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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,  
JAIPUR.

Date of Decision: 14.9.93.

OA 829/89

RAJ KUMAR SAXENA

... APPLICANT.

v/s.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON. MR. B.B. MAHAJAN, MEMBER (A).

HON. MR. GOPAL KRISHNA, MEMBER (J).

For the Applicant

... SHRI K.L. THAWANI.

For the Respondents

... SHRI U.D. SHARMA.

PER HON. MR. B.B. MAHAJAN, MEMBER (A).

The applicant, Raj Kumar Saxena, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, with the prayer that he should be declared to be entitled to regular appointment as E.D. Stamp vendor in Jaipur GPO and the appointment of Paranveer Singh as E.D. Stamp Vendor is illegal.

2. The contention of the applicant is that he had worked as E.D. Stamp vendor during various period from 1.8.83 to 30.11.88, as mentioned in para 6(1)(iii) of the OA. As mentioned in para 6(1)(iv), he had worked for 283 days in 1987, and 288 days in 1988. He has also stated that he has been approved as substitute by the Senior Postmaster, Jaipur. His contention is that his services have been terminated by a verbal order dated 30.11.88. His <sup>further</sup> contention is that he was called for interview vide letter dated 14.3.89 and he was interviewed

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on 27.3.89 but the Senior Postmaster, Jaipur, did not select him and selected the respondent No.4, Paranveer Singh, who had been engaged as substitute since September, 1988. The respondents have explained in their reply that the applicant had been working as substitute for the various periods <sup>for different E.D.s</sup> during their leave arrangements and he had been approved for being appointed as such under the Rules but that approval is only meant to consider his suitability for that work and to eliminate undesirable persons to handle Government Postal Stationary & money. They have stated that on occurrence of a short term vacancy of E.D. Stamp Vendor, the applicant alongwith others was called for interview to adjudge the suitability for the post. It is stated that the post was filled up on the basis of merit and Shri Paranveer Singh (Respondent No.4) was selected and appointed to the said post. It is also stated that the said Pranveer Singh was also working as a substitute E.D.S.V. and they have denied that he was in any way related to the Senior Postmaster, Jaipur (Respondent No.3). The respondent No.4 in his reply has also denied that he was in any way related to respondent No.3 and has produced with reply a copy of the Ration Card and Employment Registration Certificate in the Employment Exchange and the certificate regarding bonafide residence of Jaipur. All these documents have been issued in 1989. The respondent No.4 has also filed an affidavit saying that he is not related to Shri B.S. Chouhan, Senior Post Master, Jaipur GPO.

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3. We have heard the learned counsel for the applicant and for respondents No.1 to 3. None was present on behalf of the respondent No.4. The learned counsel for

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the respondents has referred to the Director General's instructions dated 24.4.72 (Swamy's Compilation of Service Rules for E.D. Staff, 5th Addition, Page-21-22). These instructions provided, inter-alia, that during leave, every E.D. 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 should be obtained in writing. The allowance normally payable to an E.D. Agent shall, during leave, be paid to the approved substitute provided by him. He has stated that the applicant had only been approved for being posted as substitute by the Senior Postmaster, Jaipur, and he had actually been engaged as a substitute of the various E.D.S.Vs., as and when such Vendors proceeded on leave, as stated in para-3 of their reply. He has also taken the plea that since the applicant had worked as substitute of the E.D.S.Vs. but had not been appointed as such by the Department, the question of issue of any retrenchment notice or payment of retrenchment compensation under Section 25 of the Industrial Disputes Act does not arise. The learned counsel for the applicant has pointed out that the details mentioned by the respondents in para-3 of their reply do not cover the entire period for which the applicant had worked, as per para 6(1)(iii) of the OA and the respondents have also not produced any copies of applications under which the applicant had been permitted to work as substitute during the leave period. The learned counsel for the respondent has pointed out that no order of appointment on adhoc basis has been produced to show that the applicant had even been appointed as E.D. Agent. The learned counsel for the applicant has also referred to instructions dated

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2.3.81 (Annexure-IX) issued by the Director General, Posts and Telegraphs, New Delhi. It provide that casual mazdoors who have been recruited from the Employment Exchange and have been done 240 days of service in each consecutive year should be preferred to the outsiders. The learned counsel for the respondents has pointed out that these instructions do not cover the cases of E.D. Agents and their substitutes.

4. We have given careful consideration to the respective pleas of the parties. It is true that the para 4 of the reply filed by the respondents does not cover the entire period during which the applicant had, in accordance with the <sup>details</sup> observations cited in the OA, worked as E.D.S.V. Further, the applicant has not produced any order of appointment as E.D. Stamp Vendor. Various charge reports submitted by him also show that he had taken over charge only for the leave arrangement and he has not produced any specific order by which he had been appointed as E.D. Agent by the Department. The applicant himself stated that he has been approved as substitute. The DGP&T's instructions, referred to above, clearly provide for arrangement of a substitute by the E.D. Agent during his leave although that person should be approved by the authority concerned. In the circumstances, we are inclined to accept the version of the respondents that the applicant had been working only as substitute during the leave of various E.D. Agents. In the circumstances, he cannot be held to be an employee of the Department and even if he had continued to work as E.D.S.V. for more than 240 days in 1987-88, it was by way of substitute for various E.D. Agents and the

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provisions of Section 25F of the Industrial Disputes Act are therefore not attracted. For a provisional appointment against the regular vacancy the applicant had admittedly been also called for interview alongwith respondent No.4. The respondent No.4 had been selected and the applicant was not selected. The applicant has alleged mala fide in the selection. The main ground was that the respondent No.4 was related to the Senior Postmaster (Respondent No.3) This has been denied by both respondent No.4 and respondent No.3. No evidence has been produced to show how the respondent No.4 was related to respondent No.3. So far as the residence is concerned, the respondent No.4 has filed a copy of the residence certificate dated 16.12.89. Although this certificate is of 1989, later than the date on which the interview was held. In absence of any evidence to the contrary it cannot be held merely on presumptions and surmises that the respondent No.4 was not a resident of Jaipur and his appointment on provisional basis was against rules. In view of the above, there is no force in the OA. However, since the applicant had admittedly worked for a long period and particularly worked for more than 240 days during 1987-88, the respondents may consider, in accordance with the rules, his claim for appointment as E.D. Agent in the vacancy which was reserved vide order dated 20.11.89 or in any subsequent vacancy which may arise.

5. With these observations, the OA stands disposed of, with no order as to costs.

*C. Krishna*  
( GOPAL KRISHNA. )  
MEMBER (J)

*B.B. Mahajan*  
( B.B. MAHAJAN )  
MEMBER (A)