Lucknow Bench, there was notification for regular appointment of EDDA, Jhakurpur Post Office, and the names of the candidates including the applicant was recommended from the employment exchange and in the selection, the applicant was appointed by a letter dt. 19.6.1993 of sub divisional Inspector of Post Office and subsequently the department issued impugned order dt.13.8.1993, canceling the appointment of the applicant, for accommodating private respondent there in. But, no such circumstances are prevailing in the instant case and there was no notification for regular appointment. Thus the said decision relied by the applicant is not helpful to the facts of this case.

In view of the above circumstances there are no merits in the claim of the applicant for regularization of his services as such OA is dismissed. No costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIAH)
MEMBER (J)
18.03.2009

Amit/-