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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 7th DAY OF JUNE, 1995

Original Application No. 81 of 1995

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAYAL, MEMBER (A)

Jawahar Lal Singh aged about 28 years
S/o Shri Raja Singh, R/o vill & Post
Chilua, Teh. Hata, District Padrauna
(Deoria)

.... Applicant

By Advocate Shri Rakesh Varma

Versus

1. Union of India through Secretary
Ministry of Communication, New Delhi
2. Sub-Divisional Inspector of Post
Offices, West Sub-Division, Deoria
274 001
3. Senior Superintendent of Post
Offices, Deoria Division, Deoria

.... Respondents

By Advocate Km. Sadhna Srivastava

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C

Through this O.A the applicant is challenging
an order dated 20.1.95 passed by the Sub-Divisional
Inspector of Post Offices cancelling the appointment of
the applicant as Extra Departmental Runner Chilua (Shukrau-
li). The facts in brief are that the candidature of the
applicant in response to the requisition sent to the
Employment Exchange Padrauna was considered and his name
alongwith four others were sent by the Employment Exchange
through the respondent no.2. The applicant on being

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found suitable /was duly selected on the post of E.D. Runner and an order of appointment dated 4.2.94 was issued and the applicant joined on 9.2.94. As per averment in the counter affidavit one Muniv Yadav, whose name was sponsored by the Employment Exchange had made a complaint to the Higher Authority. On the complaint, the file of the appointment of the applicant was reviewed and it was found that the applicant did not possess the qualification of independent source of income. The Respondent no.3, therefore by his letter dated 7.6.94 required the respondent no.2 to cancel the appointment of the applicant and to issue a fresh requisition to the Employment Exchange. Such a requisition has been sent.

2. It is relevant to point out that before issuing the impugned order or cancelling the applicant's appointment the respondent no.2 had issued a show cause notice on 22.6.94 to the applicant why his services may not be terminated. The applicant submitted his explanation and thereafter the impugned order was passed and the applicant was relieved from 20.1.95.

3. In view of the above facts the learned counsel for the applicant has raised a submission that ~~written~~ in the requisition proforma which is at page 29 source of income was not required to be disclosed. He further urged that as per averment in para 13 and 14 of the counter affidavit, an amendment in the rules was made on 21.1.94. The requisition had been sent earlier on 1.12.93. The submission is that the amendment in the Rules would be prospective and would not affect the appointment of the applicant. The learned counsel for the applicant cited the following decision in support of his submission that the amendment in the Rules would be prospective

(i) 1990 SCC(L&S) 446 N.T. Devin Katti and Ors Vs.

Karnataka Public Service Commission & Ors

In this decision it was laid down by the Hon'ble Apex Court that:

" Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the Rule or order then prevailing..., there can be no dispute about the said proposition of law.

4. In the Counter-affidavit, it has been indicated that a memo dated 21.1.94, the Directorate Postal Services has amended the qualification of recruitment to the post of E.D. Runner and the qualification ~~of~~ the Source of Income and livelihood is prescribed. A copy of the notification ^{been} dated 21.1.94 has/annexed as Annexure CA-3. However, from perusal of the same, we find that the Post Master General Gorakhpur Region, Gorakhpur has through his endorsement dated 26.1.94 forwarded copy of the communication dated 6.12.93 from Sri U.S Punia ADJ(TRG) C/o D.G. Posts. Through this letter attention was invited to earlier letters dated 30.1.81, 4.9.82, 14.12.87, 10.5.91 wherein it is stated that detailed instructions about the method of recruitment, source of income and livelihood has been prescribed. In paragraph 3 the decision of the Postal Services has been indicated that in respect of other EDAs, the present" adequate means of livelihood" will hold good. Thus the requirement of adequate means of livelihood had been provided for in the Director General Posts letter dated 10.5.91. It was wrong to say that any amendment of the rules has been brought about by Annexure CA-3. The provisions in the Executive instructions as issued from time to time has merely been

reiterated. We find a necessary clarifications based on D.G. Posts letter dated 10.5.91 as having been reproduced at page 70 of Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department VIth Edition 1995. Thus the position that emerges that ~~any~~ executive instructions extant earlier than the requisition sent to the Employment Exchange one of the conditions for appointment was that the candidates should have adequate means of livelihood.

5. The learned counsel for the applicant cited the following decisions in support of his submission that the order of cancellation of appointment is illegal.

(i) Jagdamba Prasad Vs. Union of India and Ors
1988 UPLBEC 101

(ii) (1991) 15 ATC page 20 Ganesh Prasad Singh Vs
Union of India and Ors

(iii) AIR 1988(2) CAT 142 Suryabhan Gupta Vs.
Union of India and Ors.

In this decision the applicant's appointment as Extra Departmental Branch Post Master has been cancelled by an order passed by the respondent no.2. In the said case pursuant to an order dated 14.12.87 passed by the Supdt. of Post Offices in compliance with the directions of Director Postal Services it was held that the Supdt. of Post Offices was the appointing authority and had the power to terminate the services but since the Supdt. of Post Offices had passed the order without exercising its own judgment and discretion it was held that the order has been passed without application of mind of the Competent Authority and not sustainable in law.

