

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH JAIPUR.

CA No.142/91

Date of order: 30.8.1995

Smt. Mohini Devi Sharma : Applicant

Versus

Union of India & Others : Respondents

Mr. R.C.Gaur : Counsel for the applicant

Mr. V.S.Gurjar : Counsel for the official-
respondents 1 to 5

None for the respondent NO.6

CORAM:

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

HON'BLE MR. RATTAN PRATAP, MEMBER (JUDICIAL)

O R D E R

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

In this application under Section 19 of the Administrative Tribunal's Act, 1995 Smt. Mohini Devi has prayed that the respondents may be directed to continue the services of the applicant on the post of Stamp Vendor in accordance with law and may further be directed to consider her case for permanent absorption and regularisation with all consequential benefits from the date from which her juniors have been absorbed. Her ~~still~~ further prayer is that the respondents should be directed to grant the minimum pay of Rs.750/- plus dearness allowance to her for the period during which she performed her duties as that of a permanent employee.

2. The applicant's case is that she was granted regular appointment on 31.10.1984 as Extra Departmental Stamp Vendor on which post she had been working since 7.1.1984. Since then she has been working on the said post without any break & she is not a substitute. She has completed seven years service which is three years more than the period prescribed under the rules which

makes her entitled to protection under Article 311 of the Constitution of India. Also she is the holder of a civil post and is therefore entitled to the protection of said Article.

3. Further according to her, prior to her appointment one Shri Ravindra Prakash Sharma had been working as Stamp Vendor. He had been taking leave off and on and he remained absent from 31.1.1984. He has not joined duty till date. On 19.3.1991 Director Postal Services passed order Annexure A-1 regularising his absence from 31.1.1984. The idea is to post him in the place of the applicant by removing the applicant on the pretext that Shri Ravindra Prakash Sharma has worked on the said post some time or the other. Shri Ravindra Prakash Sharma by virtue of his long absence ceased to be a Extra Departmental employee and even if he is allowed to resume duties, he cannot replace the applicant. In accordance with Rule 31(1)(a) F.R. and S.R. Part 3, leave cannot exceed a period of 360 days whereas Shri Ravinder Prakash Sharma has remained on leave for a period longer than this period. Also no leave of any kind can be granted to a Government servant exceeding five years as per rules (Annexure A-3 from Swamy's Handbook, 1990). The order passed by Director Postal Services on 19.3.1991 regularising the period of absence of Shri Sharma (Annexure A-1) is bad in law and has been issued with extraneous considerations.

4. Further according to the applicant she has not been given an opportunity of absorption against a permanent post inspite of the fact that such opportunities have been given to her juniors who have been absorbed on permanent basis. There is an apprehension that the applicant

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can be forced out of her job on account of the efforts of Shri Ravinder Prakash Sharma.

5. The applicant has further stated that she is being paid a total salary of Rs.550/- including D.A. whereas minimum pay of a permanent employee doing the same work is Rs.750/- plus D.A. Accordingly she is entitled to get the minimum of the pay of a permanent employee for the entire period during which she has been working as such.

6. The respondents No.1 to 5 in the reply have stated that the question of appointment of the applicant arose as a result of Shri Ravinder Prakash Sharma's remaining absent from duty. The said Shri Sharma was ultimately removed from service. Later on however it was revealed that Shri Sharma had in fact not been allowed to join duties. Therefore, the period of his absence was condoned and Shri Sharma was reinstated. Since the applicant had been appointed purely on a temporary basis, she had to be relieved when Shri Sharma was taken back. ~~_____~~

~~_____~~ Since Shri Sharma was original holder of the post of E.D. Stamp Vendor and he had come back, he was to be given charge and allowed to work on the post. They have denied the averment of the applicant that there are several persons working as Extra Departmental Stamp Vendors in Kota division who are junior to the applicant. In fact according to them there are only 11 Extra Departmental Stamp Vendors in the Kota division and there is no inter se seniority. When the original holder of the post has come back,

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person who has been appointed against that person has to be relieved of his/her charge. The pay of the applicant is governed by the rules of the Government. The pay scale sought by the applicant is payable to a regularly appointed Group-D employees only and since the applicant is not a Group D employee but was an Extra Departmental employee, she was not entitled to the regular scale of pay.

7. During the arguments the learned counsel for the applicant stated that the applicant's appointment as E.D. Stamp Vendor was in fact not linked with the absence of Shri Sharma. He has also sought to support this contention by referring to Annexure A-2 dated 31.10.1984, the appointment letter of the applicant in which it is stated that the applicant has been working on this post since 7.1.1981. According to him, the period of absence of Shri Sharma condoned by Annexure A-1 dated 19.3.1991 is from 31.1.1984. This means, according to him, that the applicant was appointed on a date prior to the date on which Shri Sharma proceeded on leave. Further according to him the order regularising the leave of Shri Sharma is illegal in as much as the maximum period of leave admissible to a Government servant is five years and Shri Sharma had remained absent for a period longer than that. Shri Sharma's reinstatement therefore cannot lead to ouster of the applicant. Finally, he stated that a number of E.D. Agents had been appointed even after the appointment of the applicant who were junior to the applicant and several of them had been regularised. Therefore, the principle that should be followed even if Shri Sharma has come back to his job is that the junior-most person appointed after the applicant should be relieved of his duty and not the applicant.

