

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT RANCHI

O. A. No. 485/96

Date of decision : 15<sup>th</sup> MAY-2000

Hrishikesh Mahto, son of Shri Tara Prasanna Mahto, resident of village & P.O. OTAR, District : West Singhbhum, EDBPM of OTAR EDBO, P.O. : OTAR, P.S. : Koraikela, via-Chakradharpur, District : West Singhbhum.

By Advocate : Shri S.N.Tiwary.

..... APPLICANT.

Vs.

1. The Union of India through the Secretary, Govt. of India, Ministry of Communication, Department of Posts, New Delhi-cum-The Director General, Department of Posts, India, Dak Bhavan, New Delhi-110 001.
2. The Chief Postmaster General, Bihar Circle, Patna-1.
3. The Postmaster General, South Bihar Region, Ranchi-2.
4. The Director of Postal Services, South Bihar Region, Ranchi-834 002.
5. The Sr. Supdt. of Post Offices, Singhbhum Division, Jamshehpur-831 003.

By Advocate : Shri G.K.Agarwal, ASC.

..... RESPONDENTS.

C O R A M

HON'BLE MR. JUSTICE S. NARAYAN, VICE-CHAIRMAN.  
HON'BLE MR. L.R.K. PRASAD, MEMBER (ADMINISTRATIVE).

O R D E R

*Sam*  
S. NARAYAN, V.C. :- This application under Section 19 of the A.T. Act, 1985, has been filed to quash and set-aside the impugned notice dated, 18th September, 1996, as contained in Annexure-A/1, requesting the Employment Exchange, Chakradharpur, to sponsor the names of the candidates for the post of Extra-Departmental Branch Post Master (for short, EDBPM), Otar Extra-Departmental Branch Office (for short, EDBO), under Koraikela Police Station of District West Singhbhum. The applicant has further prayed for direction upon the respondents to appoint him on the post and allow him to continue as such.

2. That applicant's case in brief is that his father (Tara Prasanna Mahto) was appointed as EDBPM of

OTAR EDBO on 23rd February, 1977, and he continued as such till 8th November, 1993, when he fell ill and proceeded on leave giving the applicant as his substitute. The Sr. Superintendent of Post Offices, Singhbhum

(Respondent no.5), sanctioned the leave and approved the applicant as his substitute. The leave was extended twice; first, upto 15th January, 1994, and, secondly, upto 31st January, 1994. All the times the leave was sanctioned with the approval of the respondent no.5 with regard to the substitute arrangement, vide Annexures-A/2, A/2(a) & A/2(b). The substitute arrangement as such, continued from 8th November, 1993 to 31st January, 1994, during which period the applicant worked as substitute of his father as EDBPM of Otar EDBO. The applicant's father prayed on 6th December, 1993, for retirement <sup>on</sup> ~~on~~ health ground and, thereupon, the respondent no.5 asked him to produce medical certificate, vide his letter dated, 15th December, 1993 (Annexure-A/4). (A) medical certificate dated, 27th December, 1993 (Annexure-A/5), was furnished and, thereupon, the Sr. Superintendent of Post Offices (Respondent no.5), by his order dated, 31st January, 1994, permitted the applicant's father to retire from service on medical ground w.e.f. 27th December, 1993. The applicant was holding the post even till present.

3. The above facts were the admitted truth on the record. In the background of ~~the~~ facts, the applicant has asserted that he did possess all the eligibility criteria for the post and he has been working as substitute till 31st January, 1994 and thereafter i.e., from 1st February, 1994, he has been working as provisional appointee. Since he was discharging the duties satisfactorily, he claimed regularisation against the post of EDBPM, Otar EDBO.

