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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of January 2004.

Original Application no. 352 of 1999.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr A.K. Bhatnagar, Member (J)

Virendra Dubey, s/o Sri S.N. Dubey,
R/o 437, Purvi Pani Paranpur,
Distt. Fatehpur.

... Applicant

By Adv : Sri R.P. Singh

V E R S U S

1. Union of India through Secretary,
Ministry of Posts & Telegraphs,
NEW DELHI.
2. Senior Supdt. R.M.S., (A) Division,
ALLAHABAD.
3. Inspector R.M.S. A-First,
Sub-Division,
ALLAHABAD.
4. Sub Record Officer R.M.S., A Division,
Fatehpur.

... Respondents

By Adv : Sri S Chaturvedi.

O R D E R

Hon'ble Maj Gen K.K. Srivastava, A.M.

In this O.A., filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for direction to the respondents to permit the applicant to join his duties in pursuance of the appointment letter dated 08.03.1999.

2. The facts, in short, are that some posts of Extra Departmental Mail Man were advertised by the respondents and requisition was sent to the Employment

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Exchange. The Employment Exchange did not sponsor the name of the applicant. Having come to know that his name has not been sponsored by the Employment Exchange, the applicant submitted his application within time for appointment as Extra Departmental Mail Man (in short EDMM). However, the application of the applicant was arbitrarily rejected vide order dated 30.12.1997 on the ground that his name was not sponsored by the Employment Exchange. The applicant filed OA no. 25 of 1998 for quashing the order dated 30.12.1997. This Tribunal granted interim relief directing the respondents to consider the candidature of the applicant alongwith other candidates. Enquiry was made, Police verification was carried out and after Medical Examination respondent no. 3, who is appointing authority, issued appointment letter dated 8.3.1999 (Ann A3). The applicant reported to respondent no. 4 on 9.3.1999 for joining the duties, but he was not allowed to join and was directed to approach respondent no. 4 again after 1 week. The applicant again reported for duty on 17.3.1999, but respondent no. 4 did not permit the applicant to join his duties. The applicant also came to know that respondent no. 2 in collusion with respondent no. 4 were intending to cancel the appointment letter dated 8.3.1999. Aggrieved by this the applicant filed this OA which has been contested by the respondents by filing counter affidavit.

3. Sri R.P. Singh, learned counsel for the applicant submitted that the action of the respondents in not permitting

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the applicant to join his duties inspite of the appointment letter dated 8.3.1999 tantamounts to violation of Article 14 & 16 of the Constitution of India. The action of the respondents is arbitrary, illegal and mala-fide. The applicant has legal right to join his duties as the Police Verification and Medical Examination in respect of the applicant have already been done, only then a legal appointment letter dated 8.3.1999 has been issued.

4. Learned counsel for the applicant has placed reliance on the judgment of this Tribunal in OA no. 11 of 1998 dated 24.1.2002, Siya Ram Singh Vs. Union of India & Others and also order of this Tribunal dated 20.3.2001 passed in OA no. 854 of 1998, Pankaj Kumar & Others Vs. Union of India & Ors.

5. Resisting the claim of the applicant, learned counsel for the respondents submitted that though the selection process in respect of two posts of EDMM attached to SRO, Fatehpur made by Sri D.K. Shukla the then IRM A 1st Sub Division Allahabad was cancelled by order dated 10.5.1999, the applicant has not challenged the same inspite of the fact that he has attached the copy of the order dated 10.5.1999 with his amendment application no. 2837 of 1999. Learned counsel for the respondents also submitted that though the amendment application was allowed on 12.11.2002 and 02 weeks time was allowed to the applicant to carry out necessary correction in the OA, the same has ^{been} carried out. Learned counsel argued that no right accrued to the applicant till he joined the post. Learned counsel for the respondents submitted that Sri D.S. Shukla who issued the appointment

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order dated 8.3.1999 was transferred and was relieved from the post of IRM A 1st Division in the afternoon of 17.2.1999. Obviously, such order issued after the appointing authority was relieved from his post cannot have legal force and is bound to be ignored. Besides complicity between Sri D.S. Shukla and the applicant cannot be disputed. Learned counsel for the respondents has placed reliance on the judgment in the following cases :-

- i. 2002 SCC (L&S) 582, Kendriya Vidyalaya Sangathan and others Vs. Ajay Kumar Das & others
- ii. Unreported judgment of CAT Allahabad Bench in OA no. 1218 of 1997, decided on 11.4.2002, Arvind Kumar Tiwari & Ors Vs. Union of India & others.

6. Heard learned counsel for the parties, carefully considered their submissions and closely perused records.

7. In this OA, the claim of the applicant is that he should be allowed to join his duties in pursuance to the appointment letter dated 08.03.1999. The main question before us for adjudication is whether the respondents have to honour the order dated 8.3.1999 or not. The respondents in their short counter affidavit and suppl. affidavit have categorically stated that Sri D.S. Shukla who issued the appointment letter dated 8.3.1999 in the capacity of IRM A 1st Division stood already relieved from IRM A 1st Division since 17.2.1999. Therefore, in our opinion once Sri D.S. Shukla stood relieved as IRM A 1st Division Allahabad, he was not competent to issue any appointment letter, thereafter.

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The appointment letter dated 8.3.1999 is void-ab initio. This Tribunal in OA no. 25 of 1998 passed an interim order on 26.3.1998 to consider the case of the applicant and also directed that the result of the selection shall not be declared. Yet Sri D.S. Shukla illegally declared the result and issued the appointment letter dated 8.3.1999 and thus in our opinion Sri D.S. Shukla acted in illegal manner which calls for a deterrent action against him.

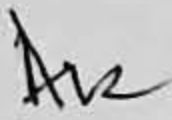
8. The Hon'ble Supreme Court in case of Ajay Kumar Das (supra) has observed that observance of natural justice is not obligatory in case of appointment made by an incompetent person. The law laid down by the Hon'ble Supreme Court is squarely applicable in this case. The appointment order has been issued in favour of the applicant by an incompetent person and, therefore, the applicant has no legal right to claim joining the post. Similarly this Tribunal in the case of Arvind Kumar Tiwari & Ors (Supra) dismissed the OA on the ground that the appointing authority has acted in a fraudulent manner. The Tribunal held that there would be chaos, if grossly illegal appointment made without jurisdiction cannot be directed to be cancelled by higher authorities. We also agree with the submission of learned counsel for the respondents that the complicity on the part of applicant and Sri D.S. Shukla cannot be disputed. The case law relied upon by the learned counsel for the applicant will not support the case of the applicant.


9. In the facts and circumstances, we do not find any merit in the OA. The OA is dismissed accordingly. However, we shall be failing our duty if we do not give a suitable direction to the respondents to take appropriate action against Sri D.S. Shukla

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who indulged into illegal activities. A deterrent punishment is called for so as to restrain others to even dare to commit and indulge into such illegal acts subjecting the department to avoidable embarresment.

10. There shall be no order as to costs.


Member-J


Member-A

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