

(2024) 02 CAT CK 0011

Central Administrative Tribunal - Allahabad Bench, Allahabad

Case No: Original Application No. 926 Of 2013

Ashish Kumar, Dwivedi

APPELLANT

Vs

Union Of India Through Its
Secretary, Ministry Of
Communication, Post And
Telegraph Department, Dak
Bhawan, Sansad Marg, New Delhi.
And Others

RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Constitution Of India, 1950 - Article 14, 16, 21, 39(a)

Hon'ble Judges: Dr. Sanjiv Kumar, Member (A)

Bench: Single Bench

Advocate: A.D. Singh, K.K. Ojha

Final Decision: Dismissed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. The instant OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking relief to quash the impugned orders dated 29.04.2013 and 31.07.2013 passed by respondent No. 3, and to direct the respondents to regularise the services of the applicant on the post of EDBPM with all consequential benefits including arrears of bonus, differences of pay in pursuance of the Pay Commission report etc., and to grant any other relief deemed fit and to award cost.

2. The brief facts of the applicant is that the applicant was initially appointed on 01.02.1996 on the post of substitute EDBPM, Ghoredeeh and continued with work till 12.08.1997 for about 18 months. Thereafter, the applicant was again appointed as substitute to the post of EDBPM from 01.10.2003 at Sub Post Office Ghoredeeh, Allahabad. And when some Shri Amar Nath Dwivedi retired on 14.01.2004, a notice dated 16.12.2003 was issued and on the bottom of the said notice it was prescribed that keeping in view the retirement of Shri Amar Nath Dwivedi the system of substitute be abolished and his place some suitable GDS employee be engaged with compliance report. The applicant was given charge of the post of EDBPM at Ghoredeeh on 22.06.2004.

3. The applicant filed OA No. 1577/2003 and obtained a judgment dated 01.09.2004 which placed reliance upon the judgment dated 24.08.2004 in OA No. 1393/2003 of this Tribunal that ad-hoc appointment cannot be substituted by another ad-hoc

appointment and on that basis directed that the applicant shall be continued till the regular selected candidates become available and he will be entitled to wages, emoluments for the period he worked. The applicant got bonus for the year 2010-11, but now it is stopped for which the applicant approached the Tribunal as it cannot be withdrawn without opportunity of being heard. The applicant further says that one employee Shri Akhilesh Kumar Mishra who was appointed as substitute / provisional on 10.05.1997 and completed more than 3 years of service, has been regularized on the post of EDDA/EDMC at Sahman inspite of his appointment was challenged in OA No. 765/1997 by the regularly selected candidates and the OA was allowed on 11.04.2004 against which the CMWP No. 19364/2002 was filed in the Hon"ble Allahabad High Court which was pleased to set aside the order dated 11.04.2002 and thereof the services of Shri Akhilesh Kumar Mishra has been regularized vide letter dated 12.06.2002 by the respondent No. 3. Hence, the applicant is entitled for similar treatment as Shri Akhilesh Kumar Mishra.

4. The applicant claims that since 2003 he is continuously working on the post of EDBPM at post office Ghoredeeh and his work is satisfactory and is paid consolidated salary and as per rule he submitted his representation on 12.04.2012 before respondent No. 3 for regularization and bonus. But the same was kept pending consideration. The applicant filed OA No. 262/2013 for regularization which was decided vide order dated 08.03.2013 to decide his representation within 2 months. Pursuant to this the respondents issued order dated 29.04.2013 rejecting the regularization of the applicant and issued advertisement dated 31.07.2014 which is improper and hence needs to be set aside as the applicant is continuously working since 01.10.2003 against a sanctioned post as substitute on provisional basis and is discharging his duties as regular employee. Ad-hoc arrangement can only be made for 180 days and as the applicant has overshoot the period, hence, he needs to be regularized. In para 4.14 of the OA, the applicant that GDS rules there is provision that in case a GDS is working continuously and has completed 3 years of his service and any vacancy arises in the Post Office, the GDS is working, he is entitled to be consider for regularization / absorption without resorting to regular selection process. But in this para no annexure are forthcoming and no rules are specifically quoted or shown. The applicant claims that he had worked for more than 10 years and now he has become overage for any other Government job and as his work and conduct has been satisfactory. Hence, he should be regularized as some similarly placed candidates have been regularized. Hence, the order dated 29.4.2013 is arbitrary and should be set aside and OA should be allowed.

