

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.146/1999

Date of order: 25/4/2007

Suresh Chand, S/o Sh.Prabhati Ram, R/o Vill.Nangla  
Deputy, Post Paharsar, Nadbai.

...Applicant.

Vs.

1. Union of India through Secretary to G/I, Mini.of  
Communication, Dept.of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Bharatpur.
3. Inspector of Post Offices, Nadbai, Sub-Division, Nadbai
4. Sh.Muneer Khan, EDDA, Akhaigarh, Distt.Bharatpur.

...Respondents.

Mr.R.P.Pareek - Counsel for applicant

Mr.K.N.Shrimal - Counsel for respondents.

CORAM:

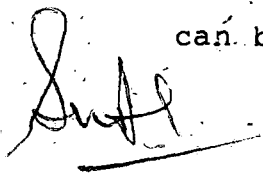
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member.

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

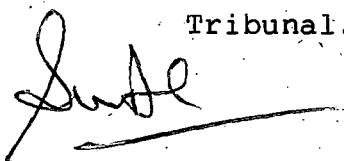
In this O.A under Sec.19 of the Administrative  
Tribunals Act, 1985, the applicant makes a prayer to quash and  
set aside the order of termination dated 30.7.98 and direct  
the respondents to continue the applicant on the post of EDDA  
Akhaigarh.

2. In brief, facts of the case as stated by the applicant  
are that the applicant was appointed as EDDA Akhaigarh on  
25.4.97, after following the regular process of selection  
against a vacant post which fallen vacant on account of  
retirement of Shri Prabhatilal. It is stated that the  
applicant worked satisfactorily on the post but the  
respondents terminated the services of the applicant on  
administrative ground in order to adjust Shri Muneer Khan, who  
was declared surplus. It is stated that the surplus employee  
can be adjusted only within a year whereas Sh.Muneer Khan was



allowed to join after 20 months long absence. Shri Muneer Khan was offered alternate job but he did not acted upon. It is stated that the applicant was duly selected candidate, against a vacant post and the appointment of the applicant was erroneously treated as provisional, therefore, the termination of the applicant vide the impugned order is altogether bad in law and liable to be quashed and the applicant is entitled to the relief sought for.

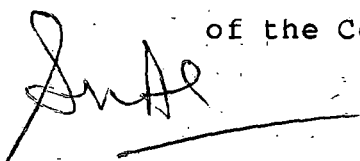
3. Reply was filed. It is stated that a notification was issued to fillup the vacant post of EDDA Akhaigarh and the Employment Exchange, Bharatpur was requested to sponsor suitable candidates. The Employment Exchange sponsored names of 20 candidates but Supdt. of Post Offices, Bharatpur, vide letters dated 17.6.96 and 23.8.96, instructed the SDI(P), Nadbai, not to fillup the post till further orders as one post of EDMC, Alipur was declared surplus and Sh.Muneer Khan was relieved on 9.1.97. But he did not join, therefore, the applicant was appointed provisionally/purely on temporary basis vide order dated 23.4.97 for a specific period till Shri Muneer Khan does not join or till a regular appointment is made, whichever is earlier. It is stated that in pursuance of the order dated 23.4.97, applicant joined on 25.4.97 and the term of appointment was extended from time to time. It is further stated that Sh.Muneer Khan joined on 3.8.98, therefore it was incumbent upon the respondents to terminate the provisional appointment of the applicant. It is stated that the applicant was offered only a provisional appointment till Shri Muneer Khan does not join or regular appointment is made whichever is earlier, therefore, the applicant has no right to the post and there can be no violation of his legal right. Hence, the applicant has no case for interference by this Tribunal.



sustainable in law. In O.A No.589/96, filed by Shri Muneer Khan against his transfer/adjustment was held as legal and proper.

8. Admittedly, the applicant was appointed as EDDA Akhaipur, on provisional basis as stopgap arrangement for a specific period till Sh.Muneer Khan does not join or regularly selected candidate joins whichever is earlier. In the order of appointment dated 23.4.97, it has been made very clear that the appointment of the applicant is provisional for a period from 25.4.97 to 30.6.97 or till regular appointment is made or Sh.Muneer Khan joins his duty whichever is earlier. It is further made clear that the appointment offered to the applicant is provisional and the applicant should clearly understand that the provisional appointment will be terminated when regular appointment is made and he shall have no claim for appointment on any post. It is also made clear that the employer has a right to terminate the provisional appointment at any time before the period mention in para 1, without any notice and without assigning any reason and the applicant will be governed by the EDA(Conduct & Service) Rules, 1964 as amended from time to time. It was made specific that if the applicant accepts those conditions, he may join.

9. In Supdt of Post Offices & Ors Vs. E.Muhiraman Nair Muliya, (1998) 9 SCC.255, it was held by Hon'ble Supreme Court that temporary and provisional appointment of EDBPM with stipulation that the same would be terminable at any time without assigning any reason and that his services would be governed by P&T EDA(S&S) Rules. Termination of such appointment on administrative grounds whether the time limit as contained in Rule 6 of the said rules held the termination simpliciter and not stigmatic, hence did not attract Art.311 of the Constitution of India.



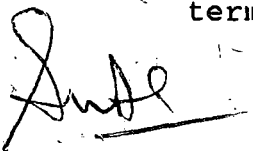
4. Heard the learned counsel for the parties and also perused the whole record.

5. It is an undisputed fact that the applicant was offered provisional appointment vide order dated 23.4.97 and the applicant joined on 25.4.97. It is also an undisputed fact that the post of EDMC Alipur was declared surplus and after declaring surplus Sh. Muneer Khan was adjusted against EDDA, Akhaipur but he did not join and filed O.A No.589/96 challenging his adjustment/transfer as EDDA, Akhaipur. The O.A was disposed of with the following observations:

"In view of the position that respondents, keeping in view the exigencies of the work, decided not to fill up the second post of EDMC at Alipur, they have instead of discharging the applicant from service, decided to adjust him against another equivalent post at a place which is not too far away from his earlier place of posting. We cannot, therefore, interfere with the adjustment/transfer of the applicant from Alipur to Akhegarh. However, we direct that if the remaining post of EDMC at Alipur falls vacant, the applicant should be considered for transfer to Alipur on a priority basis, or if the respondents decide in future to fill up the second post of EDMC also at Alipur, they shall in that situation also consider adjustment/transfer of the applicant at Alipur against the said post, before transferring/posting anyone else."

It is also an undisputed fact that after disposal of the O.A, Shri Muneer Khan Joined on 3.8.98.

7. The counsel for the applicant vehemently argued that adjustment of Sh. Muneer Khan, after one year of his being declared surplus was altogether illegal, therefore, termination of the services of the applicant is not




10. In the instant case, the appointment of the applicant was provisional, it was merely a stop-gap arrangement till Sh.Muneer Khan Joins or a regularly selected candidate joins, whichever is earlier. The process of selection was deferred because of transfer/adjustment of Sh.Muneer Khan on the post, which was held as proper and in accordance with the rules. Therefore, in our considered opinion, the applicant has no case and this O.A devoid of any merit is liable to be dismissed.

10. We, therefore, dismiss the O.A having no merit with no order as to costs.

  
(A.P.Nagrath)

Member (A).

  
(S.K.Agarwal)

Member (J).