

Central Administrative Tribunal, Circuit Bench,

Lucknow.

Registration (O.A. No. 254 of 1990)

Pradeep Kumar Misra

... Applicant

Vs.

Union of India & others

... Respondents

Hon'ble Mr. Justice K. Nath, VC,

Hon'ble Mr. M.M. Singh, AM

J U D G M E N T

( delivered by Hon'ble Mr. M.M. Singh, AM)

1. The issue that arises for decision in the above application filed under Section 19 of the Administrative Tribunals Act, 1985, is whether the applicant substitute Extra Departmental Delivery Agent (EDDA) is a workman under the Industrial Disputes Act, 1947.

2. The applicant's case is that having been appointed by Sub-Divisional Inspector (Postal) Central Sub-division, Hardoi, (respondent no. 4) he worked as EDDA of Hariawan in spells from 10-01-1987 to 18-12-1987, from -01-08-1988 to 31-11-1988, from 01-01-1989 to 31.07-89 and is continuously so working from 01.11.1989. Thus, having put in more than 240 days of continuous service in a year as an employee workman of the Postal Department he cannot be retrenched except by complying with the provisions of Sections 25F and 25N of the Industrial Disputes Act. The respondents substantially do not dispute their approving the name of the applicant for substitute, but dispute the availability of the rights and

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the protections claimed by the applicant. Their case is that the applicant was offered by Shri Ram Sharan Mishra, EDDA of Hariawan when he proceeded on leave on 23-10-1989 which offer was approved. The applicant thus is a substitute and not an employee of the Postal Department and the provisions of the Industrial Disputes Act do not apply to mere substitutes who can be discharged at the will of the approving authority at any time in accordance with the relevant rules of the Postal Department.

3. Shri Dubey, the learned counsel for the applicant submitted that in Kunjan Bhaskaran and others Vs. Sub-Divisional Officer, Telegraph and others (1983 LAB I.C. 135) Kerala High Court decided that the Post and Telegraph Department is an Industry and RMS is held to be an industry in Hari Mohan Sharma Vs. Union of India decided on 30-5-1986 by Jabalpur Bench of this Tribunal. In the Kerala case, the petitioners were casual Mazdoors and in Hari Mohan Sharma case, the petitioner was a daily wager. The counsel placed reliance on the decision of this Tribunal, Calcutta Bench in Ashoke Kumar Sinha Vs. Union of India, 1989, LAB I.C. 670 that services of Extra Departmental Branch Post Master cannot be terminated without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947.

4. Case law is since settled that the Postal Department is an Industry. But the question in this case as mentioned in the beginning is whether the provisions of Section 25F of the Industrial Disputes Act apply to substitute EDDA. The respondents case, as seen in para-3 of the counter affidavit of respondent no. 5 filed on his behalf and on behalf of respondents 1 to 4 is that Ram Saran Misra, EDDA, Hariawan proceeded on leave for 45 days from 23-10-1989 and offered the services of his son, the applicant, as a substitute in accordance with

certificate is stated to be based on the attendance register of Subpost Office, Hariawan. It is not clear to whom was this certificate issued and for what purposes and whether the signatory possesses the authority to issue such a certificate.

5. Coming to the post of substitute EDDA, the real status of the applicant, according to Rule 2(a) of EDA (Conduct & Service) Rules, 1964, an employee means a person employed as an Extra Departmental Agent. According to Rule 2(b)(iii) of these Rules, Extra Departmental Agent means an Extra Departmental Delivery Agent also. According to D.G.'s letter No. 43/15/65-PEN dated 7th June 1968, referred to on page 19 of P. Muthuswamy and V. Brinda's Service Rules for Extra - Departmental Staff in Postal Department (Fourth edition, 1989) an EDA can be authorised not to attend personally to the duty assigned to him by providing a substitute approved by the appointing authority. During such period EDA's authorised absence from duty, the salary and allowances payable to the EDA will be paid to the approved substitute. It is also in the instructions in the above book that the order sanctioning the leave to EDA should also specifically convey the approval of the appointing authority to the substitute working in place of EDA on leave and the order should also make it clear that the substitute may be discharged by the appointing authority at any time without assigning any reason. The appointing authority has also to ensure that such a substitute is not allowed to work indefinitely. The appointing authority should take immediate steps to make a regular appointment in that event and the person so appointed need not necessarily be the substitute. The substitute is not even required to furnish security as when the EDA applies for leave in the prescribed form, he undertakes to be responsible for the

