

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2921/2003

New Delhi, this the 16th day of July, 2004

Hon'ble Mr. Sarweshwar Jha, Member (A)

Pramod Kumar
S/o Shri Harpal Singh
EDDA/EDMC Basantpur, Sainthli
R/o Vill. & PO Basantpur Sainthli,
Murad Nagar, Ghaziabad, UP.

...Applicant

(By Advocate Shri Kapil Shirma)

Versus

1. Director General (Post)
Dak Bhawan, New Delhi.
2. Asstt. Superintendent (Post)
Gaziabad (North)
Gaziabad - 201 301.

...Respondents.

(By Advocate Shri M.M. Sudan)

ORDER (ORAL)

This application has been filed by the applicant for setting aside the impugned order dated 24.12.2004 passed by the respondents discharging him from the post of EDDA/EDMC, Basant Pur Sainthli in violation of the principles of natural justice even though he had complied six years of service without any break.

2. The applicant was selected and appointed as EDDA/EDMC on 17.2.1997 on the basis of his having fulfilled the conditions of the post as laid down by the respondents. He has claimed that in the letter of the respondents dated 21.12.1996 inviting the names from the Employment Exchange for the post. It was not mentioned that the said post was a provisional post. It has also been claimed by the applicant that the post against which he was appointed had been lying vacant since 1992-93 and once Shri Pradeep Kumar Sharma was appointed to the said post provisionally, but he was also transferred to some

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other place on 20.05.1996. It was for this reason that he had requested the authorities concerned to appoint him to the post on regular basis. He claims having been assured by the respondents that positive action would be taken very soon. But, instead, his services were terminated vide memo dated 24.12.2002 without issuing any show-cause notice and without following the principles of natural justice, as alleged by him. He met the officers concerned in the matter and also submitted representations in December 2002, January 2003 and March 2003; but no action was taken by the respondents in this regard, as submitted by the applicant. In the meantime, the applicant has become over-aged and he cannot apply for any other post. His submission is that he has acquired indefeasible right to be appointed on regular basis for the simple reason that he has put in six years of service in the post. He has also disputed the authority of the respondents to recruit a fresh person after he has completed about six years of work in the post. He has accordingly prayed that the respondents be directed to reinstate him against the post or to give him an alternative appointment as per the service rules of ED staff and to pay full back wages.

3. Respondents have taken us through their reply in which the information submitted by them includes the fact that one Shri Braham Singh was working in the post of EDDA/EDMC, Basant Pur Saithli B.O. as a regularly appointed candidate and that due to certain lapses on his part he was removed from service on 22.08.1996. As a result, the post fell vacant. Temporarily the need to engage someone to look after the work of the said post was, therefore, felt and it was in this process that Shri Pradeep Kumar Sharma, the applicant, was appointed to the post as per the procedure contained in EDAs (Conduct & Service) Rules 1964, Section IV Rule 15 (Annexure-I). In the meantime, Shri Braham Singh submitted an appeal against the orders of the ASPOs (N) Ghaziabad. The same having been rejected, Shri Braham Singh submitted a

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petition to the Director of Postal Services, who ordered for de novo trial in the case. After due process of enquiry, the Disciplinary Authority, ASPOs(N) Ghaziabad passed an order dated 23.11.2001. On perusal of what has been submitted by the respondents, it is observed that the Sr. Supdt. Of Post Offices, Ghaziabad Division, Ghaziabad ordered to take back Shri Braham Singh in service vide memo dated 24.12.2002 and that the provisional appointment of the applicant to the post of EDDA/EDMC, Basantpur Saithali as a stop gap arrangement came to an end. Reference to two cases by the respondents, viz., OA 2225/2002 with OA 2221/2002 decided on 13.4.2004 and also OA 1763/2003 and OA 1745/2003 as decided on 7.5.2004 does not appear to be relevant to the present case.

4. The applicant through his rejoinder has reiterated the fact that with the transfer of Pradeep Kumar Sharma who had been appointed in place of Shri Braham Singh, EDDA on 9.11.1994 and with his regularization and transfer subsequently on 20.5.1996, it cannot be said that the post to which he was appointed was available only for provisional appointment. He has argued that his appointment to the said post cannot be treated as a stop gap arrangement for the simple reason that the regular appointee Shri Braham Singh was facing disciplinary proceedings. On perusal of the facts, I find that essentially it is a case of the applicant having been in the service of the respondents for six years as EDDA, Basantpur, Saithali, since February, 1997 and it cannot be easily disputed that he has acquired a right to be given an alternative appointment in terms of the Postal ED Staff Rules which stipulate the following:

"(ii) Wherever possible, provisional appointments should be made only for specific periods. The appointed person should be given to understand that the appointment will be terminated on expiry of the specified period and that he will have no claim for regular appointment. Where a new Post Office is opened or where a new post is created or where an ED Agent dies while in service or resigns from his post and it is not possible to make regular appointment immediately, a provisional


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appointment should be made for a specific period. The offer for appointment should be in the form annexed (Annexure-A)."

5. It is also noted that provisional appointment should have been made only for a specific period and not for an open period which appears to have been the case in the present case. While the applicant continued to hold the post for six years, the other person, viz., Shri Braham Singh continued to pursue the matter with the respondents at different levels. And finally an order was issued in his favour. The facts of the matter, however, are not clearly submitted by the respondents in respect of his reinstatement. However, as these facts may not be directly relevant to the case of the applicant, I strongly feel that the respondents, while dispensing with the service of the applicant, should have taken care to follow the rules in respect of the Postal ED Staff as referred to above simultaneously, they should have made a mention of their taking necessary steps in that regard; they should not have kept quiet on that aspect, which is quite crucial to the interest of the applicant.

6. Under these circumstances, the OA is partly allowed with direction to the respondents to offer an alternative post to the applicant in terms of the above rule and keeping the above observations in mind. They are further directed to ensure that the above direction is complied with within a period of three months from the date of receipt of a copy of this order.


(Sarveshwar Jha)
Member (A)

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