

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH; ALLAHABAD.

ORIGINAL APPLICATION NO. 1241 of 2004.

ALLAHABAD THIS THE 2nd DAY OF ~~September~~ ^{September} 2005.

Hon'ble Mr. Muzaffar Hussain, Member-J

Hon'ble Mr. S.C. Chaube, Member-A

1. Atul Chandra Pandey
Son of Sri Adya Pandey,
Resident of Village Badgo, Post Office- Baur,
Vyas, District Sant Kabir Nagar.
2. Uday Narain Yadav]
Son of Sri Jai Ram Yadav
Resident of Village Sarvarpur,
Bharauti, District Mau, Presently
Posted as GDS/MR Belaha Kala (Branch)
District Sant Kabir Nagar.
3. Jai Prakash Mishra,
son of Sri Chandra Bhan Mishra,
Resident of Village and Post Office Bisauwa,
District Sant Kabir Nagar.
4. Uma Shankar Yadav,
Son of Sri Shatrughan Yadav
Resident of Village and Post Rayath, District
Basti.
5. Radhey Shyam son of Sri Ram Dhani,
Resident of Mohalla Thakur, Dwara, near
Mehadawal, Post Mehdawal, District Sant Kabir
Nagar.
6. Ramesh Chandra Pandey
son of Sri Jwala Prasad Pandey,
resident of Village Bajaha, Post Rayath,
District Basti.

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.....Applicant.

(By Advocate: Sri H.P Mishra/ Sri J.N. Tripathi)

Versus.

1. Union of India through
The Secretary
Ministry of Communications,
Department of Posts,
New Delhi.
2. The Superintendent of Post Offices,
Basti Mandal, Basti.
3. Assistant Superintendent of Post Offices,
Bansi Sub Division, Bansi, District Basti.

..... Respondents.

(By Advocate: Sri Saumitra Singh)

O R D E R

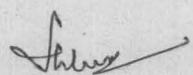
By Hon'ble Mr. Muzaffar Hussain, Member-J

The applicant six in number are challenging the impugned order dated 28.09.2004 passed by respondent NO.2 and in compliance of the said order, the applicants were disengaged by order dated 29.9.2004 passed by respondent NO.4. The applicants prayed for quashing and setting aside the order dated 28/9.2004 and 29.09.2004. They have sought direction to the respondents to implement the order 21.07.2004 passed by the respondent NO.3 by which the applicants' representation was decided and were issued appointment order, with a further direction to the respondents to pay regular salary to the applicants for which they are entitled under law.

2. The necessary facts for adjudicating the matter of controversy involved in this case may be summarized as follows:-

- i) The applicants applied for the post of Gramin Dak Sewak/ Branch Post Master(in short G.D.S/B.P.M), Gramin Dak Sewak/ Male Carrier (in short GDS/MC), Gramin Dak Sewak/ Male Runner (In short GDS/MR) from their respective places.
- ii) The applicant No.1 joined on 20.06.2001 as GDS/MC at Branch Post Office- Fakaria, District Sant Kabir Nagar. Thereafter he was transferred at Branch Post Office Santoshpur as GDS/MC. The applicant NO.2 joined on 7.11.2001 as Gramin Dak Sewak/ Male Peon (in short GDS/MP) at Branch Post Office- Chakwa and thereafter he was transferred to several places. The applicant NO.3 joined on 31.7.2001 at Branch Post Office Bisauwa as GDS/MC, District Sant Kabir Nagar. The applicant No.4 joined on 15.7.2002 as GDS/MC at Branch Post Office Manitapur Basti. Applicant NO.5 joined on 20.1.2003 as GDS/MR at branch Post Office Biswa, District Sant Kabir Nagar. Applicant NO.6 joined on 3.7.2002 as GDS/MC at branch Post Office- Segara, District Basti.
- iii) It is stated by the applicants that most of them have completed more than 3 years of services and according to service conditions, they are entitled to regularized on the posts on which they are working. The applicants are paid salary to the tune of Rs.2700/- and they have requisite qualification for the posts. The respondents proposed to cancel the appointment in some of the Districts by order dated 5.9.2003. The applicants preferred the O.A. before the Tribunal being O.A. No.1075/03 in which initially interim order has been

