

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

THIS THE 8th DAY OF JANUARY, 2008

Original Application No.1275 of 2000

CORAM:

HON.MR.JUSTICE KHEM KARAN,V.C.
HON.MR.K.S.MENON, MEMBER (A)

Ravindra Kumar Yadav, aged about
25 years, son of Shambhunath Yadav,
resident of village Bisunderpur, Post
Office Sadar, Mirzapur, at present
Working as E.D.Postman, Birohi, district
Mirzapur.

..Applicant

(By Adv: Shri R.P. Singh)

Versus

1. Union of India through the
Secretary, Govt. of India,
Ministry of Posts, New Delhi.
2. Superintendent of Post Offices,
Mirzapur.
3. Assistant Superintendent of
Post Offices, Mirzapur.

.. Respondents

(By Adv: Shri D.K.Dwivedi)

With Original Application No. 1116 of 2000

Anil Kumar Tewari, aged about 28
Years, son of Shri Kamala Shanker
Resident of village & Post Newariaghat,
District Mirzapur City.

.. Applicant

(By Adv: Shri R.P. Singh)

Versus

1. Union of India through the
Secretary, Govt. of India,
Ministry of Posts, New Delhi.
2. Superintendent of Post Offices,
Mirzapur.

3. Assistant Superintendent of
Post Offices, Mirzapur.


.. Respondents

(By Adv: Shri D.K.Dwivedi)

ORDER

BY JUSTICE KHEM KARAN,V.C.

One Shiv Shankar Upadhya, working as E.D. Stamp Vendor, in City Post Office, Mirzapur, was promoted to the post of regular Postman. Before he could relinquish the charge so as to join as Postman, the Asstt. Supdt. Post Offices (West) Mirzapur, issued advertisement in May, 1998, inviting applications from eligible persons, for making appointment on the post of E.D.Stamp vendor in City Post Office, Mirzapur. Both the applicants namely R.K.Yadav and R.K.Tewari, also applied. The selection was to be made on the basis of marks obtained in High School. While the respondents say as Sri Upadhya was not relinquishing the post of ED Stamp vendor, so Asstt. Supdt. Post Offices (W) decided (see C.A-5 in O.A.No.1116 of 2000) not to make appointment till Sri Upadhya handed over the charge of E.D.Stamp Vendor, and that could happen as late as on 8.2.1999. But applicants A.K. Tewari alleges that he was issued appointment letter on 6.11.1998 and applicant R.K.Yadav says appointment letter was issued in his favour on 6.1.1999, for the same post. These letters have been annexed to the respective O.A.s. As Sri Upadhya, the previous incumbent, happened to be uncle of Shri A.K.Tewari (see the reply) so he joined on the date, Shri Upadhya relinquished the post, i.e. on 8.2.1999. R.K. yadav, had therefore no chance to join as E.D. Stamp Vendor, though he had appointment letter dated 6.1.1999. It appears, instead of probing into the circumstances as to how two persons secured appointment letters for the same post, the authorities accommodated R.K.Yadav as ED Postman, Birohi, by issuing appointment letter dated 30.3.1999 (A-6 in O.A. No.1275 of 2000). On complaints, the matter was enquired into the engagement of both the persons was put to an end, by the impugned order in the two O.A.s. A.K. Tewari filed O.A.No.1116 of 2000 and succeeded in

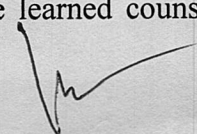


getting stay order and on the basis of same R.K.Yadav filed O.A.No.1275/2000 and obtained stay order. Both are ^{confirming} ~~enjoyed~~, on the basis of interim orders and not only this, R.K.Yadav has further been promoted as Postman as a departmental candidate. The main ground for challenge to the impugned order dated 3.10.2000 is not the same has been passed without show cause notice and without opportunity of hearing.

2. The respondents have averred in their replies, that appointment letter dated 6.11.98 in favour of applicant A.K.Tewari and 6.1.1999 in favour of R.K.Yadav, are not only suspicious but are also irregular as none of them could have been offered such appointment on the basis result sheet (C.A.4 in O.A.1116 of 2000). They say these two were much below at No.13 and 18 in the merit list.


3. Relying on Shrawan Kumar Jha Vs. State of Bihar A.T.C 1991 SC 937 and Full Bench decision of this Tribunal in Tilak Dhari Vs. Union of India 1997 Vol-36 ATC 539, Shri R.P. Singh, the learned counsel for the two applicants has argued that services of the applicants could not have been dispensed with or terminated without show cause notice or without giving them reasonable opportunity of hearing. On the other hand, the learned counsel for the respondents, has submitted in cases where persons have usurped public offices, on the basis of manipulated appointment letters or on the basis of fraudulent or suspicious appointment letters, the question of giving show cause notice does not arise.

