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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

March 16

DATED: 25 TH DAY OF FEBRUARY 1999

CORAM : HON'BLE MR. S.DAYAL, A.M.

HON'BLE MR. S.L.JAIN, J.M.

O.A. No.978 of 1991

Sri Bhagwan Yadav S/o Sri Parushram Yadav

R/o Village and Post Sahaspali, Distt. Ballia.

.... Applicant

C/A Shri K.C.Sinha, Adv.

Versus

1. Union of India, through its Secretary, Ministry
of Communication, New Delhi.

2. Post Master General, Gorakhpur.

3. Superintendent of Post Offices, Ballia Division,
Ballia.

4. Director Postal Services, Gorakhpur.

5. Bhaiya Arvind Kumar Singh S/o Sri Sakal Deep Singh
R/o Vill. & Post Sahraspali, Distt. Ballia, U.P.

... Respondents

C/R Shri Amit Sthalekar, Adv.
Shri R.C.Sharma, Adv.

O.A.NO. 1443 OF 1994

Bhaiya Arvind Kumar Singh S/o Sri Sakal Deep Singh
R/o Vill. and Post Sahraspali, Distt. Ballia.

... Applicant

S/A Shri K.C.Sinha, Adv.

Versus

J.S.

1. Union of India through its Secretary,
Ministry of Communication, Sanchar Bhawan,
New Delhi.
2. Post Master General, U.P. Gorakhpur.
3. Superintendent of Post Offices,
Ballia Division, Ballia.
4. Sri Bhagwan Yadav S/o Shri Parushram Yadav
R/o Vill. & Post Sahraspali,
District Ballia.

.... Respondents

C/R Shri Amit Sthalekar, Adv.
Shri Anil Kumar Srivastava, Adv.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

O.A. No. 978/91 has been filed by applicant Bhagwan Yadav seeking the relief that order dated 17.9.91 and order dated 4.10.91 passed by respondent nos. 4 and 3 respectively be declared illegal, unjust and against law, the respondents be directed not to interfere in any manner in the working of the applicant as Post Master, Sahraspali and not to force the applicant for submission of charge of the Post Office.

2. O.A. No. 1443/94 has been filed by applicant Bhaiya Arvind Kumar Singh for the relief by a writ of mandamus to the respondents to give effect of the order dated 4.10.91 by which he is appointed, the charge be given of the office of the Extra Departmental Post Master, Sahraspali from Shri Bhagwan Yadav (Applicant in O.A. No. 978/91) and to finalise regular appointment of Extra Departmental Post Master, Sahraspali in view of the vacancy declared vide letter dated 8.3.91 and the letter of Employment Exchange dated 8.4.91.

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3. Both the O.A.s are heard together for the reason that the order dated 4.10.91 is questioned in O.A. No.978/91 and the same order has been sought to be enforced in O.A. No.1443/94.

4. There is no dispute between the parties in respect of the following facts:

(i) Superintendent of Post Office, Ballia respondent no.3 vide his letter dated 8.3.91 demanded the names of ~~our~~ candidates for selection and appointment on the post of Extra Departmental Post Master, Sahraspali, Ballia from District Employment Officer, Ballia.

(ii) In compliance of the aforesaid letter, the District Employment Officer, Ballia has sent the names of the applicant/along with other candidates for selection.

(iii) An interview was held by the respondent no.3 and Bhagwan Yadav (Applicant in O.A. No.978/91) was selected for appointment on the post of Post Master Sahraspali, P.O. Ballia and he was provisionally appointed as Extra Departmental Post Master vide appointment letter dated 17.5.91 by respondent no.3.

(iv) Vide letter dated 17.5.91 respondent no.3 has directed Bhagwan Yadav (applicant in O.A. No. 978/91) for depositing an amount of Rs.2,000/- as security amount which the applicant deposited.

(v) Bhagwan Yadav (Applicant in O.A. No.978/91) was sent for training, after completion of training period he was ordered to take over charge of post Master Sahraspali and in compliance of the same he took over the charge from Sri Shivaji.

(vi) On 18.9.91 Deputy Divisional Inspector inspected the Branch Post Office, Sahraspali.

