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OPEN COURT

(2/10/89)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD.

Allahabad this the 24 day of January 1996.

Original Application No. 814 of 1989.

Hon'ble Mr. T.L. Verma, JM
Hon'ble Mr. D.S. Baweja, AM

Smt. Chandrawati, W/o Sri Giridhari
Lal, R/o Village & Post Kota, Dist.
Aligarh (U.P.). & Others.

..... Applicants.

Sri V.D. Ojha (C/A)

Versus

1. The Senior Superintendent, Post
Offices, Aligarh.
2. The Director General, Post Offices,
New Delhi.
3. Sri Rakesh Kumar Gaur, S/o Sri Phool
Chand, R/o Village & Post Pateni,
Dist. Aligarh (U.P.).

..... Respondents.

Sri S.C. Tripathi (C/R)

O R D E R (ORAL)

Hon'ble Mr. D.S. Baweja, AM

This O.A. has been filed by the four applicants, challenging the appointment for the post of Extra Departmental Agent vide impugned order dated 15.9.1989, and praying for quashment of the same.

2. The Post Office known as Extra Departmental Branch in village Kota, the Extra Departmental Branch Post Master

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retired from service on 11.7.1988. The work was being looked after by Sh. Rajendra Singh, who was Extra Departmental Sub-Record Clerk. To fill up this vacancy applications were invited and 10 applications were received, out of these 4 applications were found eligible. However, while the selection has been completed the respondent No. 3 Sh. Rakesh Kumar Gaur who is resident of village Pateni, which is situated more than 7 Km. from Kota was appointed against this post vide letter dated 15.9.89. The applicants have alleged that Sh. Rakesh Kumar Gaur was not the permanent resident of the village where the Post Office is located and he has manipulated his appointment by ^{con-}~~considering~~ ^{calmy} this fact. He also does not possess requisite qualification as provided under the rules, and thus his appointment is in contravention of the rules, and by his appointment the legal right of the applicants have been ⁱⁿ~~re~~fringed.

3. The respondents have filed counter affidavit wherein it has been averred that respondent No. 3 Sh. Rakesh Kumar Gaur was earlier working against the vacancy caused due to putting off ^{duty} the Branch Post Master Pateni, Dist. Aligarh on a provisional basis. The regular incumbent was taken back on duty on the conclusion of the ~~Disciplinary~~ ^{Disciplinary} Action and therefore the respondent No. 3 becomes surplus. In view of his experience the respondent No. 3 was ordered to be accommodated as Extra Departmental Branch Post Master Kota, where the vacancy was caused due to the retirement of the regular incumbent.

4. Heard the learned counsel for the applicant and the respondents. We have also gone into the material placed on the record. The respondents have submitted that the respondent No. 3 was working in the vacancy arising ~~due~~

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out of the regular incumbent being put off duty. This appointment was provisional and as soon as the regular incumbent was put back on duty, the person working against the vacancy provisionally automatically becomes surplus. It has not been communicated in the counter anywhere, whether the selection of respondent No. 3 was done on regular basis, following the extant rules for recruitment. Further it has been submitted that he was accommodated against the vacancy at Kota, in view of the experience and being surplus. The respondents have not linked the rules under which the respondent No. 3 acquired a right while working on provisional basis against the vacancy arising out of permanent incumbent having been put off duty. It is averred that it was done as a special case and there was a recommendation from higher level to provide job to respondent No. 3. It is admitted that as per the extant rules, the job of the Extra Departmental Branch Post Master is to be given to a candidate who is permanent resident of the village, but the respondent No. 3 was appointed as a special case relaxing this condition.

5. Since the process of filling up the vacancy on regular basis having been started before the respondent No. 3 became surplus and since the respondent No. 3 was not regularly selected and working on provisional basis against the vacancy arising on account of permanent incumbent being put off duty, the filling up of the vacancy for which the selection was under process is arbitrary and not as per the extant rules. The appointment therefore deserves to be quashed.

6. The application is ^{allowed} ~~admitted~~. The appointment order dated 15.9.89 is quashed with the direction that the selection process which was started should be completed and the post should be filled up by the candidate selected out

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of the selection under process as per the extant rules.
The direction should be complied with within three months
from the date of judgement. No order as to costs.

S. K. Singh
Member - 4

S. K. Singh
Member - 5

Arvind.