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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.252/95

Date of order: 8.1.1997

Ram Avtar Yadav, S/o Shri Mula Ram Yadav, F/o Village & Post Chhipoli, District Jhunjhunu (Rajasthan).

Vs.

1. The Director of Post Offices, Jaipur Region, Jaipur.
2. The Superintendent of Post Offices, Distt.Jhunjhunu.
3. The Inspector, Post Offices, Nawalgarh, Distt.Jhunjhunu.
4. The Post Master, Post Chhopoli, Distt.Jhunjhunu.

Mr.B.K.Sharma : Counsel for applicant

Mr.V.S.Gurjar : Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Patan Prakash, Judicial Member.

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Ram Avtar Yadav has prayed that the respondents may be directed not to remove him from the post of EDDA (Extra Departmental Delivery Agent) till a regularly selected candidate is made available. He has further prayed that the respondents may be directed to consider the name of the applicant as and when a regular selection is made to EDDA keeping in view the past service of the applicant. Yet another prayer is that the respondents may be directed to allow the applicant to work on the post of EDDA with regular payment of his salary.

2. The facts of the case as stated by the applicant are that he passed the Higher Secondary Examination in the year 1983 and was registered with the Employment Exchange, Jhunjhunu in 1989. One Shri Guljari Lal holding the post of EDDA, Post Office Chhopoli under the Sub Divisional Inspector Posts & Telegraphs, Nawalgarh, Distt.Jhunjhunu committed embezzlement and was put off duty in contemplation of disciplinary proceedings against

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him. The respondents sent a requisition to the Employment Exchange for supplying the names of suitable candidates for appointment on the post of EDDA which fell vacant on account of Shri Guljari Lal being put off on duty. The Employment Exchange sponsored the applicant's name and thereafter the Inspector of Post Office called for application from the applicant in the prescribed form which the applicant submitted on 20.4.93. Being found suitable, the applicant was appointed on the post of EDDA provisionally vide order Annex.A3 dated 13.7.93. He took over the charge of the post on 20.7.93 (Annex.A4). The disciplinary proceedings against Shri Guljari Lal came to an end and he was taken back on duty vide order dated 5.2.94. Consequently, the applicant vacated the charge to make room for Shri Guljari Lal, on 7.2.94 (Annex.A5). Shri Guljari Lal was again put off duty in contemplation of disciplinary proceedings and the applicant was again asked to take over the charge in place of Shri Guljari Lal vide memo dated 20.1.95. The applicant took over the charge on 23.1.95. The respondents subsequently passed order dated 31.3.95 (Annex.A7) laying down conditions for appointment of the applicant and providing that his appointment would be from 23.1.95 to 22.4.95. The applicant has however been allowed to continue on the said post and he is still continuing thereon. The applicant however apprehends his removal from the post of EDDA. There is no complaint against him. Although his appointment is provisional in nature, he is entitled to continue till the post remains available on account of Shri Guljari Lal not being allowed to join duty. Since the appointment of the applicant has been made after following the process of selection, the services of the applicant cannot be terminated. Also till a duly selected candidate is available, the respondents would not be justified in terminating the services of the applicant.

3. The respondents in their reply have stated that the O.A is against an apprehended removal from service and therefore,

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it is not maintainable. No cause of action has accrued to the applicant at present. They have added that the applicant was appointed on the basis of the conditions contained in the letter of provisional appointment dated 31.3.95 (Annex.A7) and he has no other right or claim. In the preliminary objections to the maintainability of the O.A, they have also stated that the applicant has not exhausted the alternative remedy of making a representation to the respondents.

4. During the arguments, the learned counsel for the applicant stated that although the appointment of the applicant in the second spell commencing from 23.1.95 was for a short period, yet he has been allowed to continue on the post and he is still continuing. In view of what has been stated in Annex.A7 incorporating the conditions of appointment of the applicant the respondents would not be justified in terminating the services of the applicant till either Shri Guljari Lal comes back on being exonerated in the disciplinary proceedings or till a regularly selected candidate is available. The learned counsel for the respondents stated that the disciplinary proceedings against Shri Guljari Lal are in progress and a view in the matter would be taken by the disciplinary authority shortly. If Shri Guljari Lal is exonerated and is allowed to join back duty, the applicant will have to make way for him. If Shri Guljari Lal is removed from service as consequence of the disciplinary proceedings, the post would require to be filledup by holding the process of regular selection in which the applicant would also be entitled to participate.

5. We have heard the learned counsel for the parties and have perused the material on record. The terms of appointment set out in Annex.A7 dated 31.3.95 are clear. Paragraphs 2 and 3

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of Anxx.A7 dated 31.3.95 read as follows:

"2. The provisional appointment is tenable till the disciplinary proceedings against Shri Guljari Lal EDDA, Chhapoli, are finally disposed of and he has exhausted all channels of deptt. appeals and petition, etc. and in case it is finally decided not to take Shri Guljari Lal, EDDA, Chapoli back into service till regular appointment is made.

3. Shri Ram Avtar Yadav, S/o Shri Moota Ram Yadav is offered the provisional appointment to the post of EDDA, Chapoli. Shri Ram Avtar Yadav should clearly understand that if ever it is decided to take Shri Guljari Lal, EDDA back into service, the provisional appointment will be terminated without notice."

Thus, the applicant is entitled to continue on the post of EDDA till such time as either Shri Guljari Lal is allowed to join back duty on being exonerated in the disciplinary proceedings or till such time as the post is filledup on the basis of a regular selection. In case Shri Guljari Lal not exonerated and it is decided by the respondents to fillup the post on a regular basis by holding selection as per rules, the applicant is entitled to continue on the said post till a decision is taken by the respondents in accordance with the terms set out in Anxx.A7 dated 31.3.95. If however the respondents decide to fillup the post on a regular basis by holding selection as per the prescribed procedure, the applicant shall also be entitled to participate in the said selection and his candidature would be considered by the respondents alongwith those of others in accordance with the prescribe procedure and rules.

6. The O.A stands disposed of accordingly. No order as to costs.

  
(Ratan Prakash)

Judicial Member.

  
(O.P. Sharma)

Administrative Member.