

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1218 of 1997

Allahabad this the 11th day of April, 2002

Hon'ble Mr.C.S. Chadha, Member (A)
Hon'ble Mr.A.K. Bhatnagar, Member (J)

1. Arvind Kumar Tiwari, S/o Shri Pramod Narain Tiwari, R/o Ganga Nagar Colony, Fatehpur.
2. Raj Kumar Dwivedi, S/o Shri Ram Newaj Dwivedi, R/o Ambedkar Nagar, Fatehpur.
3. Rajendra Prasad, S/o Shri Ram Abhilash, S/o Deviganj, Fatehpur.

Applicants

By Advocate Shri B. Ram

Versus

1. Union of India through the Secretary(Posts) Department of Posts, India, Ministry of Communication, DAK BHAWAN, Sansad Marg, New Delhi.
2. Sr.Superintendent, R.M.S. 'A' Division, Allahabad.
3. Inspector Railway Mail Service, 'A' Ist Sub Division, Allahabad.
4. SUB RECORD OFFICER, R.M.S. 'A' Division, Fatehpur.

Respondents

By Advocate Shri Satish Chaturvedi

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

This O.A. has been filed challenging the order of respondent no.2 vide his letter dated 26.09.97 cancelling the appointments of the applicants as E.D.M.M. As a consequence of respondent no.2's above mentioned letter respondent no.3 issued instructions dated 28.10.97 by which the applicants were restrained from working on their posts as E.D.M.M. Further the respondent no.3 also terminated their services vide his order dated 03.11.97, directing respondent no.4 to relieve the applicants in pursuance of the order. All these orders have been challenged in this O.A.

2. It has been claimed by the applicants that the D.G.Posts issued instructions to all Subordinate Offices to fill up the vacancies of E.D.Personal. As a result of these directions, respondent no.3 decided to fill up the vacant posts by making provisional appointments till regular appointments were made. It is further claimed by the applicants that they applied for the post of E.D.M.M. in response to a notification by respondent no.3 inviting applications and on fulfilling the eligibility conditions they were appointed by respondent no.3 on 02.08.97. Their appointments were cancelled by the order of respondent no.2 on 26.9.97 without giving them any show-cause notice, by an authority higher in rank than the appointing authority. Hence the order has been challenged on the ground

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B. Chawla

of lack of an opportunity to be heard, the violation of principles of natural justice and the fact their provisional appointments were sought to be replaced by other provisional appointments.

3. In the counter affidavit the respondents have stated that Shri Janardhan, the appointing authority in this case was an Asstt. Superintendent, and was not authorised to make such appointments as he was merely looking after the current charge of Inspector of Posts (First) Allahabad, in addition to his duties. It has therefore been claimed that Shri Janardhan went beyond his powers to appoint the applicants when he had no such authority. Further, he did not follow the prescribed procedure, even if it is assumed that he had such powers. He did not ~~invite~~ ^{did he} names of candidates from the employment exchange nor ^{on} advertise for filling up the vacancies. The respondents have thus stated that the averment made by the applicants that they applied in response to a 'notification' is false. Attention was drawn to their applications (Annexures 5, 6, 7) which refer to no such 'notification'. Further our attention was also drawn to the fact that apart from the appointing officer Shri Janardhan not being empowered to make such appointments he acted in an apparanetly fraudulent manner by receiving the applications at annexures-5, 6 and 7 on 31.07.97 and issuing orders of appointments on the same day. This would not happen if open market application or applications through the Employment Exchange are

:: 4 ::

invited till a fixed date, interviews/selections held and then appointments made. Although the learned counsel for the respondents has not pointed it out, a further 'fraud' has come to our notice. The applications are shown to have been made on 31.07.97 but on the Identity Card issued to Shri Arvind Kumar Tiwari, the concerning column states "Appointment held 30.07.1997". It is amazing to see the haste with which this whole process was done. On the other hand the date of appointment of Shri Raj Kumar Dwivedi as shown on his Identity Card is 31.07.97.

4. The learned counsel for the respondents has further stated that the appointments, though ab initio illegal, were also made provisionally, liable to be terminated at any time without notice. In view of the illegality of the action of Shri Janardhan vide Annexure C.A.-II, he was also asked to explain why disciplinary proceedings should not be initiated against him. The learned counsel for the applicants has argued that the cancellation by an authority higher than the appointing authority, in review, cannot be done without giving a show-cause notice to the applicants. In this regard he has placed reliance on several rulings. Firstly reliance has been placed on this Bench's order in O.A.547 of 1999 passed on 17.5.2001 in which it was held that since the appointment in that case was cancelled at the behest of a superior authority, the cancellation could not be sustained, specially

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because no regular appointment had been made instead of applicants' provisional appointment for six months. The circumstances of this case are totally different. In this case the superior authority did not either use its own discretion in finding a better candidate nor did it usurp or take upon itself the powers of the appointing authority in taking the decision it did take on 26.9.97. Had these been the circumstances certainly the higher reviewing authority could not do so without giving a show cause notice. However, all that was said in the letter dated 26.9.97 was that Shri Janardhan, who made the appointments did not have the powers to make the appointments and ^{be} were therefore cancelled. In this case the appointments were ab initio void not only because of the lack of powers with Shri Janardhan but also the total lack of following of any rules or procedure laid down by making such appointments. Therefore, the citation does not help the applicants. Further, in the cited order of this Bench, the Hon'ble Members of the Bench, also pointed out the decision of the Hon'ble Supreme Court in Brij Mohan Singh Vs. U.O.I. & Others in J.T.2000(4)S.C.436, in which the Apex Court held that if the appointee had not completed 3 years service only a notice need be given to terminate the services or at best the person concerned could claim pay in lieu of the notice period. In the instant case the illegal appointment were made on 31.7.97 (or 02.08.97 ?) and cancelled in less than two months, perhaps as soon as the illegality was noticed by the higher authority and therefore, no rights had accrued to the applicants.pg.6/-

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:: 6 ::

5. The learned counsel for the applicants has also placed reliance on the order of the Lucknow Bench of Central Administrative Tribunal dated 12.07.99 in O.A.No. 117 of 1991 (Hari Prakash Mishra Vs. U.O.I & Others) wherein it was held that the discretion vested in the appointing authority cannot be exercised by a higher authority, we are afraid that this citation also does not help the applicants because in that case the higher authority took upon itself the discretion given to the appointing authority, in as much as it found certain candidates better than or more qualified than the appointees. It was therefore held that reviewing authority could not cancel the appointments without giving an opportunity (a show cause notice) to the appointees to prove that they were not worse than the candidates the reviewing authority had preferred. In this case the reviewing authority neither exercised any such discretion nor cancelled the appointment because certain other candidates were better. The cancellation was merely on the ground that the person who made the appointments was not empowered to make such appointments. The citation of Amar Singh Vs. U.O.I. & Others in O.A. 916/HP/94 decided on 21.10.94 the Chandigarh Bench also does not help the applicant, because the basic point in all such cases is that the reviewing authority cannot use the discretion of the appointing authority and cancel an appointment on merits, without even giving a show cause notice. We are afraid that in this case no decision was

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:: 7 ::

taken by respondent no.2 on merits of the case of the applicant. The cancellation was merely because the person who appointed the applicants had no power to do so. If such grossly illegal appointments, made without jurisdiction, cannot be directed to be cancelled by higher authorities there would be chaos. We are therefore unable to agree with the learned counsel for the applicants that the citations mentioned above support the case of the applicants.

6. In the circumstances discussed above, the O.A. has no merit and is, therefore, dismissed.

7. There shall be no order as to costs.



Member (J)



Member (A)

/M.M./