

Central Administrative Tribunal, Lucknow Bench,

**Lucknow**

**Original Application No. 605/2005**

This the 22<sup>nd</sup> day of September, 2008

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

Vijay Bahadur Tripathi aged about 45 years son of Sri Ram Subhag Tripathi at present working as Group D' Packer, Barabanki Bazar Post Office, Barabanki.

**Applicant**

By Advocate: Sri Surendran P

**Versus**

1. Union of India through the Chief Post Master General, U.P. Circle, Lucknow.
2. Superintendent of Post Offices, Barabanki.
3. Asst. Superintendent of Post Offices, South Sub Division, District- Barabanki.

**Respondents**

By Advocate: Sri Vishal Chowdhary

**ORDER**

**BY HON'BLE DR. A.K. MISHRA, MEMBER (A)**

This application has been made with a prayer to quash the order dated 2.9.2005 of the respondent No.3 in which the representation of the applicant to permit him to continue against the post of Group 'D' Packer till regular appointment is made and also to grant him salary of Group 'D' Packer for the period 10.1.2005 upto 31.5.2005 and the from 1.8.2005 till a regular appointment is made.



2. The case of the applicant is briefly summarized as under:-

He was working as Extra Departmental (ED) Stamp Vendor of Barabanki Bazar Post Office since 20.2.84 and he was getting Time Related Continuity Allowance (TRCA) meant for an Extra Departmental employee. The post of Group 'D' Departmental Packer fell vacant as the previous incumbent Shri Bhuleshwar Parsed was transferred away. The applicant was asked to discharge the duties of this post and accordingly he took the charge from 10.1.2005 in addition to his own duties. However, subsequently on 17.5.2005, one Sandeep Kumar was engaged to work as ED Stamp Vendor at the recommendation of the applicant in view of the fact that he was discharging the duties of Group 'D' Packer (Annexure 3). Further, the respondent No.3 vide his letter dated 17.5.2005 sought for approval for engagement of the applicant on Muster Roll basis against the vacant post of Group 'D' Packer. Meanwhile, two Extra Departmental employees who were rendered surplus in the Head Office were deployed in this post office vide order of respondent No. 3 dated 1.8.2005 to look after the duties of vacant post of Group 'D' and the applicant was verbally asked not to perform the duties of that post any more. The applicant contends that Sri Rakesh Kumar Singh and Sri Uma Shankar Bajpai were junior to him and should not have been brought over to this post office over looking his



⑦ claim for appointment against Group 'D' post. Aggrieved by this arrangement, he filed O.A. No. 301/2005 in which the Tribunal directed the respondent to dispose of his representation within one month and to allow him to work against the said post if it was not going to adversely affect redeployed employees Sri Rakesh Kumar Singh and Sri Uma Shanker Bajpai. Further, respondent No. 3 cancelled his order dated 1.8.2005 and attached Sri Rakesh Kumar Singh and Sri Uma Shanker Bajpai against the vacant post of Departmental Postman and at the same time terminated the muster roll arrangement of the applicant against the post of Group 'D' Packer. Further, the engagement of Sri Sandeep Kumar as E.D. Stamp Vendor was also cancelled. The applicant was directed to perform the duties relating to sale of Stamps, exchange of mails and packing of posts. The representation of the applicant, which was filed in pursuance of the directions of this Tribunal was decided on 2.9.2005 (impugned order) in which it was held that because of reduction of work load, there was no justification to retain the regular post of Group 'D' Packer and that work of Packer and Stamp Vendor could be done in 2 hrs. and 25 minutes in a day. The impugned order also states that the work of Stamp Vendor for the period 10.1.2005 to 17.5.2005 was being done by the Sub Post Master himself and the applicant was looking after the duties of Group 'D' Packer. Further, the Post Master had justified the engagement of



one person against the post of Group 'D' Packer and obtained approval for the applicant's engagement on muster roll basis as well as another outsider Sandeep Kumar for work of Stamp Vending. According to the applicant, the present work load on him would justify working for more than 8 hrs in a day and entitle him to get salary of Group 'D' Packer. According to him, the change in the stand of the respondents was provoked by the action of the applicant in seeking redressal from this Tribunal. The respondents had paid him salary of Group 'D' Packer for the period 18.5.2005 to 31.7.005 and his claim for the period 1.8.2005 to 11.8.2005 was to be paid after sanction of the medical leave application. According to him, the work load has increased as he is discharging the work of exchange of mail bags from Barabanki Post Office to Head Post Office, Barabanki and the work of Stamp Vendor in addition to his duties as a Packer. Therefore, it is a travesty of truth to say that the work load has come down.

