

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A. No. 1147 of 94

Allahabad, this the 19 th day of March, 1999.

CORAM : Hon'ble Mr. S.Dayal, Member (A)
Hon'ble Mr. S.K.Agrawal, Member (J)

Goverdhan, son of Ram Sewak Yadav,
Resident of Village and Post Siarapar,
District- Basti.

.....Applicant

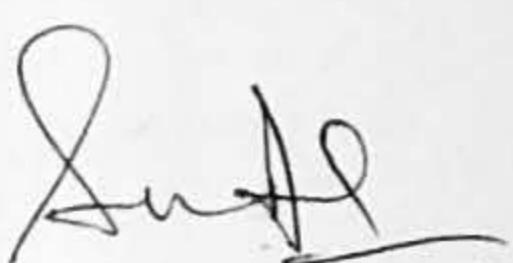
(By Shri M.K.Upadhyay , Advocate)

Versus

1. Union of India, through Secretary,
Ministry of Posts, Telegraphs, New Delhi.
2. Chief Post Master General,
U.P. Circle, Lucknow.
3. Post Master General,
Gorakhpur Region, Gorakhpur.
4. Director Postal Services,
Gorakhpur Region,
Gorakhpur.
5. Superintendent of Post Offices,
Basti Division,
Basti.
6. Bhagwan Dass, s/o Sri Nageswihar Prasad,
379 Near Hamid Painter,
Gandhi Nagar, Basti.

.....Respondents.

(By Shri S.C.Tripathy and Km.S.Srivastava, Advocates)



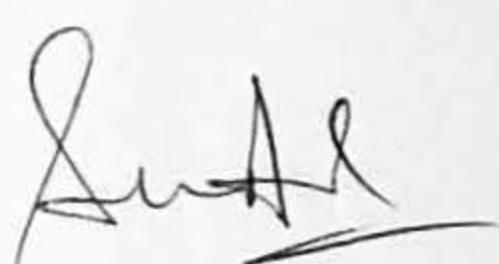
ORDER

(By Hon'ble Mr. S.K.Agrawal, Member (J))

In this Original Application prayer of the
applicant to quash the impugned orders dated 29-3-94
and 4-4-94 issued by respondent No. 3 and 5 by which

the appointment to respondent No.6 was given on the post of C.P.Chowkidar and to direct the respondent No. 1 to 5 to make appointment on the post of C.P. Chowkidar in accordance with the recruitment rules on merit from the candidates whose names were sponsored by the Employment Exchange including the name of the applicant.

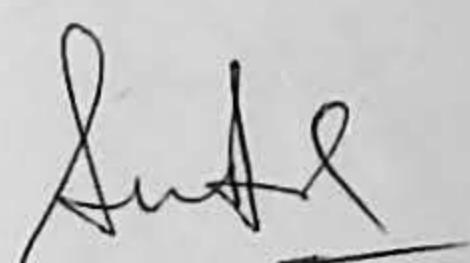
2. In brief, the facts of the case as stated by the applicant are that applicant was appointed as C.P.Waterman/Mali in the office of respondent No.4 in the year 1988 and was also appointed on the same post by respondent No.5 against the substantive vacancy of C.P.Waterman in Group 'D' cadre. It is stated that circulars were issued by Director General, Postal Services to confirm temporary status to those casual labourers who have completed 240 days from 29-11-89 and thereafter a circular was issued to the effect that casual labourers were given benefits of temporary employees. It is also stated that vide orders of Director General the services of Casual Labour having attained temporary status cannot be dispensed with ~~or~~ without following the procedure, but respondent No.5 in utter disregard to the provisions terminated the services of the applicant. Thereafter on 10-3-92 one post of C.P.Chowkidar Purani Basti was advertised by respondent No.5. The applicant also submitted his application for the appointment, but the process of selection was put in abeyance. Thereafter one Shri Asha Ram Yadav was appointed on the post. The applicant aggrieved by such appointment filed a representation and respondent No.3 after perusal of the record set aside the order of appointment of Shri Asha Ram Yadav vide order dated 4-1-94 and directed to have fresh appointment



on the post of C.P.Chowkidar and in pursuance of the order of respondent No.3 respondent No.5 terminated the services of Shri Asha Ram Yadav vide order dated 28-1-94. Thereafter Shri Bhagwan Dass respondent No.6 made a representation before respondent No.3 for claiming appointment on the ground that his father was in service of the Postal Department and he deserves to be appointed on the post of C.P.Chowkidar. Respondent No.3 called for a report from respondent No.5 and respondent No.5 submitted his report on 18-3-94, but respondent No.3 ignoring the report dated 18-3-94 directed the respondent No.5 to adjust respondent No.6 on the post of C.P.Chowkidar, and respondent No.5 in compliance of the order of respondent No.3 directed to A.S.P. East Basti to appoint Shri Bhagwan Dass respondent No.6 on the post of C.P.Chowkidar. It is stated that impugned order of appointment in favour of respondent No.6 on the post of C.P.Chowkidar is contrary to service rules. According to Recruitment Rules & Procedure names of the candidates for appointment were not called from the Employment Exchange thereby ignored the recruitment rules. The claim of respondent No.6 for the appointment on the post of C.P.Chowkidar on compassionate grounds was not tenable as per rules. It is further submitted that applicant has gained more experience for the job in comparison to respondent No.6, therefore impugned order passed by respondent No.3 and 5 appointing respondent No.6 are perverse without jurisdiction and liable to be set aside. Therefore on the basis of averments made in this Original Application the applicant makes a prayer for the relief as mentioned above.