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8. The learned counsel for the official respondents stated during the arguments that regardless of whether the authorities were empowered to condone the absence of Shri Sharma, the applicant had acquired no right to hold the post because it was made absolutely clear in ^{the} order Annexure A-2 dated 31.1.1984, which is her appointment letter that her appointment was on temporary basis which can be terminated on a permanent arrangement being made or even before doing so without assigning any reasons.

9. Respondent No.6 Shri Ravinder Prakash Sharma has also filed a reply though nobody has appeared on his behalf. With his reply there are four annexures, the last of which is Annexure-6/4 at page 35 of the Paper-book which refers to delegation of power to Director of Postal Services regarding condonation of period of absence beyond the maximum permissible period of leave. This order which is dated 4.5.1979 states that Government have decided that henceforth the power to condone the period of absence beyond the maximum period of leave shall be exercised by the Director of Postal Services in Circle Office.

10. We have heard the learned counsel for the parties and have gone through the material on record. It is by order Annexure A-1 that the period of absence of Shri Ravinder Prakash Sharma respondent No.6 which extended to beyond five years has been condoned by the Director Postal Services. From the copy of order placed on record by respondent No.6 it appears that the Director, Postal Services was empowered to pass such an order. In any case the applicant has not sought quashing of order Annexure A-1 dated 19.3.1991 by which the period of absence of Shri Sharma has been condoned. The argument

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of the learned counsel for the applicant is that it was an independent action of the respondents and it had no linkage with the case of the applicant and therefore the applicant was not required to challenge this order. However if the respondents have linked the appointment of the applicant to the post of E.D. Stamp Vendor to the absence of Shri Sharma, there is a linkage between the two and since the applicant assailed the order Annexure A-1 as being irregular, he should also have sought relief against this order and should have prayed for quashing it.

11. The learned counsel for the applicant had argued that in the order of appointment of the applicant no link had been made between Shri Sharma's absence and the applicant's appointment in his place, but this has been stated by the respondents in their reply. It is not necessary that the reason for passing an order should necessarily be recorded in the order itself. Such a reason can be available from the file or it can also be put-forward before the Court by the Government. The fact that the applicant was appointed on 7.1.1984 whereas Shri Sharma's absence has been condoned w.e.f. 31.1.1984 would seem to suggest that there is no link between the two appointments. However the applicant himself in the application has stated that Shri Sharma had been working as Stamp Vendor and had been taking leave off and on prior to her appointment. The averments in the application seem to suggest that the applicant was quite aware that he had been appointed on account of the absence of Shri Sharma. The fact that leave has been condoned from 31.1.1984 does

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does not necessarily mean ~~Q~~ that was the only date from which he proceeded on leave. Although the applicant had alleged that several persons had been appointed as E.D. Stamp Vendor after the applicant's appointment and therefore the person last appointed should be relieved, he has not given the name of any such person.

12. The crux of the matter is whether the applicant is entitled to continue to hold the post when Annexure A-2 makes it clear that her appointment is temporary and is liable to be terminated at any time without assigning any reasons. She has undoubtedly worked for seven years or more on this post but we do not think that it alone confers any right upon her for continuous appointment and regularisation.

13. However fact remains that she has worked for a period of seven years or more continuously. In this connection therefore reference may be made to instructions contained in DGP&T letter No.43-4/77-Pen., dated 23.2.1979 reproduced at page 76 of Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department 6th Edition, 1995 which reads as under:-

"2. Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G., P.&T., Letter No.43-4/77-Pen., dated 23.2.1979."

In the light of these instructions the respondents are directed that when the applicant is discharged from service, her name should be included

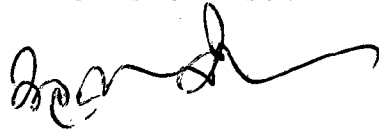
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in the waiting list of E.D. Agents discharged from service and efforts should be made to provide alternative employment to her. The interim order issued on 4.1.1994 is however vacated.

14. The applicant's claim for grant of minimum of regular scale of pay for the period of her working cannot be granted for the reason that she has specifically been appointed as ED Agent with specific working hours and not as a regular Group D employee to whom a regular scale of pay with a minimum of Rs.750/- per month is admissible. Hence this prayer cannot be accpeted.

15. O.A. is disposed of accordingly with no order as to the costs.



(RATTAN PRAKASH)
MEMBER (J)



(O.P. SHARMA)
MEMBER (A)