5. On notice the respondents have filed their counter affidavit in which they says that the Sub Divisional Meja, Sub Division, Allahabad ordered to Shri Amar Nath Dwivedi the then EDBPM, Ghoredeeh vide his letter dated 31.01.1996 to work temporarily on the post of EDR, Ghoredeeh to engage some suitable person temporarily on his original post of EDBPM as substitute. Accordingly, Shri Amar Nath Dwivedi, engaged Shri Ashish Kumar Dwivedi as substitute to work temporarily on the post of GDSBPM, Ghoredeeh from 01.02.1996, as per standing departmental rules at that time during the leave or absence of regular incumbent. And once the regular incumbent returned he had to be relieved and there was no right to the substitute to be absorbed on regular basis for the substitute. And on receipt of pubic complaint by one Shri Surya Dutta Pandey, Village and Post Ghoredeeh regarding irregularities in the work of Shri Ashish Kumar Dwivedi, the matter was looked into by the SDI, Meja and then Amar Nath Dwivedi was asked to join his original position. The Amar Nath Dwivedi after relieving from the post of BPM Ghoredeeh on 08.11.1996 proceeded on leave without the approval of leave sanctioning authority and remained unauthorised absent till

12.08.1997 and during his absence period Shri Amar Nath Dwivedi again and again directed him to join on his post of EDBPM, Ghoredeeh. Further on getting a letter dated 07.08.1997 to remove unauthorized person working on the post. In compliance to the above instruction the SDI Meja ordered Shri Chandrma Prasad Mishra the then Mail Overseer to get Shri Ashish Kumar Dwivedi relieved immediately. Shri Amar Nath Dwivedi joined on 12.08.1997 and thus the substitute arrangement of Shri Ashish Kumar Dwivedi was terminated. Again Shri Amar Nath Dwivedi proceeded on leave w.e.f. 01.10.2003 without getting the leave prior sanctioned by the sanctioning authority and engaged Shri Ashish Kumar Dwivedi as his substitute at his own without approval of his seniors in contravention of the departmental rules and sent the application for grant of leave from 01.10.2003 to 31.10.2003 on medical grounds while no medical certificate was sent. His explanation was called why he has availed the leave and engaged the substitute without prior permission of the competent authority with a direction to SDI Meja to depute some suitable GDS employee to work as GDSBPM Ghoredeeh temporarily terminating the said arrangement of Shri Ashish Kumar Dwivedi. Shri Amar Nath Dwivedi has sent his explanation in which he stated on 08.10.2003 that due to his ill health he had to proceed on leave suddenly and he had to engage Shri Ashish Kumar Dwivedi as substitute and he promised not to repeat. A lenient view was adopted and the leave for the period from 01.10.2003 to 31.10.2003 was granted to him. And substitute arrangement of Shri Ashish Kumar Dwivedi for the period from 01.10.2003 to 31.10.2003 was also approved on the clear understanding the substitute may be discharged by the appointing authority at any time without assigning any reason. But further Shri Amar Nath Dwivedi extended his leave on medical ground and Shri Ashish Kumar Dwivedi continued and he filed OA No. 1577/2003 and attaining the age of 65 said GDSBPM, Ghoredeeh Shri Amar Nath Dwivedi was due to retire on 14.01.2004 and Shri Ashish Kumar Dwivedi was not relieved. The said OA No. 1577/2003 was decided on 01.09.2004 with a direction that the applicant shall be continued till the regularly selected candidate become available and he was entitled to wages and emoluments and Shri Ashish Kumar Dwivedi still working as substitute on the post of GDSBPM.

6. Thereafter, another OA No. 262/2013 was filed by Shri Ashish Kumar Dwivedi and further whatever facts of the applicant were are confirmed and in compliance of this Tribunal order dated 08.03.2013 vide their order dated 29.04.2013 the authorities have asserted that he was working purely as substitute on the post GDSBPM, Ghoredeeh and as per departmental rules his engagement on regular basis on the said post of GDSBPM is not admissible and due to not being on regular engagement the bonus is not admissible to him. And a notification has been issued vide office memorandum dated 31.07.2013 for regular appointment by selection and against the said speaking order and the notification for appointment the applicant has come before this Tribunal again. And as there is no rule for regularizing a substitute who is irregularly appointed and continued and there is no rule under which he can be regularize. Hence, the OA should be dismissed.

