

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 745 of 1996

alongwith

Original Application No. 1002 of 1996

Allahabad this the 15th day of Sept 1997

Hon'ble Dr. R.K. Saxena, Member ( J )  
Hon'ble Mr. D.S. Bawaria, Member ( A )

Q.A. No. 745 of 1996

Sri Lal Bahadur Yadav aged about 29 years, S/o  
Sri Girdhari Lal, Extra Departmental Postman, R/o  
Village Bilawa, P.O. Pilawa, Tehsil Phoolpur, District  
Allahabad.

By Advocates Sri B.P. Srivastava  
Sri R.K. Pandey Applicant

Versus

1. Union of India through the Secretary, Ministry of Post and Telegraphs, New Delhi.
2. The Sub Divisional Inspector (Post Offices), Handia Circle, Allahabad.
3. Raj Kumar S/o Shyam Lal R/o Village & P.O. Belawa Distt. Allahabad.

Respondents.

By Advocate Sri S.K. Anwar  
Sri G.P. Gupta (for respondent no.3)

Q.A. NO. 1002 of 1996

SRI Raj Kumar aged about 24 years S/o Shri Shyam Lal R/o Village and P.O. Belwa Distt. Allahabad.

Applicant

By Advocate Sri G.P. Gupta

Versus

1. Union of India through the Secretary, Ministry of Post and Telegraph, New Delhi.
2. Sub Divisional Inspector (Post Office) Handia Circle Allahabad.
3. Lal Bahadur Yadav, S/o Sri Girdhari Lal, R/o Village Belwa P.O. Belwa, District Allahabad.

Respondents.

By Advocates Sri S.K. Anwar

Sri R.K. Pandey (for respondent no.3) ... pg. 2/-

ORDER

By Hon'ble Dr. R.K. Saxena, Member (J.)

These are two cases which have been filed by two different persons for the claim of their appointment on the said post. They are, therefore, taken up together and are being disposed of by one the common judgment.

2. The brief facts giving rise to these two cases are that one Saligram Yadav was working as Extra Departmental Delivery Agent, Belwa, Sahsoan in Allahabad district. Because of the selection and appointment of the said Saligram Yadav on the post of Postman, the post of Extra Departmental Delivery Agent fall vacant. Consequently, the applicant - Lal Bahadur Yadav of O.A.745 of 1996 was appointed as substitute. In the meantime a requisition(annexure A-2) was sent to the District Employment Exchange, Allahabad to sponsor the names of 3 to 5 persons for the post of Extra Departmental Delivery Agent. In response to this requisition, the names of 4 persons namely Raj Kumar( the applicant of O.A.no. 1002/96), Manoj Kumar Yadav, Raj Bahadur Yadav and Lal Bahadur Yadav( the applicant of O.A. 745/96) were sent by the Employment Exchange. A comparative chart of all those 4 persons was prepared. This chart has been brought on record of both the cases. It is revealed from the perusal of this chart that Raj Kumar the applicant of O.A.no. 1002/96 belong to S.C. community whereas other three persons including the applicant of O.A.No. 745/96 - Lal Bahadur Yadav belong to backward community. This Lal Bahadur Yadav was graduate and had agriculture land whereas other 3 persons were matriculate and had no source of income. It is further

mentioned in the remark column of this chart that only Lal Bahadur Yadav - the applicant of O.A.no. 745/96 fulfilled all the conditions of eligibility whereas others failed to fulfil those conditions. Consequently, this Lal Bahadur Yadav was given the appointment letter annexure A-3. It appears that said Lal Bahadur Yadav who was already working on the post from 11.1.1989 to 04.8.1994 had joined the post after the appointment letter annexure A-3 was given to him.

3. It appears that Raj Kumar - the applicant in O.A. 745/96 made a complaint that his claim of for appointment was ignored although he belong to the category of S.C. and according to the departmental instructions, he ought to have been given preference over other candidates. On the basis of the complaint some inquiry is stated to have been made and ultimately the Director of Postal Services passed an order on 17.1.1996 that the appointment of Lal Bahadur Yadav was cancelled and should be complied with. In pursuance of this direction, the Sub Divisional Inspector, Mandia intimated Lal Bahadur Yadav through annexure A-1 dated 09/7/96 that his services stood terminated on the expiry of the period of one month from the date when the notice would be served on him.