*Singh*

4. As against the above plea, the official respondents pleaded, inter-alia, that the applicant while holding the post as substitute of his father, was not entitled for appointment dehors the rule. It was further submitted that his case on the ground of relaxation of normal rules had been rejected by the concerned authority and his act of continuing on the post was highly irregular as already communicated to the Sub-Divisional Inspector of Post Offices, Chakradharpur, vide letter dated, 13th October, 1995 (Annexure-R/1). The impugned employment notice dated, 18th September, 1996, is said to be quite valid and to have been issued in due course of selection process.

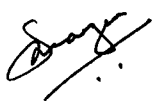
5. A simple question, therefore, arises whether the applicant was entitled to hold the post of the EDBPM, Otari, EDBO, dehors the rule, or by any sort of relaxation? The validity of the employment notice (Annexure-A/1) also has to be examined.

6. So far the substitute arrangement was concerned, it goes without saying that during the leave period every Extra-Departmental Agent should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him. Such approval was required to be obtained in writing. In the instant case, the leave, as prayed for, by the applicant's father was granted from time to time with the approval of the substitute arrangement, made with his consent. This aspect of the case has been demonstrated on the record with reference to the leave applications and the endorsements contained in the body thereof, vide Annexures-A/2, A/2(a) & A/2(b). This substitute arrangement was, however, could not be a ground for vesting any right or entitlement to the applicant to continue on the post even beyond the period of substitute arrangement. In fact, the

applicant has not claimed any right on this ground.

7. Much emphasis on behalf of the applicant was put on the fact that since he continued to hold the post even beyond the period of substitute arrangement, it would be deemed that he has been working as provisional appointee. The period beyond the substitute arrangement i.e., from 1st February, 1994, according to the applicant, would entitle him for regularisation against the said post.

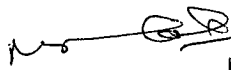
8. Even assuming (not, of course, accepted) the applicant's plea of provisional appointment (beyond the period of substitute arrangement) to be true, we are of the view that it would not create any right to hold the post on regular basis. A provisional appointment dehorse the rule, in any ordinary course, can not be a valid ground for regular appointment. In fact, there was no formal order even of provisional appointment. In this view of the matter, the above plea was basically wrong. It appears that after the period of substitute arrangement was over, the applicant moved for relaxation of normal rules for his absorption, but that was rejected by the concerned authority as explained in the letter dated, 13th October, 1995, addressed to the Sub-Divisional Inspector of Post Offices, Chakradharpur (Annexure-R/1). It, of course, consumed more than six months time in declaring the arrangement with the applicant to be irregular, but it can not be considered to be unusual. Even thereafter, the respondents authorities made the delay of about an year in issuing the impugned employment notice dated, 18th September, 1996 (Annexure-A/1), but the delay aspect, in the given facts and circumstance of the case, should not create any right of regularisation. The fact remains that the applicant held the post continuing even after substitute arrangement for about 2½ years,




but it was dehorse the rule. A regular appointment could be held only going through the selection process under the rules otherwise, it has to be taken as invalid one. And, at the very root of the applicant's case, it has to be noticed that he continued to hold the post beyond the period of substitute arrangement without any valid order issued by the competent authority.

9. Lastly, it was urged on behalf of the applicant that he has worked for quite number of days, much beyond 240 days in an year, and he was entitled to the benefit as provided under Chapter-V A of the Industrial Disputes Act, 1947, and, in this context, our attention was drawn to a decision of this Tribunal from Ernakulam Bench in the case of R. Padmanabhan Nair Vs. Superintendent of Post Offices and Anr.; reported in ATR 1990 (1) CAT 215. Suffice it to say in this context, that the Postal Department has not been categorised as industry. It was only the Telecom Department which has given the status of industry. That being as such, no advantage can be derived by the applicant under the provision of the Industrial Disputes Act, 1947.

10. For the reasons, aforesaid, we would confidently say that this OA has no merit and, accordingly, we dismiss this OA with no order as to costs.

  
(L. R. K. PRASAD)  
MEMBER (A)

  
(S. NARAYAN)  
VICE-CHAIRMAN

SKJ