

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH:JAIPUR

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Date of Order : 12/7/2000

O.A.NO. 69/2000

M.A.NO 325/2000(IN OA69/2000)

Mahesh Chand Vijay S/o Shri Satya Narain Vijay, aged about 30 years,  
Resident of Opposite Police Station, Sikandara Road, Bandikui, District -  
Dausa.

.....Applicant.

VERSUS

1. Union of India through the Post Master General, Department of  
Post, Jaipur.
2. The Superintendent of Post Office, Jaipur (M) Dn. Jaipur -16.
3. Roop Kishore, Male Overseer, Bandikui Post Office, Bandikui,  
District Dausa.

.....Respondents.

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Mr. Manish Bhandari, Counsel for the applicant.

Mr. Mukesh Sharma proxy counsel for Mr. S.M. Khan, counsel for  
respondents.

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CORAM :

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

Hon'ble Mr. J.K. Kaushik, Judicial Member

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ORDER

PER MR. A.P.NAGRATH :

The applicant was engaged provisionally as Extra Departmental  
Branch Post Master (EDBPM) at Shyalawas Kalan, against a vacancy which



had arisen because of putting of from duty one Shri Ram Babu Gupta, who was a regular incumbent of that post. The appointment letter stated inter alia that this appointment shall be only till the finalisation of the inquiry under Rule 8 of the P&T Agent (Conduct & Service) Rules, 1964 pending against Shri Ram Babu Gupta. The case against Shri Ram Babu Gupta culminated into his removal from service vide order dated 18.8.1999. Vide order dated 22.1.2000 (Annex.A/1), the applicant was directed to handover the charge of the post of EDBPM Shyalawas Kalan to one Shri Sanjay Kumar, Extra Departmental Delivery Agent (EDDA) as his engagement was being terminated. The applicant has impugned this order dated 22.1.2000 (Annex.A/1) in this OA and has prayed for the following reliefs :-

- "i) That the present Original Application may kindly be allowed and the order of termination may kindly be declared as illegal and the same may kindly be quashed and set aside with all consequential benefits in favour of the applicant arising out of the quashing of the impugned order.
- ii) Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be granted in favour of the applicants.
- iii) Costs may also be allowed in favour of the applicant."

2. This O.A. had been filed on 9.2.2000. By order dated 8.8.2000 this Tribunal stayed the operation of the impugned order and directed the respondents to allow the applicant to work on the post of EDBPM, Shyalawas Kalan, Jaipur, till the next date. This interim order has continued to remain in operation and the applicant has been continued.

3. We have heard the learned counsel for the parties and perused the entire record of the case.

4. The plea of the respondents is that the applicant had been engaged only provisionally and initially, he was expected to




continue till the case against Shri Ram Babu Gupta was finalised. Though, the case against the said Shri Ram Babu Gupta, attained finality with his removal from service, but, that development did not create any right in the applicant to continue on the post. The learned counsel for the respondents stated that the work-load of the Post Office had been reviewed and it was found that the said Branch Post Office at Shyalawas Kalan, was running in huge loss and thus did not justify the posts of EDBPM and EDDA. In the interest of the public exchequer, it was decided to manage this Post Office only by a single person. Accordingly, the impugned order was issued directing the applicant to handover the charge of the post to the EDDA, who was already present in the branch Post Office. The contention of the respondents is that since a permanent employee of the department is working as EDBPM, Shyalawas Kalan, the applicant cannot make a grievance of such an action as he has no legal right to continue in the post.

5.                   Opposing this contention of the respondents, Shri Manish Bhandari, the learned counsel for the applicant, argued at great length to establish that the action of the respondents was totally arbitrary and had arisen out of mala fide on the part of one Shri Roop Kishore, Mail Overseer, who has been impleaded as respondent No. 3 in this O.A. Shri Manish Bhandari, emphasized on the fact that respondent No. 3 has not even cared to file any affidavit denying the charge of mala fide and thus, the same has to be taken as having been established against him. The learned counsel also assailed the report of the Sub Divisional Inspector, Bandikui, which has been made the basis by the respondents to do away with the services of the applicant. Shri Bhandari's plea was that the report of such a junior official cannot have the sanctity of carrying the authority of the competent level of the department which could result into declaring that a particular Post Office was running in loss.

6.                   We have given our anxious consideration to the arguments



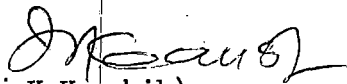
of the parties. We have considered whether, the alleged mala fide on the part of Shri Roop Kishore, Mail Overseer, could be a determining factor in deciding the legal right of the applicant and whether, the report of the Sub Divisional Inspector could form the basis to decide the number of incumbents required to run a particular branch Post Office. In our considered view, the Mail Overseer cannot influence the decision of the appointing authority. Even if, he has not filed any affidavit denying mala fide on his part, this cannot take us to reach a conclusion that the services of the applicant were terminated at the instance of respondent No. 4. The learned counsel for the applicant made much of the fact that the services of the applicant had been terminated soon after removal from service of Shri Ram Babu Gupta by taking a plea that the work could be managed only by a single person in this branch Post Office. It was open to the respondents to have reviewed the work-load even much earlier and could have abolished one post but, the same was not done in the hope (as the applicant alleges) that the son of the respondent No. 4 could be adjusted. Since that did not happen, the post is being surrendered just to deprive the applicant. We are not impressed with this argument. If the respondents decided to continue the post till decision in the case of Shri Ram Babu Gupta, no fault can be found with this as in the likely event of his being exonerated in the departmental proceedings, he was required to be adjusted as he was a permanent employee. The moot point, in so far as the applicant is concerned, is, whether being a provisional appointee, has a right to foist himself on the department when the department comes to a conclusion that considering the work-load, the services of the applicant are not needed. It is not the case of the applicant that he is being replaced by any other provisional appointee or that the department is making a recruitment and his case has not been considered. The simple fact is that the department has taken a view that this branch Post Office can be managed by a single person. If that be the case, there is no ground for the applicant to insist and demand that he be continued. We do not see any

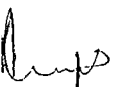


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merit in this assertion of the applicant and this O.A. is liable to be rejected.

7. While we dismiss this O.A. as having no merits, we direct the respondents that if at a future date, it is decided to engage an EDBPM for this Post Office on provisional basis, the applicant shall have first right to be appointed. In the event the respondents proceed to engage a person on regular basis as EDBPM, Shyalawas Kalan, they shall consider the case of the applicant along with others. The interim orders issued on 8.8.2000 stand vacated with immediate effect. There shall be no orders as to cost.

  
(J.K. Kaushik)  
Judl. Member

  
(A.P. Nagrath)  
Adm. Member

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