

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

(This the 16 day of 9 2009)

Present

Hon'ble Mr. A.K. Gaur, Member-J

Original Application No.1014 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Harindra Kumar Khare, aged about 34 years, son of Shri Ganesh Prasad Khare, resident of Langhanpura, Mahoba.
...Applicant.

By Advocate : Shri R.K. Nigam

V E R S U S

1. Union of India, through the Secretary, Ministry of Communication, Govt. of India, New Delhi.
2. Post Master General Kanpur Region, Kanpur.
3. Sr. Superintendent of Post Offices, Banda Region, Banda.
4. Sub Post Master, Post Office, Mahoba.

...Respondents

By Advocate : Shri Saumitra Singh
Shri S.C. Mishra

O R D E R

(Delivered by : Hon'ble Mr. A.K. Gaur, Member-J

The applicant through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for following main relief/s:-

"i). To issue writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 28.11.2003 (Annexure A-I);

ii). To issue writ order or direction in the nature of MANDAMUS thereby commanding the respondents to appoint the petitioner on regular and substantive vacancy of Class IV in any unit of the P.&T

Department...."

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2. The factual matrix of the case of the applicant that he was engaged as Daily Rated Worker (Waterman) on 02.04.1994 and worked continuously upto 18.09.2000. He was seized to work w.e.f. 19.09.2000. Aggrieved the applicant filed O.A No. 1038/2000, which was disposed of by the Tribunal vide judgment dated 29.09.2000 with direction to the concerned authority to decide his pending representation. According to the applicant, as the compliance of the direction of the Tribunal was not made, he filed Contempt Petition No. 138/2001. However, the applicant filed comprehensive representation dated 15.10.2001. Since the respondents did not pass any order on the said representation, the applicant filed another O.A No. 39/2002, which was also disposed of by the Tribunal vide judgment dated 19.08.2003 with direction to the respondents to consider the representation of the applicant and pass a reasoned and speaking order within a period of three months for the date of receipt of copy of the order and in compliance thereto, the Senior Superintendent of Post Offices, Banda Division/respondent No. 3 passed the order dated 28.11.2003..

3. Learned counsel for the applicant invited my attention to para 2 of the order dated 28.11.2003 and submitted that the ground taken by the respondent No. 3 is totally perverse inasmuch as the applicant was engaged on 02.04.1994 and not on 02.04.1999. Learned counsel for the applicant further submitted that the applicant was engaged as Full Timer C.P Waterman and not as part timer C.P. Waterman, as mentioned in the order dated 28.11.2003. The grievance of the applicant is that he worked as full timer C.P. Waterman w.e.f. 02.04.1994 to 18.09.2000 , therefore, in view of the decision rendered by the Hon'ble Supreme Court in Ram Kumar's case, the applicant is entitled for regularization as he had

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continuously worked for more than 240 days. Learned counsel for the applicant further submitted that after the order dated 28.11.2003, the applicant preferred representation dated 21.12.2003/Annexure A-IV to the respondent No. 2 and representation dated 19.02.2004/Annexure A-V of O.A to the Chief Post Master General, Lucknow.

4. On notice the respondents the respondents filed counter affidavit. Learned counsel for the respondents submitted that the applicant was never appointed on the post of C.P Waterman at Mahoba but was engaged as substitute by the Sub Post Master, Mahoba and was allowed to carry out the work of Waterman on the responsibility of Sri Praveen Kumar Khare during the absence of one Sri Shyam Lal, the permanent incumbent of the post and the engagement of the applicant automatically came to an end on joining of permanent incumbent. Learned counsel for the respondents invited my attention to the letter dated 31.03.1969 issued by D.G. (P&T) New Delhi/Annexure1 to the C.A and submitted that as per para 3 of the said letter the applicant is not entitled for regularization in group 'D' cadre.

5. Applicant has filed rejoinder affidavit reiterating the facts stated in the original application except annexing application dated 07.06.2000, receipt of which has been denied by the respondents in their Suppl. Counter Affidavit. The applicant also filed Suppl. Rejoinder Affidavit annexing certain pay bills to which the respondents filed Suppl. C.A-II reiterating the contents stated in the Counter Affidavit.

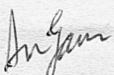
6. I have heard rival contentions and perused the pleadings as well.

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7. In the present case, though assuming but not admitting that the applicant was engaged as Full Timer Waterman but he has not placed on record the appointment letter to show that he was engaged after following due process of recruitment. The applicant also failed to place an iota of evidence that he was engaged as Full Timer C.P. Waterman. Mere working as Waterman for six years does not entitle the applicant for being regularized. In the absence of any documentary evidence on record with regard to appointment of the applicant as full time C.P. Waterman, there is no room to disbelieve the contention of the respondents that the applicant was allowed to work as substitute Waterman in the absence of regular incumbent of the post. The substitute engagement of the applicant was also not made after following due procedure and the applicant was allowed to carry out the work of Waterman on the responsibility of one Sri Praveen Kumar Khare and the said engagement of the applicant automatically came to an end after joining of Sri Shyam Lal, the regular incumbent of the post. The principle of regularization is no longer res-integra after the judgment of Hon'ble Supreme Court reported in 2006(1)SCC 677 - State of U.P. Vs. Neeraj Awasthi, JT (2006)2 SC 137- UPSC Vs. Girish J. Lal, JT(2006)SC 84- State of Karnataka Vs. K.G.S.D Canteen and 1999 Vol (ii) UPLBEC 1353- Piara Singh, the regularization is not and cannot be made of recruitment by any state under Article 162, there is no power to State to make appointment and even if there was any such power, no appointment could be made in violation of statutory rules. High Court or C.A.T had no jurisdiction to frame a scheme by itself or direct to frame scheme for regularization.

8. In view of the settled principle of law and the observations made above, I find no good ground to interfere with the order dated 28.11.2003/Annexure A-1. The O.A is accordingly dismissed being devoid of merits.

9. There will be no order as to costs.


MEMBER-J

//Anand//