

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No: 266/2009

This, the 17/10 day of September, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Mukesh Shukla aged about 29 years S/o Sri V. P. shukla, R/o village Cole Bajar Deeh, P.O. Kola-Bajhan, P.S. antu, Distt Pratap Garh.

Applicant

By Advocate Sri A. P. Singh.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Senior Superintendent of Post Office, District Pratapgarh.
3. Sub Divisional Inspector, Post Offices Lalganj, Sub Division, Lalganj Pratapgarh.
4. Branch Post Master, Kola Bajhan (Kishungan), District Pratapgarh.
5. Senior Post Master, Pratapgarh.

Respondents

By Advocate Sri Atul Dixit.

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

The applicant is aggrieved by the order dated 5.6.2009 of the Respondent No. 3 disengaging him from his duties related to the post of Gramin Dak Sevak Delivery Agent (GDS DA).

2. The post of Gramin Dak Sevak Delivery Agent fell vacant on 29.2.2000 after retirement of the regular incumbent (Ram Dev Singh). The applicant, according to the respondents, was

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engaged on the same date as a substitute to manage the duties of the vacant post. Afterwards, he was asked to discharge additional responsibilities of the post GDS Runner Kolbajhan when the incumbent of that post expired. Subsequently, when a regular candidate was appointed on the post of GDS Runner, Kolbajhan, the additional responsibility of the applicant was withdrawn.

3. According to applicant, his pay was stopped once w.e.f. April, 2004, but on his representation his pay was released subsequently. Respondent No. 2 inspected the Branch Post Office on 8.6.2007 and recorded his satisfaction on the work of the applicant in his inspection report dated 15.6.2007. But unfortunately, his allowances were not released from July, 2007. The applicant fell ill on 26.6.2008 and could not perform his duties for a short period. He rejoined his duty on 15.7.2008 on submission of medical fitness certificate. In the letter dated 24.9.2008, the applicant was once again disengaged from work on the same ground of irregular initial appointment but, this order was cancelled on the same day. The applicant submitted a representation on 22.9.2008 to Respondent No. 2 for release of allowances and followed it up with another petition on 24.2.2009. Allegedly, Respondent No. 3 did not take kindly to the action of the applicant to place his grievance before Respondent No. 2, who took cognizance of the matter and directed Sr. Post Master to report why his TRCA had not been released. Therefore, it is alleged, the respondent No.3 issued the impugned order in a huff.

4. The impugned order is challenged on the ground of being arbitrary without any basis or valid reason. The fact that he

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was discharging the duty of that GDS Delivery Agent for a number of years since 29.2.2000 was well known to the respondents. He was regularly drawing his allowances all these years till June 2007. He was even considered good enough to be entrusted with additional responsibilities when a temporary vacancy on the post of Runner occurred. According to him, his trouble started only after the respondent No. 3 came as the Sub Divisional Inspector. During one of his inspections, according to the applicant, the original appointment letter dated 31.1.2000 was produced before him. He took it, and allegedly did not return it. The applicant's allowances were stopped in July 2007 which led him to make a representation before Respondent No. 2. There was nothing wrong in making a request for release of his legitimate dues. There was no reason for Respondent No. 3 to take offence at this, nor was there any other valid development to justify the impugned order.

5. At the time hearing, the learned counsel for the respondents submits that the applicant had no right to continue on that post, as he was not a regularly appointed employee of the Postal Department. He was engaged as a substitute employee purely on temporary basis to manage the work after retirement of the regular incumbent. The practice is that a substitute is arranged by a regular incumbent during his leave, or temporary absence and he takes responsibility for the good conduct of the substitute; that is not the case here. Therefore, the applicant, at best, can be described as a casual/ temporary employee who was engaged to manage the duties of GDS DA. It is an admitted fact that he has been continuing in this capacity since 31.1.2000

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for more than 9 years. It is not the case of the respondents that a regular candidate has been appointed on the post. Neither is it a case of termination on the ground of misconduct. The services of an employee who has been working for long years satisfactorily could not be dispensed with at the whims and caprices of Respondent No. 3.

6. We fail to appreciate the reasons behind the action of Respondent No. 3. Not only that he had stopped the payment of the applicant's honorarium since 1997, though the applicant was allowed to perform the duties, he had disengaged the applicant on 21.6.2008 only to reinstate him the same day. Further, when the matter was with Respondent No. 2 who had given a direction to ensure payment of allowances to the applicant and to asked for reasons for non-payment of his TRCA, there was no immediate provocation for Respondent No. 3 to pass the termination order.

7. In the result, the impugned order, not being sustainable, is hereby quashed. The respondents are directed to re-engage the applicant in the same status which he had earlier on the post of Gramin Dak Sevak Delivery Agent at Kolbajhan, Pratapgarh District provided no regular appointment has been made on this post. In case, this post has been filled up by a regular appointee, the applicant may be adjusted else where in the same status against an available vacancy. The Respondent No. 2 is directed to investigate the conduct of Respondent No. 3, which appears to be whimsical and capricious and examine whether the allegations of malafide made by the applicant have any basis to justify disciplinary action.

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8. The application is allowed with the above directions. No cost.

A. K. Mishra 17/CS/09
(Dr. A. K. Mishra)
Member (A)

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Member (J)

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