

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No.O.A.350/00379/2014

M.A.350/00113/2014

Date of order : 22.9.2016

Present : Hon'ble Mrs. Urmita Datta (Sen), Judicial Member

Phatik Chandra Mahato, son of
Babulal Mahato, Vill. Pathar Dih,
P.O. Parbedia, P.S. Kashipur,
District. Purulia

.....Applicant

-Vs-

1. Union of India, service through the
Secretary, Ministry of Communication,
Dept. of Post "Dak Bhawan"
New Delhi – 1
2. The Chief Post Master General,
Yogayog Bhawan, 5th Floor,
C.R. Avenue, Kolkata-700 012
3. The Post Master General, South Bengal
Region, Yogayog Bhawan, 7th Floor,
C.R. Avenue, Kolkata-700012
4. The Sr. Supdt. of Post Offices,
Purulia Division, Purulia-723101
5. Sub-Divisional Inspector of Post Office,
Adra Sub-Division, Purulia, P.O. Adra,
P.S. Kashipur, Dist. Purulia-723101
6. The Post Master Gourandi Branch,
Purulia – 723101

.....Respondents

For the applicant : Mr. B.K. Das, counsel

For the respondents : Mr. B.P. Manna, counsel

O R D E R

The instant Original Application has been filed praying for the
following reliefs:-

A.L.

- "a) Declaration upon the respondents to regularize the service of the applicant as postal mail peon at Gourandih Branch Post Office immediately;
- b) Call for the records;
- c) The application may be allowed on merits."

2. As per the applicant, he had discharged duties as Casual Mail Peon (outsider) in place of Ramdas Hansda from 04.12.2003 to 15.12.2003, 09.01.2004 to 19.01.2004 and 22.01.2004 to 18.06.2004 and in place of Laxman Mondal, Postman, from 16.12.2003 to 22.12.2003. According to the applicant, he completed 180 days of work under the respondents. As he was not regularized by the respondent authorities, he filed one application being O.A.No.204 of 2009 before this Tribunal, which was disposed of on 06.04.2009 with direction to the respondents to consider the representation of the applicant (Annexure A-5). In pursuance of the said order, the respondents have passed a speaking order rejecting the claim of the applicant on 22.07.2009. Being aggrieved with such rejection order, the applicant has filed the instant Original Application.

3. The applicant has also filed an application for condonation of delay being M.A.No.113 of 2014 on the ground of his medical treatment.

4. The respondents have filed their written statement denying the claim of the applicant. In the written statement, the respondents have stated that the applicant was engaged intermittently in irregular manner on leave vacancy and there is no provision in the Department to absorb such employee to any permanent/temporary post. According to the respondents, the applicant was neither a contingent paid staff nor a GDS, but purely an outsider, who was appointed without prior approval of the competent authority for certain periods in place of Ramdas Hansda and

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Nitai Halder, who committed misconduct and were cautioned by the respondent authorities vide letters dated 17.04.2005 (Annexure R-1) and 15.02.2005 (Annexure R-2). However, the applicant approached this Tribunal in 2009 by filing O.A.No.204 of 2009 and in pursuance of the direction of the Tribunal dated 06.04.2009, the respondents rejected the claim of the applicant for regularisation vide order dated 22.07.2009 informing that there was no provision in the department to absorb to any permanent or temporary post. Moreover, the applicant has filed this application five years after passing of the order of rejection.

5. The applicant submitted a rejoinder wherein he stated that he has been appointed by the Branch Post Master, who is the competent authority. Therefore, he should be regularized.

6. I have heard the Id. counsel for both sides and perused the materials available on record.

7. It is noted that the applicant himself admitted that he worked for intermittent periods as outsider as a substitute for leave vacancy and according to the respondents, said engagement was irregular as it was not approved by the competent authority. Moreover, the concerned persons were also show caused for the same.

8. However, as per direction of this Tribunal, the respondents considered the case of the applicant and rejected the same on the ground that there is no scope of regularization of any outsider against the vacancy and that too after a long time. Moreover, as per the decision of the Hon'ble Apex Court in the case of **Uma Devi (3)[2006(4) SCC-1]**, no person can be appointed irregularly without following proper process of appointment and in the instant case, it is clear that the applicant was appointed for a few

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days against leave vacancy, that too, irregularly by an incompetent authority. There is no provision for absorption of an outsider against a leave vacancy as per rules. Moreover, the instant application has been filed after a long time of five years of passing the order of rejection.

9. In view of the above, I am of the opinion that the applicant has no case on merit. Therefore, there is no question of condonation of delay for filing the instant application.

10. Accordingly both the O.A. and M.A. are dismissed. No order as to cost.

(URMITA DATTA SEN)
Judicial Member

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