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Registration O.A. No. 8 of 1990

Baboo Lal ... Applicant.

Versus

Union of India
and others ... Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (2)

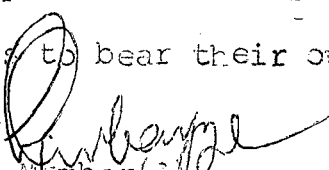
(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as 'Extra Departmental Letter Box Peon (EDLB Peon in short) by letter dated 23.12.1985 issued by the respondent no. 4 at Aliganj Extension Post Office, Lucknow. Shri Ram Niwas who was EDLB Peon in Aliganj Extension Sub-Post Office was deployed to work as outsider postman in the same sub-post office. The applicant gave an application to the Assistant Superintendent of Post Offices, Lucknow on 23.12.1985 for engaging him as an 'EDLB Peon' in Aliganj Extension Post Office in place of Shri Ram Niwas and he gave an undertaking that he himself ^{would} vacate the post when Shri Ram Niwas comes back to his post. The Assistant Superintendent of Post Offices, North Lucknow directed the Sub- Post Master, Aliganj Lucknow to engage the applicant as EDLB Peon in his office on purely temporary basis on the risk and responsibility of Shri Noor Mohd Khan. The applicant continued to work as such, till 31.7.1989 when the said Ram Niwas reported back to his duty and with the result, the applicant was relieved back. The applicant has challenged the said termination order on the ground that he was employed by the post office and his services can be terminated only in accordance with

law and further the post office being an industry, he was entitled to the benefit of the Industrial Disputes Act. It is to be noticed that the post never fell vacant as the said Ram Niwas, the permanent incumbent was only deployed ^{elsewhere} to work and he has a lien over the said post. In order to continue the work, the applicant was appointed. The applicant must have been appointed on the basis of the said application. In case the said application which has been filed by the respondents is a forged one, the reasons for which were still not forthcoming. The applicant should have come forward with the copy of the application which was given by him. Even if, we ignored the question of undertakings, but the fact remains that the applicant was engaged on a post which was still not vacant as the permanent incumbent to the said post had gone out somewhere without vacating the said post and on his return, obviously, the applicant's appointment must be ceased and that is why it ceased. In case, the applicant would have been regularly appointed on the said post, he could have claimed that his services could be terminated after giving notice to him in accordance with the rules. The post office may be an Industry and the benefit of the Industrial Disputes Act, will be available to those who have been appointed in accordance with law. The engagement of the applicant was only a time gap arrangement and it has not ripened into an 'appointment' on the post which was 'vacant'. As such, it is not open for the applicant to claim benefit of the Provisions of Industrial Disputes Act. The Provisions of the Industrial Disputes Act would have been made applicable if there was not rule in this behalf. The applicant has got his appointment under the relevant rules or the departmental


instructions which provides for making such arrangements.

2. Accordingly, we do not find that the applicant has been able to substantiate his claim and this application is bound to be dismissed and accordingly, it is dismissed. However, in view of the fact that the applicant had worked more than three years and has gained experience, as such, the applicant's claim for appointment on the said post in the said postal circle or elsewhere should be considered by the respondents and we hope that they will consider the claim of the applicant for appointment in any other Branch Post Offices and give him priority and preference in the matter of appointment in comparison to any new comers. The application is dismissed with the above observations. Parties to bear their own costs.


Member (A)

Dated: 23.6.1992

(n.u.)


Vice-Chairman