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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 861/2003

This the 28th day of April, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

Sh. Krishan Bhardwaj  
S/o Sh. Bhagwan,  
R/o 183, Halambi Kalan,  
Delhi-110082.

(By Advocate: Sh. D.R.Roy)

Versus

Union of India through Secretary,

1. Ministry of Communications,  
Department of Posts,  
New Delhi-1.
2. Chief Post Master General  
Meghdut Bhawan,  
Link Road,  
New Delhi.
3. Senior Suptd. of Post Offices,  
Delhi North Division,  
New Delhi-54.

(By Advocate: Sh. R.P. Aggarwal)

ORDER (ORAL)

By Sh. Kuldip Singh, Member (J)

Heard.

2. Applicant who have been working as Gramin Dak Sewak Branch Post Master is aggrieved of the impugned order Annexure A-1 vide which his services is stated to be no longer required as a regular person has been selected.

3. In order to assail the same applicant has submitted that the disengagement of the services are totally malafide, arbitrary and colorable exercise of administrative power and impugned order is not sustainable under the law. He submits that post of Gramin Post Office at Holambi Kalan is a regular post and Gramin Dak Sewak Post Master holding the post have been a regular appointee. He further submits that he was

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appointed as per order dated 1.12.98 by the Head of the Division and he took over charge on 4.12.98 and is continuing since then uninterruptedly. But respondents had never issued any order of Asstt. Suptd. of Post Office Civil Lines Division dated 1.12.98 and have kept the applicant in suspense as if the applicant is a substitute of Gramin Dak Sewak Post Master though he had been regularly appointed.

4. Applicant also claims that financial hand book of the department under rule 267 does not authorise any outsider to take charge from the out going incumbent. It can be done only by a regular appointee only. Applicant further pleads that he had been working throughout for a period of 4 years without any break, so he is entitled to hold the post of Gramin Dak Sewak Post Master.

5. Respondents are contesting the OA. They are pleading that OA is barred by res judicata as applicant had earlier filed an OA seeking cancellation of Public Notice dated 6.5.2002 by which applications were invited for a regular appointment to the said post and said OA had been rejected as it was found that applicant was a provisional appointee. Though the OA was dismissed in limine but public notice assailed by the applicant in the earlier OA was not quashed and respondents could proceed to make a regular appointment after making an appropriate selection from amongst those who filed applications in pursuance of the aforesaid notice. Thus, it was found that applicant is not a regular employee. So this issue is no more open to the applicant as it is hit by principle of res judicata.



6. Respondents further pleaded that in pursuance of the said notice Smt. Kamlesh Kumari was selected for the said post on regular basis and was issued the appointment letter but applicant did not hand over the charge to the said selected candidate. Applicant has raised hue and cry and created a rucus and did not allow the regular appointee to take over the charge and hence he has come to this Court.

7. I have heard the learned counsel for the parties and gone through the record. As regards the principle of res judicata is concerned, counsel for applicant submitted that since the issue has not been finally decided at the time when the earlier order was period, as respondents have not been summoned. So both the parties were not before the Court and issue was not finally decided. Hence the principle of res judicata is not applicable. Counsel for applicant submits that as per rule 8 of the Service Rules for postal staff the applicant who has served as a Gramin Dak Sewak Post Master and has rendered more than 3 years service from the date of appointment cannot be terminated unless given a notice and the period of such notice has to be of one week. Thus, the services of the applicant is being terminated in violation of rule 8 and applicant is entitle to continue on the same post.

8. Though the applicant claims that he has been regularly appointed but this issue cannot be taken up again because in the earlier OA it has already been held that applicant is merely provisional appointee. By order dated 6.6.2002 in OA-1541/2002 the Court had observed that an appointment letter appointing the applicant regularly in the said post cannot be issued. Court has further observed that no one has been regularly appointed in place of Sh. Ved Prakash and Court has also observed that it is clear that the applicant has been

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working only provisionally right from 4.12.98. Such an appointment cannot give any right for regular appointment in the same post. Since applicant is not regularly working as Gram Dal Sewal Post Master so the rules, particularly rule 8 of which applicant is seeking support is not applicable. Status of the applicant remains to be that of Substitute Gramin Dal Sewal Post Master.


9. Now the question arises whether the applicant has a right to hold the post or whether a regular selected candidate can take over the charge. In earlier OA, it was alleged department has issued a public notice dated 6.5.2002 for regular appointment and applicant has sought a relief for quashing of the same but the said relief was not granted. Thus, the right of the department to hold the selection and to appoint regular persons was rather upheld in the earlier order. Now since the department has selected and appointed a regular person to the said post applicant cannot claim the right to remain in the post. He has to make room for the regularly selected candidates. No malafide or arbitrary action or colorable exercise is being done by the department because department has to make a regular appointment to the said post.

10. Applicant has not been able to prove that he was a regular appointee as alleged by him in para 4.1. However, earlier order also shows when the notification was issued for regular appointment of Gramin Dak Sewak Post Master, applicant did not make any application to participate in the said selection being held for regular appointment. There is no document on record to show that applicant has been regularly appointed though the applicant submits that department did not give the order dated 1.12.98 vide which he had been appointed

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to the post. Now the department claims that he was merely a substitute appointee. For regular appointment there is a selection procedure and applicant could not be appointed on regular basis without going into regular selection procedure. In my view also applicant without going through the selection procedure cannot be said to be a regular appointee. Moreover it has already been held by the Court earlier that status of the applicant remains to be that of a substitute appointee and his services can be terminated and replaced by a regular candidate.

11 Now since the regular selected candidate has been appointed, applicant has no right to remain in post. OA has thus no merits and the same is accordingly dismissed. No costs.

  
( KULDIP SINGH )  
Member (J)

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