7. The applicant has filed rejoinder affidavit in which he has reiterated his stand as in the OA. He emphasises that he has been continuously working for more than 10 years he is still working and hence he has to be regularized. The applicant also cited the order of this Tribunal in OA No. 582/2009 dated 12.10.2012 wherein this Tribunal ruled following:-

“In view of the above, the OA is allowed. Impugned order dated 14th MAY 2009 is quashed and set aside. Respondents are directed to prepare the seniority list of the applicant and similarly situated substitutes and in case they decide to regularize such persons, they shall follow the seniority list for the purpose of

regularization. On preparation of such seniority lists, the applicants be informed of their seniority position and the likelihood of their being absorbed on regular basis."

8. And the applicant claim that there are many similar cases of similarly placed persons in a list so prepared who have been regularized, so he should also be regularized.

9. Further, supplementary affidavit has been filed by the applicant, wherein he says that during pendency of the OA, compliance of this Tribunal order dated 12.10.2010 passed in OA No. 580/2009 (Dinesh Kumar Mishra and Divakar Nath Tiwari vs. Union of India and Others) and on approval of the Post Master General Allahabad letter dated 02.02.2015 the respondent No. 3 has issued an order for regularizing the services of the substitute employees according to continuous working of the employees in which the name of the applicant also placed at Sl. No. 5 for regularizing his service and hence the applicant is legally entitled for regularization on the post he is still working, therefore, no any occasions to issue new advertisement. The respondents vide their order dated 08.02.2019 cancelled the advertisement and the applicant's service should be regularized.

10. The case came up for final hearing on 01.02.2024. Shri A.D. Singh, learned counsel for the applicant and Shri K.K. Ojha, learned counsel for the respondents were present and heard. I have gone through the records carefully and considered the rival contentions.

11. From the statement of both the parties and the record it is evident that initially the applicant was appointed as substitute EDBPM, Ghoredeeh on 01.02.1996 and he continued on that post for 18 months till 12.08.1997. It is very clear that no rule has been shown which can either give any right to the applicant appointed as substitute to be continued further as EDBPM or to be regularized by working on the said post for 18 months as it was a temporary arrangement and as and when the regular person was to come, the applicant had to be relieved from his duty. After August 1997 again the applicant was appointed, but this time irregularly by the incumbent there who was going on unauthorised leave without getting approval from his senior. Is it a coincidence or there is something more collusive that the name of applicant and his benefactor who appointed him irregularly as substitute have same surname, but confirming the irregularity? On 01.10.2003 the applicant again resumed work as EDBPM and the said person who did this irregularity Shri Amar Nath Dwivedi had to retire on 14.01.2004 and in his retirement letter the authority has mentioned on 16.12.2003 that someone regular should be appointed. Against which the applicant had filed OA 1577/2003 and vide order dated 01.09.2004 the applicant was continued and under the protection of the said order he continued till 2012 when he moved his letter for regularization and bonus. As the same was not decided he again went in OA No. 262/2013 where order dated 08.03.2013 it was directed that within two months his representation should be decided and the authorities on 29.04.2013 rejected the regularization of the applicant and also issued an advertisement for regular selection and appointment dated 31.07.2015. This OA has been filed against these two orders and the applicant has obtained an interim order of stay against that advertisement and regular appointment. At this stage the contention of the applicant is that he fulfils the criteria for regularization hence he should be regularized. He also claims that he is similarly placed to some other persons who are regularized. Hence, on equity ground he should be regularized.

12. If I first examine whether any similarity exists between the cases which has been cited by the applicant. The applicant has cited the case of this Tribunal the order dated 12.10.2012 in OA No. 582/2009 wherein the Court ordered, **"The OA is allowed.**

Impugned order dated 14th MAY 2009 is quashed and set aside. Respondents are directed to prepare the seniority list of the applicant and similarly situated substitutes and in case they decide to regularize such persons, they shall follow the seniority list for the purpose of regularization. On preparation of such seniority lists, the applicants be informed of their seniority position and the likelihood of their being absorbed on regular basis". The applicant was not party in the same but clearly the order in the said OA is not specific to regularise but only to maintain a seniority list and if and when the respondents decide to regularize they should go by that seniority list. The applicant has not been able to show that there are any rules which exist for regularization of similarly placed persons in the respondents" department. so this citation does not serve the applicant much.

