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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application no.
Transfer Application no.

O.A.No: 211 of 1992.
alongwith O.A.No:1094/90.

Date of Decision 16.1.97

PRADEEP KUMAR BOHARE.

Petitioner

Sri O.P.Gupta.

Advocate for the
Petitioner

V E R S U S

U.O.India through its Secy and
others. Minor Communication,
G.O.I., New Delhi.

Respondents.

Sri P.Mathur.

Advocate for the
Respondents.

C O R A M

Hon'ble Mr. Dr. R.K.Saxena, JM.

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

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 Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Bench ?


SIGNATURE

PIYUSH/

(12)

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH.
ALIAHABAD.

DATED This the 16th Day of January, 1997.

CORAM: Hon 'ble Dr. R.K. Saxena, JM.
Hon 'ble Mr. D.S. Baweja, AM.

ORIGINAL APPLICATION NO: 211 OF 1992.
with O.A. No: 1094/90.

Pradeep Kumar Bohare aged about 26 years,
Son of Sri Ram Kishor Bohare, resident of
near Lokmanya Tilak Girls' School, Pani-ki-
Dharmshala., district: Jhansi.

.. APPLICANT.

C/A: Sri O.P. Gupta.

Versus:

1. Union of India. Through its Secretary,
Ministry of Communication, Govt. Of India,
New Delhi.
2. Director of Postal Services, Kanpur.
Department of Post & Telegraphs, U.P. Circle,
Kanpur.
3. Superintendant of Post Officers,
Jhansi Division, Jhansi.

.. Respondents.

(C/Respondents: Sri P. Mathur.)


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Order

(By Hon'ble Dr. R.K. Saxena. JM.)

These two cases are being taken up together for disposal by a common judgment. Initially, both the applicants namely; Pradeep Kumar Bohare, and Narendra Kumar Khare, had filed joint O.A. No: 1094/90 but subsequently, on the objection being raised, Sri Pradeep Kumar Bohare, filed a separate O.A. No. 211/92.

2. The facts of the two cases are that Pradeep Kumar Bohare, and Narendra Kumar Khare, were appointed as Extra-Departmental Packer (for short EDP) on 13.7.1984 and 15.12.1986 respectively. The appointment of Pradeep Kumar Bohare, was made as a substitute on the guarantee of one Sri Sukhnandan Pandey, who was already working as Gp'D' in the post office, Subhash Ganj, Jhansi. Similarly, Narendra Kumar Khare, applicant was engaged on the responsibility of Sri Krishna Kumar Khare. The appointments of both the applicants were made on local arrangement. It appears that neither the appointment was made through the process of selection as laid down under the rules, nor was the appointment ^{made} ~~issued~~ by the competent authority. The contention of the applicants however, is that they were validly appointed and they worked to the full satisfaction of the authorities concerned. Their services were terminated abruptly on 18.4.1988 and 21.4.1988 respectively. It is averred that the procedure given under Section 25F of the Industrial Disputes Act, was not adopted and thus, the orders of termination were illegal and liable to be quashed.



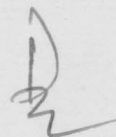
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3. The respondents have contested the case and filed counter-reply. It is contended that the appointments of the applicants were made purely as local arrangement and the appointment letters were issued by the authority which was not competent to get any appointment. It is further contended that their appointments were terminated on 18.4.1988 and 21.4.1988 and there was no illegality in termination of the services. It is, therefore, urged that both the O.As should be dismissed.

4. We have heard the learned counsel for the parties and have perused the record.

5. There is no dispute that both the applicants were appointed as EDP on 13.7. 1984 to 15.12.1986 respectively. The contentions of the applicants are that they were regularly appointed by the competent authority and they have discharged their duties faithfully and sincerely. The applicants could not show as to how the appointments were made on a regular basis. The respondents have categorically stated that the appointment of two of the applicants was made on the basis of local arrangements and also on the responsibility of two persons, who were already working under the respondents. Further contention of the respondents is that the competent authority for making the appointment is sub-Divisional Inspector of Post offices, but the appointment of these two applicants was not made by the Sub-Divisional Inspector Of Post Offices. It is also



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brought on record on behalf of the respondents that the necessary formalities for giving appointment have not been followed. This assertion of the respondents could not be controverted by the applicant. Rules relating to the Extra Departmental Agents are quite clear on the point. Besides the regular appointment, there is a provision for Provisional appointment and the appointment by substitution. The appointment by substitution is made ~~applicable~~ only ^{and} when the E.D.A., who is already working, goes on leave, brings his substitute in his place. This is not a situation in the present case. For regular as well as, the provisional appointment, the procedure of selection has been prescribed. In these two cases, the said procedure of selection has not been adopted. It is, therefore, clear that the appointment of none of the applicants can be said to have been made after following the prescribed procedure. Definitely, their entry was from the back door. The respondents have no doubt come with the plea that the appointments of the applicants were not made by a Competent Authority, but it also ^{manifests} appears that no action for making illegal appointments by the concerned authorities has been taken against the said authority. The respondents are disputing the legality of the appointment on ^{the} one hand, but keeping silent for such an act as has been done by its own functionary, on the other hand. We, however, deprecate such system of making appointments arbitrarily and after ignoring the rules. Anyway, we hold the view that the applicants were not appointed by holding any selection process and thus, they cannot claim their exit from service as illegal.

6. Learned counsel for the applicant has argued that no opportunity of show cause before the removal was given. It is a well known principle that a person who seeks equity must come with clean hands. The entry of the applicants in service is through back door and thus, they cannot claim any illegality in the order of removal. Rule 6 which deals with termination of service of EDAs is meant for those persons who are appointed regularly. Before the year 1993, there was no provision for giving

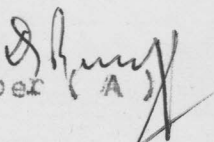


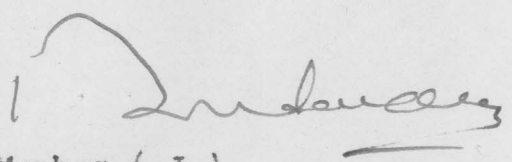
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any notice of removal to the BDAs prior to the actual removal from service. Thus, we are of the view that this argument is not tenable.

7. The learned counsel for the applicants further argues that the compliance of the provisions of Industrial Disputes Act, has not been made. Therefore, on that ground also, the orders of termination have been challenged. The learned counsel for the respondents, however, contends that neither the Post and Telegraph Department is an Industry, nor the provisions of Industrial Disputes Act are applicable. The learned counsel for the respondents relied on the decision of the Hon'ble Supreme Court in 'Sub Divisional Inspector of Post Vaikam and Ors. etc. Vs. Theyyam Joseph etc. J.T. 1996 (2) S.C. 457' on this point. No contrary decisions could be shown to us. Thus, even this argument does not hold good.

8. In view of the foregoing facts, we come to the conclusion that there is no force in the Original applications and both of them are, therefore, dismissed. No order as to costs.


Member (A)


Member (J)

rcs.