6. However, in the case in hand the position arising from the pleadings is that the show cause notice dated

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22.6.94 had been issued by the Sub-Divisional Inspector Post Offices, 5th Sub-Division, Deoria calling upon the applicant to show cause why his appointment may not be cancelled on the ground that he did not possess any independent source of income. The applicant in response to the said show cause notice submitted his reply on 11.7.94, copy of which is Annexure A-8. This was addressed to the Sub-Divisional Inspector. After considering the reply to the show cause notice the impugned order cancelling the appointment passes by the Sub-Divisional Inspector, respondent no.2 has been passed. The Sub-Divisional Inspector however, has chosen to indicate in the impugned order that the order of appointment has been cancelled pursuant to the letter dated 7.6.94 and 19.1.95 of the Senior Supdt. of Post Offices, Deoria Division, Deoria. The respondents had placed on record the letter dated 7.6.94 as Annexure CA-2. A perusal of this letter shows that the Sub-Divisional Inspector had sent the requisite papers to the Senior Supdt Post Offices and the Senior Supdt. Post Offices indicated that none of the applicants possessed any independent source of income and therefore the appointment of the applicant has been cancelled. It was also indicated that fresh requisition be sent and a fresh process and selection to be initiated. In view of these facts it is difficult to hold that the order of cancellation has not been passed by the respondent no.2 in his own discretion. He issued the show cause notice after receiving the reply to the show cause he sent the requisite files to the respondent no.3 who appointed out the short coming and irregularity in the appointment and directed a fresh process of selection to be initiated. The principles of natural justice have been complied with.

7. The second decision in Suryabhan Gupta's case by a Division Bench of the Tribunal at Allahabad, there also it was laid down that principles of natural justice should be followed before cancelling the appointment. Thus this decision is also unhelpful.

8. The third decision is by the Patna Bench of the Tribunal in Ganesh Prasad Singh's case. In that case it was held that the Head of the Circle as the authority to call for the file and examine the case when a representation is submitted by one of the unsuccessful candidate. It was laid down unless there be ^{ing} a patent illegality in respect of the appointment it is not proper that the appointment is cancelled and another person is appointed. The view taken was that the Competent Authority has after assessment of comparative merits of the candidates made selection, it is totally unfair on the part of the Higher Authorities to cancel the selection.

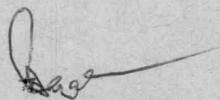
9. The facts in the present case are altogether different. Here the infirmity pointed out is absence of independent source of income as required by the Executive Instructions to be followed while making appointments. In this case relying on Suryabhan Gupta's case it was held that the natural justice are the condition precedent to be followed before cancelling the order of appointment of a candidate selected.

10. As noted hereinabove, since a show cause notice has been issued explanation was called for and thereafter the cancellation order has been passed, there has been no breach of the natural justice.

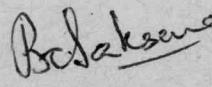
11. The learned counsel for the applicant laid great emphasis on the fact that neither in the requisition sent to the Employment Exchange nor in the letter of appointment the applicant at any time had been required to indicate his independent source of income. It may be so. But if the Executive Instructions extant ~~at the~~ relevant time stipulated the candidate to possess adequate means of livelihood and this aspect of the matter having come to light, may be on a complaint made by an un-successful candidate does not persuade us to hold that one of the requisite conditions of the appointment had been followed. The letter dated 7.6.94 ~~when~~ by the Senior Supdt. of Post Offices indicates that none of the candidates possessed independent source of income, the applicant no doubt alleges that alongwith his reply to the show cause he has filed a certificate indicating his independent source of income but he has chosen not to annex a copy of the said certificate alongwith the reply to the show cause notice. Before the Patna Bench in the case of Ganesh Prasad Singh no doubt it was raised but as noted hereinabove, the jurisdiction on respondent no.2 therein to review the order had not been set aside on the ground that Rule 16 did not clothe them with the power to review.

12. The other decisions cited by the learned counsel for the applicant is Smt. Swarnlata Vs. Union of India and Ors 1979 SCC(L&S) 237 is wholly inapplicable to the questions and pleas raised in the present case. The other decision reported in 1991 SCC(L&S) ¹⁰⁷⁸ Shrawan Kumar Jha Vs. State of Bihar and Ors lays down that the ~~holders~~ of appointment orders entitled to opportunity of hearing before cancelling their appointments.

13. In the case in hand compliance of the principles of natural justice had been duly made. On the larger question whether the respondent had jurisdiction to review the case is left undecided since this question would require a deeper analysis of the various instructions issued by the Director General Posts. In the present case being satisfied that the principles of natural justice have been complied with and the order for holding a fresh process of selection would also give the applicant an opportunity to have his candidature considered alongwith other candidates and thus substantial justice will be done, we are not inclined to interfere with the orders. We find that the interim order was passed on 3.2.95 restraining the selection of a candidate in pursuance of a letter dated 23.1.95 and the said interim order has continued. We provide that the applicant will be allowed to continue, the process of selection initiated through the requisition dated 23.1.95 Annexure A-12 shall be completed and if the applicant is selected, he will be allowed to continue on the basis of the said selection. In any other event, the respondents will be at liberty to issue an order of appointment to the selected candidate. The applicant will be entitled to the salary and allowances while he continued in service. The parties to bear their own costs.



Member (A)



Vice Chairman

Dated..... June, 1995

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