granted by the Tribunal and in pursuant to that they have been permitted to continue to discharge their duties on their respective posts. Vide judgment dated 25.5.2004, the Tribunal disposed of the aforesaid O.A. directing the authorities to consider the representation of the applicants and dispose of in accordance with the law as early as possible preferably within a period of two months from the date of receipt of the representation. It is further made clear that pending decision of the representation, the applicants may be allowed to continue if they have not been disengaged by now. The applicants have been discharging their duties on their respective posts, hence they are not disengaged after the order dated 25.5.2004. The applicants after obtaining certified copy of the order represented before the Authority i.e. respondent NO.3 who forwarded the representation of the applicants to the respondent NO.2 who passed the order directing the Competent Authority to decide the same on 20.7.2004. Respondent NO.3 decided the representation of the applicants. According to that, the appointment letters have been issued to them on 21.7.2004. Thereafter about two months the respondent NO.3 issued show cause regarding validity of the appointment order. The applicants submitted their representation before the Authority on 12.9.2004. The respondent NO.2 passed impugned order on 28.09.2004, in pursuant to which the respondent NO.3 passed the order for disengagement on 29.09.2004. The applicants impugned both these orders by way of filing this O.A.



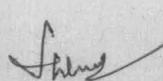
3. The respondents contested the claim of the applicants. They have filed short counter affidavit, counter affidavit and supplementary affidavit. Respondents stated that the applicants who filed the present O.A. were working as Substitute on the responsibility of different Gramin Dak Sewak and Department officials in stop gap arrangement against the following vacant Gramin Dak Sewak posts:-

1. Shri Atul Chandra Pandey-GDS MD/MC, Sultanpur.
2. Shri Jai Prakash Mishra- GDS MD Bisauwa,
3. Shri Radhey Shyam Yadav- GDS MC Bisauwa,
4. Shri Uday Narain Yadav- GDS MC Belhar Kala.
5. Shri Uma Shanker Yadav- GDS MD/MC Manitapur.
6. Shri Ramesh Chandra Pandey- GDS MD/MC, Sagra.

It is also stated that under the postal Directorate DO letter No.40-35/10th Plan/Plg, dated 14.08.2003 instructions were issued to the effect that no vacant post of Gramin Dak Sewak may be filled up in any office that is two handed or till further instructions. It is further mentioned that under P.M.G. Gorakhpur Region, Gorakhpur endorsement no. RPG/Rectt/M.14/1/5/Rlg./Ch.V dated 21.08.2003, certain instructions were issued to the effect that no substitute be allowed on vacant post of Gramin Dak Sewak including short term vacancies. Accordingly by letter No.A-3/10/Plan target/03-04 dated 05.09.2003 instructions were issued to all the Unit Incharge for compliance. The Assistant Superintendent of Post Offices, Bansi Sub Division, Basti Division, which is the appointing authority of Gramin Dak Sewak

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issued order to disengage all the substitutes who were working under the Stop Gap Arrangement without following proscribed recruitment procedure. The applicants filed O.A. No.1075 of 2003 in this Hon'ble Court against the said order dated 5.09.2003 and order issued in compliance of the order dated 05.09.2003 by the Assistant Superintendent of Post Offices. The applicants on the strength of the stay order continued on the respective Gramin Dak Sewak Posts. It is further submitted that though Tribunal had directed to consider and decide the representation of the applicants in accordance with the law/Scheme of Department but in the Department Rules, no provision has been made for regular appointment of any outsider person without observing prescribed recruitment procedure. It is further stated that in the exercise of power conferred by Sub Rule 3 of Rule 4 of Department of Post Gramin Dak Sewak (Conduct & Employment) Rules 2001 amended by Department of Post Gramin Dak Sewak (Conduct & Employment) amended Rule 2003 and circulated under DG Post New Delhi memo NO.19-15/2002 GDS dated 9th May 2003. The irregular appointment orders in favour of above mentioned applicants(outsiders) by ASPOs Bansi Sub Dn. Bansi Postal Division was reviewed by Supdt. Post Offices Basti Dn. Basti, Supervisor authority to the said appointing authority ASPOs Bansi, before taking any decision in R/o irregular appointment of the applicants, the show cause notice dated 02.09.2004 on the material irregularities as observed in review by Competent reviewing Authority. Supdt. Post Offices Basti Dn. Basti respondent NO.2 were got issued to the above applicants for submitting their representations through ASPOs



Bansi with his comments after considering the representation, comments of appointing authority respective appointment files other related document & Departmental Rule etc. the appointment made under respective orders dated 21.07.2004 were found against Departmental Rules and law as discussed in the respect review orders. As such in the interest of justice the orders dated 21.07.2004 in favour of above applicants (outsiders) were canceled and the above mentioned (outsider) applicants have been got disengaged. The work of the respective posts is being got managed by combined the duties with the regularly appointed GDS and thus no separate substitute has been engaged on disengaging the above outsider. The applicants have filed original application against the order of Competent Reviewing Authority which is liable to be dismissed.