3. The respondents have resisted the claim of the applicant. It is asserted that he was never selected for doing the work on a regular Group 'D' post. On the other hand, his work as a Stamp Vendor was taken over by the Sub Post Master in addition to his own duty w.e.f. 10.1.2005 to 17.5.2005 and the applicant was allowed to perform the work of Packer upto a maximum of 5 hrs. daily as GDS



• Packer. Even the work of exchange of mail was entrusted to another GDS employee of Barail Branch Office. This should go to prove that the work of Group 'D' post was distributed to other officials, and the applicant never complained about any extra load or about his entitlement for regular salary of Group 'D' post. However, he was engaged to work on Muster Roll basis for a period of 18.5.2005 to 11.8.2005 and was paid salary for this period except for the portion he was on medical leave. It was explained that there are two categories of Packers in the Department:

- i) Regular Packers where the work load justifies eight hours of work a day;
- ii) GDS Packers where work load does not justify more than 5 hrs. of work in a day.

4. The position was reviewed by the Department with reference to the work load on Barabanki Bazar Post Office and it was ascertained that the work load did not justify engagement of a Packer on muster roll basis. Therefore, the muster roll arrangement was terminated. Reference was made to the application dated 10.5.2005 of the applicant (Annexure 'C' of the C.A.) in which he had advanced his candidature for engagement against the vacant Group 'D' post and requested for favorable consideration of his representation. This application itself goes to show that he was not working against Group 'D' post, if it was still said

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to be vacant and he was desirous of being engaged in a regular manner against the said post . As regards , the engagement two GDS officials, it was explained that they were surplus at Barabanki Head Office hence they were deployed at Barabanki Bazar , so that expenditure on account of muster roll engagement could be saved. Since only GDS officials were engaged, there was no question of seniority/juniority involved, as they were not to be paid regular salary meant for a Group 'D' post. It was also urged that the work of Group 'D' packer was distributed between the Post Master and another GDS employee Ram Prakash and the applicant did not have the work for more than 5 hrs. in a day. The Sub Post Master Sri Saini has also testified to this effect in a statement which was annexed as Annexure 'B' of C.A. The applicant drew his T.R.C.A. during the period from 10.1.2005 to 17.5.2005 and did not raise any objection at any time. It was also stated that the respondents have full competence to conduct a review about the work load and to terminate the muster roll arrangement. According to the reassessment, it was seen that the work in the post office other than what was attended to by the Sub Post Master required engagement of one person for 2 hrs. and 25 minutes daily. Therefore, the temporary arrangement of muster roll engagement was revoked in the interest of economy of expenditure.

5. The applicant has been paid muster roll salary for the period 18.5.2005 to 31<sup>st</sup> July, 2005. He was absent from duty without any intimation on 2 and 3<sup>rd</sup> August, 2005. Thereafter, he submitted leave application on medical ground on 17.8.2005 for sanction of leave from 1.8.2005 to 11.8.2005. The leave applied for is yet to be sanctioned for this period.

6. From the above narration, it is clear that the applicant was engaged as a Extra Departmental Agent and he is legally entitled to his allowance meant for such an agent. For a short period from 18.5.2005 to 11.8.2005, he was engaged as a muster roll employee and has been paid salary meant for a Group 'D' Departmental employee. Thereafter, the muster roll arrangement has been terminated. The applicant himself is seeking a relief that he should be allowed to work against the Group 'D' post until a regular employee is posted there. That means he has no legal right to hold a Group 'D' post. Neither can one seek regularization unless he is recruited in the manner prescribed by Rules. It is also a fact that he had applied on 10.5.2005 to be engaged against the vacant post of Group 'D' Packer vide Annexure 'C'. This controverts his own claim that he was working against the said post w.e.f. 10.1.2005. It goes without saying that the Department has got full authority to review the work load of a Post and to ascertain the

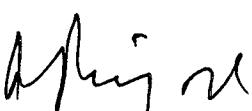


justification for continuing with a temporary arrangement. The applicant had relied on a report of an Inspector which indicated that he was working against the vacant post of Group 'D' Packer but the respondents have clarified that the Inspector had made an erroneous observation for which he was taken to task and a corrigendum was issued by the Inspector vide Annexure 3 of Supplementary Counter Affidavit, which clarified that the applicant was to be shown against the post of GDS Stamp Vendor but not against Group 'D' Packer.

7. Be that as it may, the applicant does not have a legal right to claim the salary of a regular Group 'D' employees unless he has been appointed in a regular manner for the said post. Similarly, in the present case, the applicant was appointed as an ED Stamp Vendor and has been getting allowances meant for that post. For the short period, he was engaged on muster roll against the Group 'D' Packer post, he has been paid the salary except for the leave portion. We would direct that his leave application should be decided within a period of one month from the date of receipt of copy of this order. We do not consider it appropriate to interfere in the administrative decision of the Department about the need for a post which has to be justified purely from the point of view of work load. Therefore, we cannot find fault with the decision to terminate the muster roll



arrangements as, according to the respondents, there was no sufficient work load to justify it. Under the circumstances, we find that there is no merit in this application. The O.A. is disposed of with the observation that his leave application should be disposed of within a period of one month from the date of receipt of copy of this order, if it has not been done so far.

  
(Dr. A.K. Mishra)

MEMBER (A)

  
(M. Kanthaiah)

MEMBER (J)

22-09-2006

His/-