

OA 443/98

Date of Order:10.11.99

Pramod Kumar Sharma S/o Sh. Jamuna Lal aged about 28 years. Resident of Village & Post Sonkhar via Kherli District Alwar and presently working on the post of Extra Departmental Branch Post-Master Office (E.D.B.O.) under Kherli Sub Post Office Distt. Alwar.

....Applicant

VERSUS

1. Union of India through its Secretary to Government of India Department of Posts, Ministry of Communication Sanchar Bhawan, New Delhi 110001.
2. Chief Post Master General Rajasthan Circle, Jaipur 302007.
3. Senior Superintendent of Post Office, Alwar Postal Division Alwar (Rajasthan)

....Respondents

Mr. C.B. Sharma, Counsel for the applicant.

Mr. Shiv Kumar, Brief holder for

Mr. K.N. Shrimal, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial).

Hon'ble Mr. N.P. Nawani, Member (Administrative)

O R D E R

(PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL))

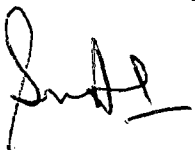
In this OA, applicant makes a prayer to direct the respondents to allow the applicant on work till the joining of permanent incumbent or till a regular appointment is made. Applicant also makes a prayer to direct the respondents to consider the candidature of the applicant in case of regular appointment keeping in view the experience after allowing due weightage of experience.

...2/-

2. The case of the applicant is that the applicant was a leave engaged substitute for the period of 61 days w.e.f. 22.6.98 in the leave vacancy of original incumbent on the post of Extra Departmental Branch Post-Master, Sonkhar. Leave was further granted upto 21.11.98. It is stated that applicant fulfills the eligibility criteria and therefore, he may be continued on the post till regularly selected incumbent joins and in making any selection, his experience should be given due weightage.

3. Counter was filed. In the counter, it has been made very specific that applicant was engaged by the original incumbent and applicant gave an undertaking that he is only a substitute in place of original incumbent and sole responsibility will be of the original incumbent in case of any default etc.

4. Rule 2(a) of Posts and Telegraphs EDA (Conduct and Service) Rules, 1965 defines 'Employee' as a person employed as an Extra-Departmental Agent (EDA) and Rule 2(b) describes various types of EDAs. The substitutes and provisional appointees are not included in the definition of EDAs nor is there any provision in the rules for appointment of substitutes. Only administrative instructions provide for nomination of a substitute by an EDA when he proceeds on leave. Both statutory and administrative provisions laying down eligibility conditions and method of recruitment for EDAs indicate that substitute has no right to claim any appointment. The substitute is only an agent of permanent incumbent. The department cannot take any action against a substitute and in case of any irregularity or fraud committed by a substitute, the department can proceed only against the principal incumbent on whose responsibility the substitute functions. The appointing authority has no power to remove a substitute when such appointment has been approved by the sanctioning authority. The only power which the department has got is either it can approve the substitute proposed by EDA or ask him to provide another substitute. The substitute is only an agent or regular EDA. There is no privity or employer-employee relationship between the Postal Departmental and the substitute.

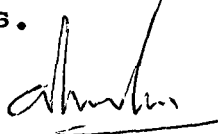


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5. It is an admitted position by the parties that the applicant was engaged as substitute. In view of the legal positions, as mentioned above and the facts and circumstances of this case, the applicant is not entitled to any relief sought for. Therefore, this OA is devoid any merit and liable to be dismissed.

6.

We, therefore, dismiss this OA with no order as to costs.



(N.P. NAWANI)
MEMBER (A)



(S.K. AGARWAL)
MEMBER (J)