4. Learned counsel for the applicants contended that applicants were appointed after considering the facts and circumstances and in compliance of the order dated 25.05.2004 passed by Tribunal in O.A. No.1075/04. The respondent No.2 has no power to review the matter because the respondent NO.2 has already directed the respondent NO.3 to decide the case of the applicants. The review order can be passed only by the authority who has already passed order in the matter in pursuant to the order passed by higher authority. Once matter has been decided on 21.7.2004 and services of the applicants are regularized then matter cannot be re-opened. The impugned orders have been passed without *Shivu* application of mind and therefore orders

passed by respondents NO.2 and 3 are liable to be quashed and set aside.

5. Learned counsel for the respondents, on the other hand, has submitted that Superintendent of Post Offices, Basti is empowered under said rule to review the appointments made by the respondent NO.3 and issued the justified orders. In accordance with the order of Hon'ble Tribunal dated 25.5.2004, the respondent NO.3 was directed by respondent NO.2 to decide the representation of the applicants in accordance with the Scheme of the Department and provision of the law. But respondent no.3 by issuing respective appointment order dated 21.07.2003 not only acted against the scheme of the Department but against the provisions of the Rule. Therefore, for such material irregularities, the appointment were warranted to be reviewed by the Competent Authority i.e. respondent NO.2.

6. We have considered the rival contention raised, argument advanced and case law cited by the learned counsel for the parties and perused the material placed on record.

7. The short question for consideration arise that whether the respondent NO.2 has power to review the order dated 21.07.2004 passed by Assistant Superintendent of Post Offices, Bansi. By the said order, the applicants were allowed to continue as GDS in regular basis. The contention of the applicants is that they have completed more than 3 years of service and according to

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the service condition they are entitled to regularize and order dated 21.07.2004 was passed in compliance of the order of Tribunal dated 25.5.2004, therefore, the respondent NO.2 has no power to review the matter and services of the applicants are regularised and it has become final. The stand taken by the respondents is that applicants are not engaged against the respective post after observing prescribed recruitment procedure and they were engaged in stop gap arrangement and due amount of TRCA was paid to them for period when they had worked. Learned counsel for the respondents invited our attention to Postal Directorate letter dated 14.8.2003 (Annexure SCA 1) wherein instructions were issued to the effect that no vacant post of Gramin Dak Sewak may be filled up in any office that is two handed or more till further instructions. Learned counsel for the respondents has also invited our attention to letter dated 5.9.2003 (Annexure SCA-2) by which instructions were issued to all the Unit incharge for compliance. The Assistant Superintendent of Post Offices, Bansi Sub Division, Bansti Division, which is the appointing authority of Gramin Dak Sewak issued order to disengage all the substitutes who were working under the stop gap arrangement without following prescribed recruitment procedure. This order was challenged in O.A. NO.1075/03 before this Hon'ble Tribunal and was disposed of by order dated 25.5.2004 with the following directions:-

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"Decision to discontinue the prevailing system of appointing substitute GDS is a policy decision and scope of judicial interference against the

policy decision is very limited. The impugned policy decision is not shown to be violative of any statutory provisions nor can it be said to be suffering from vice of malafide and arbitrariness. The applicants have acquired no right to hold the post. In the circumstances, no interference in the matter is called for. It is, however, provided that this order is without prejudice to the right of the applicants to seek alternate appointment or regularization under any scheme of rules. In case, the applicants file any representation in this connection, the same shall be considered and disposed of in accordance with law as early as possible preferably within a period of two months from the date of receipt of the representation. It is further made clear that pending decision of the representation, the applicants may be allowed to continue if they have not been disengaged by now.

Accordingly the O.A. is disposed of with no order as to costs".