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(vii) On 4.10.91 Superintendent of Post Offices, Ballia respondent no.3 has informed the applicant that Director Postal Services Gorakhpur Division has cancelled the appointment of Bhagwan Yadav (Applicant in O.A. No.978/91) and Bhaiya Arvind Kumar Singh (Applicant in O.A. No.1443/94) is appointed on the post of Extra Departmental Branch Post Master, Sahraspali.

5. In O.A. No.978/91 the applicant's case, in brief, is that order dated 17.9.91 in consequence of which order dated 4.10.91 is passed by respondent no.3, was not served on him, the basis and the reason on account of which his services are terminated is not known to him. His appointment was till regular appointment on the said post and no regular appointment has been made so far. Name of Shri Arvind Kumar Singh was never sent by the Employment Exchange for appointment on the post of Post Master, Sahraspali, hence no appointment can be made unless and until the name has been sent by Employment Exchange for appointment. Applicant was not afforded any opportunity to defend his case, hence this O.A. for the aforesaid relief.

6. In O.A. No.1443/94 the applicant's case, in brief, is that he was one of the sponsored candidate by the Employment Exchange for the post of E.D.P.M., Sahraspali, applicant Bhagwan Yadav (in O.A. No.978/91) was provisionally appointed on the said post, the said appointment was illegal in view of the suitability in a comparative manner and as such the respondent no.2 has issued a letter regarding the cancellation of the same provisional appointment by means of letter dated 17.9.1991, in fact the said provisional appointment of the applicant was made on complaint moved by him and that too after considering

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the complaint and passing the needful order. Bhagwan Yadav (Applicant in O.A.No.978/91) has not handed over the charge of the same post to him and secured the interim order from the Tribunal, hence this O.A. for the aforesaid relief.

7. Applicant's counsel in O.A.No.978/91 argued that the impugned order is passed by Superintendent of Post Office, Ballia is, in fact, an order in compliance of the order dated 17.9.91 passed by respondent No.4 who has no authority to pass the same as he is neither appointing authority nor the disciplinary authority. He has relied on a judgement passed in O.A.No.24/92 by this Bench in Ganeshji v. Union of India and others in which it has been held as under :-

"Even if the respondent has studied upto intermediate and no such power has been given to the superior authority to interfere in the matter of the provisional appointment, i.e. for time being in this manner, and the applicant's appointment was valid till the regular appointment has been made in accordance with condition of the appointment and no regular appointment has been made by the respondents and Km.Neelam has also been appointed on provisional basis after terminating the services of the applicant."

In 1997(1) ATJ 279 Gind Singh Vs.The Superintendent, P & T Office Pithoragarh & others it has been held that High Departmental authority has no power either inherent or otherwise to revise the order of appointment passed by lower departmental authority or setaside the same.

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8. He further relied on the judgement reported in (1998) 2 UPLBC 1232 Mohd. Rais Ahmad and argued that cancellation of appointment of adhoc/temporary employee of Class IV even cannot be made without following the requirements of Rule 3 U.P.Temporary Government Servant Termination of Service Rules, 1997. On the said basis he submitted that at least principles of natural justice needs to be followed which has not been done in the present case.

9. We do agree with the learned counsel for the applicant that principles of natural justice has not been followed while determining the services of applicant Bhagwan Yadav (in O.A.No.978/91).

10. It is true that there is no rule for determining the services of the applicant Bhagwan Yadav (O.A.No.978/91) but as his appointment was to continue till regular appointment and the cause for terminating the services is that Bhaiya Arvind Kumar Singh (Applicant in O.A.No.1443/94) is possessed better qualification. In the circumstances the applicant Bhagwan Yadav was entitled to be served with a notice to show cause why his services should not be determined. In addition to it it is further clarified that provisional appointment of Bhagwan Yadav has been replaced by another provisional appointment of Bhaiya Arvind Kumar Singh which is not warranted by any provision of law.

11. In the result O.A.No.978/91 deserves to be allowed and order dated 4-10-91 which is passed on the basis of order dated 17-9-91 is quashed. Respondents are ordered not to interfere in the working of applicant Bhagwan Yadav, O.A. No.1443/94 deserves to be dismissed and is dismissed accordingly. Looking to the facts and circumstances of the case both the applicants (O.A.No.978/91 and O.A.No. 1443/91) shall bear their own costs.

Brijendra Singh
MEMBER(J)

H.S.
MEMBER(A)