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instruction below Rule 5 of EDA (Conduct & Service) Rules 1964. This rule requires that every EDA should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction the leave and the applicant was so approved on the clear understanding that he may be discharged from service at any time without assigning any reason. This has been denied by the applicant in his rejoinder affidavit. We are not convinced by this denial. Firstly, the applicant did not furnish copy of the authority by which he was approved for the post at Hariawan. Secondly, the application and also the rejoinder make no mention of this approval order and its contents and the applicant merely disclosed in the application that he has been working "off and on in leave and casual vacancies as EDDA at Post Office Hariawan" without stating the conditions of his appointment for the work. In the rejoinder also, after denying the contents of para 3 of the counter affidavit, the applicant jumps to asserting that he worked for more than three years continuously without stating the contents of the authority by which he was given the work to start with for each spell. In the circumstances, we are inclined to believe the averment of the respondents that the applicant was offered by his father Shri Ram Sharan Mishra, EDDA, Hariawan, as his substitute when he proceeded on leave for 45 days from 23-10-1989 and the offer having been accepted by the Postal Authority started the last of the several spells of the applicant's work as substitute EDDA. In view of this, we hesitate to accept as wholly correct the contents of the certificate dated 10-8-1990 reported to have been issued by Up Dak Pal, Hariawan to the effect that the applicant worked on the post of EDDA at Up Dak Ghar, Hariawan, for spells including the last one starting from 1-11-1989. The applicant really worked as substitute EDDA at Hariawan. The

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work of the substitute. The EDA's security bond also makes it clear that he would be responsible for the action of the substitute. Even with regard to irregularity committed by a substitute who is nominee of a EDA, the nominee while discharging the duties of a public servant remains a private agent. Any loss suffered by the Postal Department in such cases has to be recovered from the EDA who offered the substitute to work on his responsibility. The EDA as the principal will be liable for any civil action by the third party for the tort committed by his nominee though obviously EDA cannot be prosecuted in a criminal court for crime committed by his nominee substitute unless it can be established that the EDA agent has conspired with his nominee to commit the offence. Such characteristics of the substitute's post point to his being an agent of the EDA. No employer and employee relationship sets up between the Postal Department and the substitute EDDA. In this view of the matter, there does not arise the question of such a substitute being considered as a workman under the Industrial Disputes Act, 1947, who cannot be retrenched without complying with the provisions of Sections 25F and 25N of the Act. Also, when the applicant has no legal claim to the post of EDDA, he can obviously not challenge the action of the respondents to take steps to fill the post of EDDA at the juncture the administration sees the need for that and the action of the respondents to call for names of candidates from the Employment Exchange and the Employment Exchange sending a panel of four names including the name of respondent No. 6 and the selection of respondent No. 6 cannot be challenged by the applicant. As the applicant did not figure in the panel of names sent by the Employment Exchange, he could not be considered for the post by the respondents. In view of this clear position, we

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do not deem it necessary to address ourselves to the allegations of malafide, malpractices and nepotism the applicant has made in the matter of selection of respondent No. 6.

6. In view of the above, the application is dismissed without any order as to costs and the status quo for a period of 14 days ordered on 13-8-1990 and continued upto 31-8-1990 by order dated 28-8-1990 and extended by order dated 31-8-1990 is lifted with immediate effect.

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Dated : Lucknow

September 12, 1990

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