8. A perusal of the order indicates that the Tribunal has observed that impugned policy decision is not shown to be violative of any statutory provisions nor it be said to be suffering from vice of malafide and arbitrariness. It is further observed that the applicants have acquired no right to hold the post. In the circumstances, no interference in the matter is called for. However, it was directed that If the applicants file any representation in this connection, the same shall be considered and disposed of in accordance with law as early as possible preferably within a period of two months from the date of receipt of the representation. It is further made clear that pending decision of the representation, the applicants may be allowed to continue if they have not been disengaged.

9. Learned counsel for the applicants has not shown any Rules, instructions or law which may help the applicants in regularizing their services who were working as Substitute and were engaged in stop gap arrangement, therefore, we are in the agreement with the

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argument of the learned counsel for the respondents. Thus, it appears that the action of issuing appointment order on regular basis in favour of the applicants without even issuing notification to fill up the post by providing opportunity to other candidates for submitting their application is violative of Fundamental right and is in regard to the law laid down by the Hon'ble Apex Court Excise Supdt. Vs. K.B.N Visheser Roa 1996 AIR SCW 3979.

10. In view of the above, we hold that order dated 27.7.04 passed by Assistant Superintendent of Post Offices, Bansi were contrary to law and procedure prescribed by the Rules.

11. Learned counsel for the applicant argued that respondent NO.2 has no power to review the order passed by Assistant Superintendent of Post Office, Bansi. Learned counsel for the respondents has invited our attention to amendment incorporated in Rule 4 which is reproduced below:-

"(3) Notwithstanding anything contained in these rules, any authority superior to the appointing authority as shown in the Schedule may, at any time, either on its own motion or otherwise, call for the records relating to the appointment of Gramin Dak Sewaks made by the appointing authority, and if such appointing authority appears-

- (a) to have exercised a jurisdiction not vested in it by any law or rules time being in force: or
- (b) to have failed to exercise a jurisdiction so vested ; or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

Such superior authority may, after giving an opportunity of being heard, make such order as it thinks fit".

12. A perusal of the amended Rule indicates that the Superior Authority to appointing authority.

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may also review the order passed by Appointing Authority on the ground mentioned in the Rule. In exercise of power conferred by Sub Rule 3 of Rule 4 of Department of Post GRamin Dak Sewak (Conduct & Employment) Rules 2001 as amended by Amendment Rule 2003. Respondent NO.2 issued show cause notice to the applicants for submitting their representation in respect of material irregularities in their appointment through Assistant Superintendent of Post Office, Bansi and on receipt of their representations, impugned order has been passed. Thus, we find that the impugned order in the present case has been passed after affording full opportunity to the applicants by the Competent Authority. As the order dated 21.7.2004 were contrary to the guidelines of the Department and no proper procedure were followed before issuing appointment order in favour of the applicant, therefore, we find no illegality in the orders passed by respondent no.2 and 3 respectively.

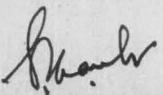
13. Learned counsel for the applicants argued that in O.A. 1055/03, Vandana Singh and others Vs. Union of India and others, O.A. No.1056/03 Dileep Kumar Pandey and another Vs. Union of India and others, O.A. No.1063/03, Arvind Kumar Tripathi Vs. Union of India and others and O.A. No.1075 of 2003, Amit Kumar Singh and others Vs. Union of India and others in compliance of the order of Tribunal in these cases, the respondents have regularized the applicants and permitted to continue. It depends on the facts and circumstances of the each case whether the appointment should be regularized or not. In distinguishable facts of these case, if respondents have regularized, it cannot be ground for the applicants for regularization.

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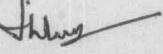
reliance on the judgment of Division Bench CAT, Bangalore Bench, Sri Ravi S. Banakar Vs. Superintendent of Post Offices, Haveri and others wherein the Tribunal set aside the order, canceling the appointment. In this case. Appointment was made after the selection and it was cancelled on the basis of compliant, therefore, facts of this case are not applicable to the facts of the present case.

14. For the reasons stated above, the applicants failed to make out any case for judicial interference on any legal, valid and tenable grounds. The O.A. being devoid of merit, fails. It is accordingly dismissed.

No order as to costs.


(Hon'ble Mr. S.C. Chaube)

Member-A


(Hon'ble Mr. Muzaffar Hussain)

Member-J

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