13. Further, the applicant has cited Hon"ble Supreme Court judgment in the case of **H.S. Rajhashekara vs. State Bank of Mysore and Anr - 2012 (1) ALSJ 168 [SLP (C) No. 10845/2009]** where Article 14 and 16 absorption Calendar Year and block year of twelve months have been the main issues to be decided where the appellant had worked 292 days from 08.07.1994 to 30.08.1994 and claimed regularization on the basis of that he had completed 240 days in a calendar year. But clearly this judgment is not on the issue of regularization of similarly placed EDBPM substitute employees. Hence, it is not relevant.

14. Further, the applicant has cited the order of this Tribunal (Bombay Bench) in **OA No 10/2011 - Ashok Vithal Patil and others vs. Union of India and others** dated 10.02.2012 the Tribunal had ruled, **"In view of the above discussion of law and fact, the OA stands allowed. The applicants are entitled to be considered and regularized as Chowkidars / Sweepers or against any other Group „D" post of Guest House Attendant etc. The applicants are also entitled to continuity of service with all consequential benefits on notional basis. The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this order"**. But this case does not pertain to EDBPM substitute employees. Hence, is not at all relevant in this case. Hence on similarity ground I do not find any case for the applicant for regularization.

15. If I examine the case of the applicant for regularization on substantive grounds of his completing 10 years continuous service and more, I have to examine the case on the touchstone of the case of **Secretary, State Of Karnataka and Ors vs. Umadevi And Others -[(2006) 4 SCC 1]**. In which the Hon"ble Supreme Court has observed as under:-

".....Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under [Article 39\(a\)](#) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on [Article 21](#) of the Constitution.....

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One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

16. As per this ruling the applicant has to prove following to get regularized:

a. That he was appointed against a sanctioned post. Although he appears to be appointed as substitute on a sanctioned post, but it is clear from the understanding of both the parties that substitute is a substitute and there was sunset clause in the substitute when they have to be discontinued, but under the order of the Court in OA No. 1577/2003 dated 01.09.2004 the applicant has been continued till today and not under any specific rule which is there in the department.

b. The applicant has to prove that he was either regularly or irregularly appointed and not illegally appointed. From the very appointment of the applicant on the second time by the then incumbent EDBPM Ghoredeeh Shri Amar Nath Dwivedi who had no power to appoint him and make him substitute while going on unauthorized leave in year 2003-04 was highly deviant from rule and cannot be considered as regular. Further appointment of a substitute is different than an „appointment“ to a government regular vacant post as such.

17. So in no way the applicant is able to substantiate that he was appointed either regularly or irregularly and not illegally. Further as per the Uma Devi's case (supra) the applicant must substantiate that he was eligible for the said post and all the eligibility criteria he was holding. I do not find any averment for the same from the applicant that he was eligible to be appointed on the said post and he had eligibility.

18. Further, the Uma Devi's (supra) judgment specifies that such irregular appointments if continued for more than 10 years in the year 2006 when judgment came, and as further clarified in OM No. 49014/7/2020-Estt.(C) dated 07.10.2020 issued by DOPT it has been mentioned that one time exercise should consider all daily-wage/ ad-hoc/ those employees who had put in 10 years of continuous service as on 10.04.2006 without availing the protection of any interim orders of Courts or Tribunals. But the applicant does not qualify on that to be regularized. Further the judgment of Uma Devi specified that continuance of the person in a post cannot be under any Court

order and those periods have to be discounted for the purpose of regularization. The case of the applicant from 2004 onward the applicant continued under the pretext of the order in OA No. 1577/2003, hence, all the subsequent period he does not get any credit for regularization. Furthermore, the judgment of Hon^{ble} Apex Court in Uma Devi case (supra) makes it amply clear that the right to regularization of a person before any Court or Tribunal is not better than anyone else's right who are waiting for public employment as per the Constitutional scheme of public employment given in the Constitution and they cannot seek protection of Article 14 and 16 and in normal course of things the public employment should be after due notice to everyone as per rule and giving opportunity to them to appear for such selection and based on due selection on merit the public employment should be given. In the present the case applicant is not able to substantiate his case that he has eligibility as per the Hon^{ble} Supreme Court judgment in Uma Devi's case (supra) for public employment by being regularized.

19. Further, if I examine the impugned order which is challenged, it is a speaking and detailed order and is as per rules. Hence, I do not find any ground to interfere with the impugned order, hence, I pass following order:-

"The OA is dismissed". All associated MAs, if any, also stand disposed of accordingly. No costs".