4. Feeling aggrieved by this order, Lal Bahadur Yadav preferred O.A. no. 745 of 1996 with the relief that the impugned order of termination of service dated 09/7/96 be quashed and the respondents be directed to pay the salary and other allowances month to month to the applicant.

5. Other applicant- Raj Kumar moved application

for impleadment in O.A. 745/96 and filed another O.A. no. 1002/96. The contention of Raj Kumar is that he is a S.C. candidate and possess the necessary qualifications and thus, he should have been given preference. The appointment of Lal Bahadur Yadav has been assailed by him on the same ground and claimed that the direction be given to the respondents to appoint him on the post of Extra Departmental Delivery Agent, Belwa. The further relief claimed was that the respondent no.3 be directed no-t to issue fresh notice for appointment of said post.

6. The Union of India and Sub Divisional Inspector are made official respondents in both the cases. Lal Bahadur Yadav was made respondent no.3 in O.A. no. 1002/96. This Lal Bahadur Yadav came with the same plea which has been taken by him in O.A. 745/96. The stand taken by the official respondents in the two cases was some what different. It is contended that Saligram Yadav who was working as Extra Departmental Delivery Agent/M.C. was no doubt, declared successful in the examination of the Postman of the year 1990-94 and he was likely to be promoted to the post of Postman. In these circumstances, the post of Extra Departmental Delivery Agent/M.C. was vacant, the process was started and 4 names were sponsored by the Employment Exchange. It is mentioned in the counter-affidavit filed in the O.A. no. 745/96 that the qualification upto High School of all the 4 persons was taken into consideration. The percentage of marks was taken out and according to that percentage Raj Kumar - the applicant in another O.A. got 48.5%, Manoj Kumar Yadav got 37.3% , Raj Bahadur

Yadav got 40.8% whereas Lal Bahadur Yadav got 52.4% of marks. Consequently, the appointment order was given to Lal Bahadur Yadav but this fact that Raj Kumar was a S.C. candidate, was ignored. It is further stated in para 15 of the counter-affidavit that the ground for ignoring Raj Kumar also was that he did not possess adequate means of independent livelihood. It is further contended that the cancellation of appointment of Lal Bahadur Yadav by the Director Postal Services, Allahabad was justified.

7. The counter-affidavit of the official respondents did not elaborately dealt with the points mentioned in different paragraphs of O.A. It was mostly averred that the particular para required no comments or the facts given in a particular para were legal and argumentative.

8. We have heard Sri R.K. Pandey, counsel for the applicant in O.A. No. 745/96 and as counsel for the respondents in O.A. No. 1002/96, Sri G.P. Gupta counsel for the applicant in O.A. No. 1002/96 and counsel for the respondent no.3 in O.A. No. 745/96 and Sri S.K. Anwar counsel for the official respondents in both the cases.

9. There is no dispute that on selection of Saligram Yadav as postman, the post of Extra Departmental Delivery Agent (for short E.D.D.A) / M.C. of Belwa, Sahsoan, District Allahabad fell vacant and, therefore, the process for filling in the post was started. The requisition was sent to the Employment Exchange wherfrom the names of 4 persons were received. It is also not in dispute that the applicant-Lal Bahadur Yadav secured highest percentage of marks in High School examination

and fulfilled all the conditions of eligibility for the post. It is clearly mentioned in the comparative chart which has been brought on the record of both the fases that other 3 persons had got not only lesser marks but have also lacked in fulfilling other conditions of eligibility. It is for this reason that appointment of Lal Bahadur Yadav was given by the appointing authority.

10. The controversy had arisen on the complaint of Raj Kumar - the applicant of O.A. 1002/96 that the preference was not given to him because he belong to the category of S.C. - The departmental instructions in this connection were issued and the photostat copy of the said instruction contained in the method of recruitment has been brought on record in both the cases. The heading 'preferential category' is given at serial no.6 and it appears from the perusal of it that different circulars were issued by the department for preferential treatment of different categories. One was issued on 08/3/78 with respect to S.C. and S.T. candidate, another of 17.2.1979 regarding ex-army postal service personnel and another on 20.1.1979 regarding backward class and weaker section of society. It is mentioned that the preference to these categories of candidates should be subject to first and foremost condition that the candidates selected should have an adequate means of livelihood. Thus, it is emerged that the preference is given not only to the candidates belonging to S.C./S.T. but to other two categories mentioned above. The preferential treatment is given only when other things are equal. This very circular which talks about the preferential treatment also stipulates that first condition would be that the candidate should possess adequate means of

