

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
A L L A H A B A D

O.A. No.
T.A. No.

999 1087

DATE OF DECISION April, 1988

Mausalan

Petitioner

Sri A. V. Srivastava

Advocate for the Petitioner(s)

Versus

C. O. I. & others

Respondent

Sri N. B. Singh

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, A.M.

The Hon'ble Mr. G. S. Bhasma, A.M.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 999 of 1987.

Nauratan Applicant.

Versus

Union of India & others ... Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This is an application received under Section 19 of the Administrative Tribunals Act XIII of 1985. Briefly the facts are that the applicant was provisionally appointed as an E.D.Packer on 24.10.85 with the stipulation that he shall take over charge after the then incumbant Kharag Singh is relieved of his post on his promotion as Postman. The appointment was done by the Inspector of Post Offices. This appointment was rescinded by the impugned order of 22.2.86, and another person Ram Singh (respondent no.6) has been appointed as E.D. Packer instead. The applicant made representations but they did not bring any response.

2. The applicant, therefore, filed this application seeking relief that the order dated 22.2.86 be set aside and he may be treated in service in terms of the appointment letter dated 24.10.85 and he be given the salary of the post. The grounds are that the impugned order has been passed without considering the facts, it has violated Articles 311, 14 & 16 of the Constitution as the applicant was not afforded any opportunity and the orders for appointment of Reserved Community Candidates have been violated.

3. The departments' case, is that the applicant is not ~~xxxif fxxh nifggh~~ maintainable as the applicant is not a Government

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servant and he was not appointed by the appropriate authority. He has also not availed of departmental remedies. The regular vacancy of E.D.Packer at Chharra was ~~was~~ ³⁴ notified in January, 1987. Thereafter applications were invited from the Employment Exchange for filling up the post. Candidates including the applicant appeared in the selection and Ram Singh, respondent no.6, was selected. The appointment letter issued on 24.10.85 was in contravention of rules and, therefore, it was cancelled. There was no vacancy till 1986, and no regular appointment could be made to a post of EDDA till the incumbent is regularly absorbed. The 24.10.85 letter was issued without calling applications from the Employment Exchange, and the appointment was irregularly made so it was cancelled. The respondents have further said that the representations made by the applicant are under consideration in PMG's office. There was no reservation of this post for SC/STs, and since he had not yet taken over the violation of Article 311 does not arise.

4. In his replication the applicant has said that he was registered with the Employment Exchange in 1983. When he got the conditional employment on 24.10.85, he intimated the Employment Exchange and his name was struck off the register. According to him the applications are entertained by the department on the basis of information tendered by the Employment Exchange and selections are made and there have been previous cases too where conditional appointments had been later regularised. He has also denied that he appeared in the second selection because his name had already been scored off by the Employment Exchange.

5. We have heard the learned counsel for the parties. On behalf of the applicant it was contended that the practice of conditional appointments existed and there was nothing to disqualify the applicant. This was opposed by the learned counsel for the respondents on the ground that the Inspector of Post Offices was not competent to make a regular appointment and the applicant's name was not

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sponsored by the Employment Exchange and no selection was actually held.

6. It is clear from the averments made by the applicant in his replication that his application was not sponsored by the Employment Exchange. ~~he has not submitted any documents in support of it.~~ It is also clear that no proper selection in terms of EDDA Rules for recruitment was done. For this ~~at least~~ ³ names were to be sponsored by the Employment Exchange. The applicant had not been able to prove that there were other candidates also who went through the selection as a result of which he was given the order dated 24.10.85. Annexure I to the application, which is the offer of appointment, only says that the applicant was provisionally appointed as E.D. Packer. A check on the character or police verification would not make the appointment proper or regular. For regular appointment the process that is to be followed starts only after the regular absorption of the previous incumbent in the new appointment. A provisional appointment can, however, be made till a regular selection is held. Such persons work as substitutes and are provided ^{by} ~~from~~ ³ Employees who have been approved for regular appointment, before they start working on the new post.

7. A provisional offer of appointment does not generate any right for the person, ^{to whom} it is made, for regular absorption. A regular appointment and a provisional appointment are two different things. One does not merge into the other. For regular appointment the proper procedure has to be followed. It has evidently not been followed in this case.

8. Regarding the claim that the post was reserved for SC/ST, the applicant has again not produced any documents to support his claim. The respondents have denied that it was a reserved vacancy. In the absence of any supporting documents this contention also fails.

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9. Now that the regular selection has been made by the respondents, the provisional appointment orders which never materialised cease to have any value. We reject the contention that any relief is due on that account.

10. Under the circumstances we find no merit in the application. It is accordingly dismissed. Parties will bear their own costs.

Sursharma
MEMBER (J)

3/GR/OTW
MEMBER (A).

Dated: April 21, 1988.

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