

2

1

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2178/2003

New Delhi this the 1st day of April, 2004

Hon'ble Shri S.K. Naik, Member (A).

Shri Surender Pal,
S/o Shri Raiyat Singh,
R/o D-577, Gali No.17,
East Gokalpur, Amar Colony,
Delhi-110094.

... Applicant.

(By Advocate Shri R.L. Sharma)

Versus

1. Union of India,
through the Secretary,
Ministry of Telecommunication,
Government of India,
New Delhi.

2. The Chief Post Master,
Delhi Circle,
Meghdoot Bhawan, Link Road,
New Delhi-110 001.

... Respondents.

(By Advocate Ms. Rinchen Ongmu Bhutia)

O R D E R (ORAL)

Hon'ble Shri S.K. Naik, Member (A).

The applicant, Shri Surender Pal, was appointed on the post of ED as a substitute of Shri Shyam Mohan, who was the regular EDDA at Gokalpuri Post Office, on daily wage basis. He worked there continuously from 24.9.1999 to 30.4.2002 except certain spell of breaks. He has, however, not been allowed to work in the Department w.e.f. 1.5.2002 without any order in writing or assigning any reason. Aggrieved against this oral termination, the applicant is before me seeking relief in the form of a direction to the respondents to call him back on duty and regularise his services.

hcs

2. Respondents have contested the claim of the applicant. Their counsel has contended that the applicant was engaged as a substitute by Shri Shyam Mohan who is a regular EDDA. The applicant was provided by the said Shri Shyam Mohan to work as his substitute for a short duration in his absence. When Shri Shyam Mohan rejoined his duty, orders were issued for discontinuation of the daily wage arrangement of the applicant. The counsel, therefore, contends that the applicant neither having been appointed by the respondent/Department nor having been given any assurance that he would be ever taken on the regular appointment, states that the claim of the applicant is not tenable. It also does not fall within the EDA Conduct and Service Rules, 1964.

3. With regard to the claim of regularisation, the counsel contends that the applicant having been engaged by Shri Shyam Mohan, as ^{a substitute in} regular ED, will not fall in the category of casual labourer/worker for regularisation under any of the DOP&T Schemes. The reference to his working for over 240 days, therefore, would have no relevance. She has also referred to the Apex Court judgement in Union of India & Ors. Vs. Debika Guha and Ors. (2001 SCC (L&S) 90), in which the Hon'ble Supreme Court has held that substitute EDA of the Postal Department who have worked for 180 days or more in one calendar year continuously cannot claim

Dr. A. K.

regularisation as a matter of right. The Apex Court has further held that they have no legal claim of absorption on the basis of their working continuously. The counsel has further referred to the Full Bench judgment of the Tribunal (Bangalore Bench) in D.M. Nagesh & Ors. Vs. The Assistant Supdt. of Post Office, Bangalore South, Bangalore & Ors. (1997-2001) ATFBJ 161), in which it has been held that,

"Candidates appointed as casual labourers and to whom the Scheme of regularisation is applicable are entirely distinct from the candidates who are appointed as E.D. Agents on ad hoc or provisional basis or by way of stop gap arrangement. Candidates appointed as E.D. Agents on ad hoc or provisional basis or by way of stop gap arrangements are not entitled to the benefits conferred on casual labourers vide instructions dated 6.6.1988".

The counsel, therefore, contends that on all counts the applicant has no case for any consideration and the same deserves to be dismissed.

4. I have carefully considered the averments made by the parties. The applicant in his own application admits that he has been engaged as a substitute by Shri Shyam Mohan. He has neither applied in response to any notice or advertisement by the respondent Department for the post nor has he passed through any procedure of selection. The Department has never appointed him. In effect, therefore, it means that the applicant was hand-picked by Shri Shyam Mohan

10/10/02

to work as substitute and when he later returned to his place of substantive posting, the substitute had to go. The fact that he worked for certain period as a substitute of Shri Shyam Mohan will not give rise to any legal claim or right over the post by the applicant. It was by way of a mutual arrangement that he got some engagement for certain period. As has been rightly contended by the learned counsel for the respondents, the applicant cannot be treated in the category of casual labourers and, thus, he cannot claim any right under the Scheme of Regularisation as well.

5. I am, therefore, of the view that the claim of the applicant fails on all counts. Having no merit, the same is accordingly dismissed with no order as to costs.

S.K. Naik
(S.K. Naik)
Member (A)

'SRD'