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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
JAIPUR.

O.A. NO. 942/92

Date of order: 21.9.1995

Om Prakash Sain

: Applicant

Versus

Union of India and others : Respondents

Mr. K.L.Thawani, Counsel for the applicant

Mr. J.D.Sharma, Counsel for the respondents

CORAM:

HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

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REPER HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

In this application under Section 19 of the Administrative Tribunal's Act, 1985 Shri O.P.Sain has sought a declaration that the termination of the services of the applicant shall be violative of Articles 14 and 16 of the Constitution of India and principles of natural justice and provisions of Industrial Disputes Act, 1947. He has also sought a direction to the respondents that the applicant may be appointed as Extra Departmental Mail Carrier (EDMC) Rai on a regular basis.

2. The facts of the case as set-out by the applicant are that he was appointed as EDMC Rai, Extra Departmental Branch Office, w.e.f. 5.9.1991. No order of appointment however was given to him. The applicant has been continuously working on the said post till now. He

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has worked for 390 days upto 13.9.1992 and thus he has worked for more than 240 days on the said post. The applicant fulfils all the requisite qualifications for appointment as EDMC. He has also passed the VIII standard examination and is registered with the Employment Exchange. There is a clear vacancy of EDMC Rai and by terminating the applicant's services someone else would be appointed which would be a clear discrimination, and in violation of Articles 14 and 16 of the Constitution, as well as principles of natural justice.

3. The respondents in their reply have stated that the post of EDMC Rai was held on a regular basis by one Shri Mohan Lal Rathore and he had nominated the applicant as a substitute when he had proceeded on leave. The applicant was required to work only during the absence on leave of Shri Rathore. When Shri Rathore returned from leave in June 1992 the applicant did not hand over the charge to him. He is therefore an unauthorised occupant of the said post. No order of termination was actually passed in the case of the applicant. Since the applicant did not hand-over charge to Shri Rathore and since the applicant was nominated as a Substitute by Shri Rathore who was a regular E.D.M.C., Shri Rathore is a necessary and proper party to the application, but the applicant has deliberately not impleaded him as a respondent. In case Shri Rathore does not resume his duties as E.D.M.C., leading to

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the occurrence of a vacancy of EDMC, it will be filled up on regular basis through the Employment Exchange as per the procedure contained in Section-III- 'Method of Recruitment' in Swamy's Compilation of Service Rules for Extra Departmental Staff and particularly in the light of the Instruction No.12 in the said section. Even though the applicant may be eligible for appointment as EDMC, he cannot be straight-way appointed as a regular EDMC. The provisions of the Industrial Disputes Act are also not attracted in this case.

4. During the arguments, the learned counsel for the applicant stated that the applicant is registered with Employment Exchange and in case the respondents want to consider the names of the candidates sponsored by the Employment Exchange, the applicant's name should also be called for from the Employment Exchange and thereafter he should be considered alongwith other candidates sponsored by the Employment Exchange. In case the Employment Exchange does not forward any names within a period of 30 days, the respondents can consider appointment by considering candidates from the open market in which case also applicant's case can be considered alongwith other candidates. He has therefore stated that there is no case for termination of the services of the applicant straightaway.

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5. The learned counsel for the respondents stated that unless the applicant's name is sponsored by the Employment Exchange, his name cannot be considered alongwith the names of others who were sponsored by the Employment Exchange. He agrees that in case the Employment Exchange does not forward any names, candidates from the open market can be considered by issue of a public notice. In that case if the applicant applies he can also be considered alongwith other candidates.

6. In this case on 21.10.1992 an interim direction was issued to the respondents whereby they were restrained from terminating the services of the applicant from the post of EDMC, Rai till the next date and this direction was continued till further orders, on 17.2.1993. The applicant has been continued on the post of EDMC in pursuance of these directions.

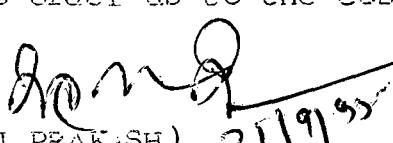
7. We have heard the learned counsel for the parties and have gone through the material on record. The applicant was appointed only as a substitute in place of Shri Mohan Lal Rathore and it is a position admitted by the learned counsel for the applicant that he was not a regularly selected and appointed candidate. The respondents have a right to make a selection for the post of EDMC Rai on a regular basis and to appoint a regularly selected

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candidate to the post. When the respondents call for names from the Employment Exchange and if the applicant's name is also forwarded by the Employment Exchange, the respondents shall consider the name of the applicant also alongwith other candidates for selection for appointment as EDMC on a regular basis. While calling for the names from the Employment Exchange, the respondents shall inform the applicant. In case no names are forwarded by the Employment Exchange and the respondents propose to make a selection on regular basis from the open market after issuing a public notification, in such case also they shall consider the name of the applicant alongwith the names of others. However till such time as regularly selected candidate is not appointed, the applicant shall be allowed to continue on the post of EDMC, Rai. In these circumstances, it is not necessary for us to continue the interim direction issued on 21.10.1992. Other issues raised in the Original Application do not merit any decision.

8. The Original Application is disposed of accordingly with no order as to the costs.


(RATTAN PRAKASH)
MEMBER (J)

21/9/92


(O.P. SHARMA)
MEMBER (A)