3. A counter was filed by official respondents. In the counter it is stated that earlier for the post of

C.P.Chowkidar recruitment process was started, Employment Exchange, Officer Basti was requested to sponsor the names of suitable candidates. The Employment Exchange Officer Basti sponsored the names of 29 candidates. Therefore it was sent back with a letter to sponsor only 5 names of eligible candidates. In view of this names of 5 candidates were sponsored. In the mean time the applicant Goverdhan made a representation for the appointment on the said post, but the name of Shri Asha Ram was approved and he was appointed on the post w.e.f. 5-12-92. It is stated that against the appointment of Shri Asha Ram the applicant made a representation and after perusal of the record the appointment of Shri Asha Ram on the post of C.P.Chowkidar was cancelled. In the mean time Shri Bhagwan Dass also submitted a representation for appointment on the post of C.P. Chowkidar on compassionate grounds by giving relaxation of the recruitment rules and Shri Bhagwan Dass was appointed on the post vide impugned orders. It is stated in the counter that applicant was not entitled to the benefits of the circulars as he has referred in his Original Application. It is admitted that applicant had also applied for the appointment on the post before C.P.Chowkidar, but in pursuance of the direction ^{No. 1} of the higher authority claim of Shri Asha Ram Yadav was considered and he was appointed. Later on the said appointment was cancelled. Regarding Shri Bhagwan Dass it is stated in the counter that appointment of Shri Bhagwan Dass on the post of C.P.Chowkidar was made in compliance of the orders of Post Master General, Gorakhpur, dated 29-3-94. It was further submitted that respondent No.6 has fulfilled all the requisite



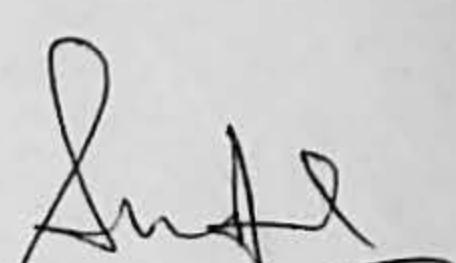
qualifications for the post and while making his appointment his period of service which he has rendered as C.P. Waterman was taken into consideration and applicant cannot claim his appointment on the post of C.P.Chowkidar. Therefore, in view of the counter filed respondents have requested that this Original Application is devoid of any merit and is liable to be dismissed with cost.

4. A Rejoinder was also filed emphasising that Shri Bhagwan Dass was appointed without following recruitment rules and in violation of the recruitment procedure which is in force.

5. Heard the learned lawyer for the applicant and learned lawyer for respondents.

6. No counter was filed by respondent No.6 inspite of notice sent to him by registered post.

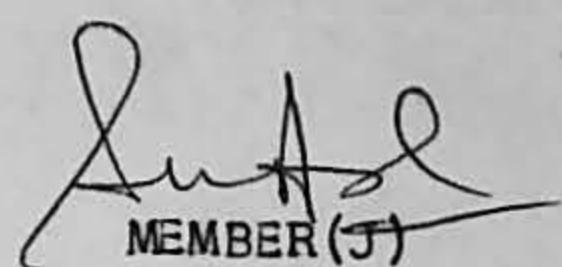
7. It is an admitted fact/position that Shri Bhagwan Dass respondent No. 6 was appointed by respondent No. vide order dated 4-4-94 in pursuance of the order passed by respondent No.3 on 29-3-94. It is also abundantly clear that no recruitment procedure was followed before appointing Shri Bhagwan Dass respondent No.6. No applications were invited for the post of C.P.Chowkidar before the appointment of Shri Bhagwan Dass respondent No.6. Names from Employment Exchange Basti were also not called for and Employment Exchange Officer Basti never sponsored the names of suitable candidates for this purpose. It is a public office and it was the duty of the appointing authority to follow the recruitment procedure before



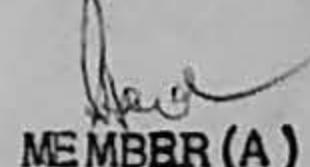
giving appointment to any person on public post. The Appointing Authority must have notified/advertised the post and after receiving the applications in pursuance to that notification/advertisement and the names sponsored from Employment Exchange a Selection Committee should have select the candidates who are most suitable for the post. But admittedly nothing has been followed and only on the representation of the respondent No.6 Shri Bhagwan Dass respondent No.3 Post Master General, Gorakhpur gave the directions to respondent No.5 Superintendent of Post Offices, Basti Division, Basti to consider the applicant for the post and respondent No.5 and without following any procedure meant for recruitment for the post appointed Shri Bhagwan Dass respondent No.6 on the post of C.P.Chowkidar, which appears to be illegal, arbitrary and against the recruitment rules.

8. We, therefore allow this Original Application and quash the impugned order dated 29-3-94 and 4-4-94 and direct the respondents to make appointment on the post of C.P.Chowkidar according to the recruitment rules applicable for this purpose.

No order as to costs.



MEMBER (J)



MEMBER (A)

satya/