

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00710/14**

Reserved on: 23.02.2018
Pronounced on: 14.03.2018

C O R A M

**HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**

Mohan Rai, S/o Late Rachchho Rai, resident of Mohalla- Kashipur,
Harmonium Gali, Ward No-11, District- Samastipur.

..... Applicant.

- By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary Cum D.G., Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Superintendent of Post Offices, Samastipur Division, Samastipur.
5. The Postmaster, Samastipur Head Post Office, Samastipur.
6. The Inspector Posts, West Sub Division, Samastipur.

..... Respondents.

- By Advocate(s): - Mr. Radhika Raman

O R D E R

Per A.K. Upadhyay, A.M.:- The applicant has filed this OA seeking the following reliefs:-

“(i) Order No. A-Sarairanjan S.O. dated at Samastipur the 26.09.2014, issued by Inspector Posts, West Sub Division, Samastipur, as contained in Annexure-A/4, whereby the applicant has been ordered his termination from the post of GDSMC of Sarairanjan Sub Post Office, may be quashed and set aside.

(ii) The respondent authorities may be directed to act in accordance with rules and law, if they are to act against the applicant.

(iii) The cost of litigation incurred in filing the instant application may be awarded upon the respondents.

(iv) Any other relief/reliefs, as the applicant is entitled and Your Lordships may deem fit and proper in the ends of justice.”

2. Heard the parties and perused the documents.

3. One Shri Bhola Rai was ED Packer, Samastipur. He was deputed to Army Postal Service (APS in short) vide memo dated 27.07.1998. Shri Bhola Rai proposed the name of the applicant Shri Mohan Rai as a Substitute in his place on his own risk and responsibility. Accordingly, the applicant was appointed as a Substitute vide order dated 31.07.1998 (Annexure A/1). The applicant continued till 26.09.2014 when his services were terminated by the order of the Inspector of Posts dated 26.09.2014 (Annexure A/4). The applicant has challenged this notification in the present OA.

4. Respondents issued an Employment Notice date 23.01.2015 for filling up of the said post on regular basis. The applicant filed MA 338/2015 praying for keeping this notice in abeyance till disposal of this OA. The notice was not stayed, but the Tribunal ordered on 06.02.2015 that the applicant was at liberty to make application against the said notification and the selection will

be subject to the outcome of the OA. It appears that the selection has not yet been finalized.

5. Respondents have stated that several similar cases has been rejected by the Tribunal. Hon'ble Suprmee Court has held in **Devika Guha Vs. Union of India & Ors.** that a substitute has no legal claim to appointment merely on the ground of having worked as a substitute for a long time.

6. The Postal Department have long had a practice of allowing an EDA (now as GDS to nominate a person to work as a substitute in his place when he goes on leave or on deputation. Initially, this figured under Rule-5 relating to Leave under EDA Conduct and Service Rules, 1964. This provision has been retained in subsequent amendments. In the latest amendment GDS (Conduct & Employment), 2011, it has been renumbered as Rule-7 and provisions relating to Substitutes are given in Director General's instructions quoted under the basic rule in Swamy's Compilation of Service Rules for Postal Gramin Dak Sevak.

7. After the judgment of the Hon'ble Supreme Court in the matter of Devika Guha Vs. Union of India holding that the Substitutes have no right for regularization, the departmental instructions are very clear that arrangement of Substitute should be resorted to very sparingly. The first effort should be to manage the duty by combining the duties of GDSMD/MC of the neighbouring BO/SO in whose beat the BO falls. If the substitute arrangement is unavoidable

it should not continue beyond one year without the specific approval of the Head of the Circle for reasons to be recorded by the concerned authority. No such specific approval has been placed on record by the Head of the Circle. It appears that the applicant has continued as a Substitute for long years in a routine manner.

8. The Department has already undertaken the exercise for regular appointment. No intervention is called for in this administrative exercise. It goes without saying that public employment has to conform to constitutional principles of right to equality and equal opportunity as enshrined under Rule 14 and 16 of the Constitution through an open selection process. The applicant is always at liberty to apply in the regular selection process.

9. In conclusion, there is no merit in the OA. Hence, dismissed. No order as to costs.

[Jayesh V. Bhairaiva]
Judicial Member
Srk.

[A.K Upadhyay]
Administrative Member