

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No. 435/2006

This, the 1st day of May, 2008.

Hon'ble Shri M. Kanthaiah, Member (J)
Hon'ble Sri Shailendra Pandey, Member (A)

Anupama Shukla aged about 32 years wife of Shri Vinnet Dixit, Resident of Village and Post- Benti, District- Lucknow.

Applicant.

By Advocate: Shri Praveen Kumar

Versus

Union of India through:

1. The Secretary, Department of Post Offices, Dak Bhawan, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Superintendent of Post Offices, Lucknow.

Respondents.

By Advocate: Shri S.K. Awasthi

ORDER

By Hon'ble Shri Shailendra Pandey, Member (A)

The applicant in this O.A. has sought quashing of the order dated 22.8.2006 passed by the respondents and counting of past services rendered for the benefits of seniority, promotional benefits and other benefits etc..

2. Brief facts of the case are that the applicant had been initially appointed on the post of EDBPM at Benti Post Office but her services were terminated by order 5.11.2001 (the order was passed as a result of order issued in O.A. No. 380 of 1993). Thereafter, she preferred Misc. Applications No. 2942 of 2002 and 2968 of 2002 for recall of the order dated 31.8.2001 but in the mean time, on the basis of an application moved by her, the Director Postal Services, Office of the PMG wrote to respondent No. 3 that the applicant had completed more than 3 years of service and should be adjusted as a surplus candidate as EDDA somewhere. This Tribunal had also directed that the case of the applicant be considered for being given alternative employment in Extra Departmental Post Office keeping in view the instructions of DOP&T with regard to the provisional appointment of ED Agents and also keeping in view the instructions with regard to near relations for the

purpose of appointments to the ED posts. Accordingly, the applicant was appointed on 9.8.2005. On 27.4.2006, she made a representation to the respondents for grant of seniority on the basis of previous services rendered by her, which was rejected by the respondents vide impugned order dated 22.8.2006 (Annexure A-1). It is the contention of the learned counsel for the applicant that the impugned order dated 22.8.2006 is bad in the eyes of law for the following reasons.

i) That the appointment of the applicant cannot be treated as a fresh appointment as it is being issued in compliance of the order passed by this Hon'ble Tribunal in O.A. No. 71 of 2002. That the Tribunal while passing the order in O.A. No. 71 of 2002 was fully aware about the facts of the case and in spite of this, ordered that she may be treated as a surplus employee and therefore, she would be entitled to these benefits.

ii) That the applicant had put in more than 9 years of unblemished service with the respondents and is fully entitled to have the services counted for seniority etc. as the rules provide for benefit of counting of previous service.

3. On the other hands, respondents counsel has opposed the above contentions of the counsel for the applicant and has pointed out that the order dated 5.11.2001, terminating the services of the applicant was issued because her earlier appointment, which was held to be irregular, had been quashed and therefore, the subsequent order appointing her, has to be treated as a fresh appointment. He has also pointed out that her earlier appointment was against the rules and once the initial appointment itself is held to be irregular, no benefits of counting of her past services can be claimed as the past services itself are to be construed as a irregular. He has also mentioned that the quashing of her earlier appointment had also not been challenged by her and, therefore, she cannot now claim any benefits on account of services rendered prior to quashing of the appointment.

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4. We have carefully considered the rival contention of both the counsel and gone through the pleadings on record.

5. It is trite that once an appointment has been held to be in violation of rules, then the same becomes a nullity and thus in respect of services rendered as a result of such appointment, no benefits can be claimed. The observations made by the Apex Court in connection with judgment in the case of *National Fertilizers Ltd. Vs. Somvir Singh (AIR 2006 SC 2319)* also support this view. Admittedly, the initial appointment of the applicant itself had been quashed by the Hon'ble Tribunal on the ground that the appointment of the applicant was against the rules. She cannot, therefore, claim as a matter of right any benefits that would accrue to a person who is appointed in conformity with the rules. Moreover, the initial appointment order dated 8.4.93 and subsequent appointment order dated 9.8.2005 clearly state that the appointment of the applicant would be in the nature of a contract and can be terminated at any time by notifying each other in writing.

In view of the above, the O.A. lacks merit and is dismissed without any order as to costs.


MEMBER (A) 19.05.08

HLS/-


MEMBER (J)

19.05.2008