4. There is no dispute that selection was to be made on the basis of percentage of marks obtained in High School Examination. There is further no dispute that while applicant Tewari, secured 43.5% marks in High school Exam and Yadav 45.83%. According to copy of result sheet (CA 4 in O.A. No.1116 of 2000) applicant Yadav ranked 13 and Tewari 18. We see no reason to say that merit list C.A.4 is false or manipulated. Even Shri R.P. Singh has said nothing against the genuineness of C.A.4. So it is evident, that none of these two applicants, could have been offered appointment on the post of ED Stamp Vendor in Mirzapur City Post Office, as they were much below in the merit list. The contention of the learned counsel for the



respondents that these two procured appointment letters, surreptitiously in connivance with certain officials, appears to be well founded. How these two succeeded in getting appointment letters (Tewari got appointment letter dated 6.11.98 and Yadav dated 6.1.1999) for the same post. It appears to us that before the decision could be taken for offering appointment on vacation of seat by Shri Upadhyaya, these two manipulated respective appointment letters.

5. The question that arises for our consideration is as to whether the services of the two applicants could have been dispensed with without show cause notice to them or without affording them opportunity of hearing. The ratio in Tilak Dhari's case is that Rule 6 of Post & telegraph Extra Departmental Agent (Conduct & Service) Rules, 1964 does not confer power on appointing authority or any authority superior to the appointing authority to cancel the appointment of extra departmental agent who has been appointed on a regular basis in accordance with rules. ^{For reasons} ~~other than unsatisfactory service etc.~~ In other words, this Full **Bench** decision will be applicable to a case where some one has been regularly appointed under the said Rules of 1964, and not to the cases like those before us, where appointment letters have been manipulated or procured by corrupt means, in connivance with officials. The two applicants were evidently not regularly appointed but they procured appointment letters illegally in collusion with other officials. In Shrawan Kumar Jha's case (Supra) the Apex court said that no order to the detriment of a person could be passed without complying with the rules of natural justice. But the Apex court has also ruled in 'Sohan Lal Gupta Vs. Asha Devi Gupta, (2003) 7 SCC pg-492 that principles of natural justice cannot be put in straight jacket formula and in a given case the party should only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby. The said view in Sohan Lal's case was quoted with approval in Vice Chairman Kendriya Vidyalaya Sangathan Vs. Girdhari Lal Yadav decided on 28.4.04 and also in Bar Council of India Vs. High Court of Kerala (2004) 6 SCC pg-311. Similar views were expressed by a Three Judges Bench in **Umarani Vs. Registrar, Co-operative Societies and another (2004) 7 SCC 112.** We



have already observed above that the learned counsel for the applicant has not been able to satisfy us how the giving of notice or giving ^{of} opportunity of **hearing** to the applicants could have changed the fate of the matter. It is well settled law that fraud vitiates even solemn proceedings (See **S.P. Changelvaria Vs. Jagannath, 1994 (1) SCC pg-1** and **Indian bank Vs. Satya Fibres India, 1996 (5) SCC 550**, and **United India Insurance Vs. Rajendra Singh, 2000 (2) A.W.C 1349 SC**). One cannot be allowed to continue to reap the fruits of his fraudulent deeds or misdeeds. Relying on a Division bench decision of Allahabad High Court in **Ramesh Prasad Patel Vs. Union of India & Ors, (2006) Allahabad Civil Journal pg-1573** and on **R. Vishwanath Pillai Vs. State of Kerala, (2004) (2) ATJ pg-555**, a Division Bench of this Tribunal (comprising both of us) has already ruled in OA No.975/02 and 261/02 Arvind Kumar Yadav and Ors and Madan Lal vs Union of India & ors, that in a case where commission of fraud is writ of large and no other conclusion is possible, observance of principles of natural justice would be a futile exercise. We see no reasons to take a different view as in the case in hand also appointment letter dated 6.11.98 in favour of Shri A.K.Tewari and apointment letter dated 6.1.99 in favour of Shri Yadav were but were result of fraud and manipulation. The result sheet with annexed to the reply, clearly demonstrates that none of the two could have been offered appointment as percentage of marks obtained by them in High school examination was far below the other candidates. One of them was at Sl.No.13 and the other at 18 in the merit list. Appointment dated 30.3.99 (A-6) in favour of Shri R.K. Yadav on the post of E.D.Postman, Birohi was prima-facie, adhoc or temporary as that post was never advertise3d nor any selection was held for making appointment on that post. The applicant Shri Yadav was benefited by the authorities by offering the said appointment simply because he was armed with order dated 6.1.99 for being posted as E.D.Stamp vendor in Mirzapur city post office where Tewari had already joined on the basis of fraudulent order dated 6.11.98. We think if the authorities concerned have put to an end to their legal continuance on the respective posts even without any show cause notice , this tribunal should not interfere with the same. They have already reaped the fruits of those illegal appointments by continuing on the basis of



the interim orders of this Tribunal and it would be a travesty of justice if we set aside the impugned order and thereby pave a way for their further continuation. After all the courts and Tribunal are sitting for doing justice and not for securing the compliance of technical rules of natural justic, without having regard to the facts and circumstances appearing in a particular case. So we are of the view that both these OA deserve to be dismissed and the interim order to be discharged. Accordingly the OAs are dismissed and interim orders are discharged. No order as to costs. Let a copy of this order be kept in connctected OA No.1116/2000.

[Signature]
MEMBER (A)

[Signature] 08.1.08
VICE CHAIRMAN

Dated: Jan: , 2008

Uv/