livelihood. We have already mentioned while discussing the comparative chart that other 3 candidates did possess no adequate means of livelihood. Thus, the claim of preferential treatment by Raj Kumar fails on this count also. Besides it is very clear preposition that the preference would come into play when other things are equal. In this case all the four candidates whose names were sent by the Employment Exchange belong to a category which has been placed in the preferential category. Thus, they are to be treated equally so far as this aspect is concerned. Incase Lal Bahadur Yadav had not obtained higher percentage of marks in the High School and the claimant of the post - Raj Kumar had obtained highest marks, the position would be different. Even if both of them or all of them had acquired same percentage of marks, the question of preferential treatment would arisen. This Raj Kumar who had made the complaint and who was seeking his appointment did not possess sufficient or adequate means of livelihood, and he did not obtain highest of all the 4 candidates percentage of marks or at-least equivalent percentage of marks to Lal Bahadur Yadav. Thus, in no way, the applicant - Raj Kumar of O.A. No. 1002/96 can be said to be equal to the applicant Lal Bhadur Yadav to O.A. No. 745/96. In this way, the claim of Raj Kumar for appointment to the post of E.D.D.A./M.C. is not made out.

II. The learned counsel for the applicant - Lal Bahadur Yadav also argues that the Director of Postal Services had cancelled the order of his appointment which was unwarranted because no opportunity of hearing was given. It is also that the appointing

authority is the Sub Divisional Inspector, a very junior officer but the cancellation of appointment has been directed by the Director of Postal Services as if he was sitting in appeal over the appointment order issued by the Sub Divisional Inspector. There is no doubt that the principle of natural justice which are applicable in quasi judicial matters, are equally applicable in administrative matters. This view was taken by their Lordships of Supreme Court in "A.K. Kraipak Vs. Union of India and Others, 1969 SLR 445" The observation of their Lordships is as follows:-

"Under our constitution, the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by rule of law. .... The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement to act judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. .... The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included two rules namely (1) no one shall be a judge in his own case (Homo debeat case index propria causal) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial inquiries must be held in good faith without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. .... If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative inquiries.

Often times, it is not easy to draw the line that demarcates administrative inquiries from quasi-judicial inquiries. .... Arriving at a just decision is the aim of both quasi-judicial inquiries as well as administrative inquiries. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry."

12. On consideration of this principle laid down by their Lordships of Supreme Court, it is clear that even in administrative matters, the spirit of natural justice cannot be thrown out. In the present case, it is quite clear that the appointment of Lal Bahadur Yadav was made in accordance with the procedure which was laid down and the appointment letter was issued to him by the competent authority. The said appointment letter was cancelled by an authority which was not an appointing authority and without giving any reasonable opportunity to Lal Bahadur Yadav to explain to disuade the Director of Postal Services from reaching a conclusion of cancellation. Not only this, it appears from the manner in which the appointment order of Lal Bahadur Yadav was cancelled as if the Director of Postal Services was hearing in appeal and then giving his decision which too is not supported by any reasons. In our opinion, the manner in which the order of appointment of Lal Bahadur Yadav was cancelled, by an authority which was not an appointing authority, violates the principle of natural justice. The said Director of Postal Services nowhere mentioned about irregularities or corrupt practice having been adopted in the selection. Had any such ground been there, obviously a superior authority is suppose to look into the conduct of the subordinate authority but here it is not the case. By taking shelter behind

:: 10 ::

Rule 6 of Extra Departmental Agent ( Conduct and Service) Rules, 1964, the arbitrariness cannot be allowed to take place. We, therefore, hold that the cancellation of appointment order of Lal Bahadur Yadav is quite illegal and unsustainable in law. We also hold that Raj Kumar- the applicant of O.A. No. 1002/96 does not acquire any right and cannot claim his appointment on the post of E.D.D.A./M.C. of Sub post office, Belwa. We, therefore, quash the impugned order of cancellation of appointment passed by the Director of Postal Services and consequently by the Sub Divisional Inspector on 09/7/96. The applicant Lal Bahadur Yadav is continuing on the post on the basis of the stay which was granted on 23.7.1996 and shall continue accordingly. Both the O.A.s no. 745/96 and 1002/96 are disposed of accordingly. No order as to costs.

*D. B. Wad*  
Member ( A )

*D. B. Wad*  
Member ( J )

/M.M./