

सिबिल प्रविष्टि

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 975 OF 2002
CONNECTED WITH
ORIGINAL APPLICATION NO. 261 OF 2002.

ALLAHABAD THIS 27th DAY OF April, 2007

Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. K.S. Menon, A.M

Arvind Kumar Yadav son of Shri Udairaj Yadav, Resident of Village and Post
Nandan, District Azamgarh.

.....Applicant in O.A. No.975/02

(By Advocate: Sri Irshad Ali)

Versus.

1. Union of India through the Chief Post Master General, U.P Region,
Lucknow.
2. Post Master General, Post Office, Gorakhpur.
3. Deputy Regional Inspector, Post Office West, Sub-Division, Azamgarh.
4. Senior Superintendent of Post Office, Head Post Office, Azamgarh.
5. Sri Madan Lal son of Sri Mohan Ram Nishad, R/o Vill. And P.O
Atraulia, Distt. Azamgarh.

.....Respondents In O.A. No.975/02

(By Advocates: Sri S. Singh/Sri A. Kumar)

WITH

ORIGINAL APPLICATION NO.261 OF 2002.

Madan Lal son of Shri Mohan Ram Nishad, Resident of Village Ataraulia,
Tehsil, Burhanpur, District Azamgarh.

.....Applicant in O.A. No.261/02

(By Advocates: Sri Anand Kumar/Sri R.P. Tiwari)

Versus.

1. Union of India through Secretary of Communication Department of
post, New Delhi.
2. Chief Post Master General, U.P. Mandal, Lucknow.
3. Post Master General, Post Office, Gorakhpur.
4. Deputy Regional Inspector, Post Office West Sub Division, Azamgarh.



5. Senior Superintendent of Post Office, Head Post Office, Azamgarh.
6. Registrar (Examination), Sampurnand Sanskrit University, Varanasi.
7. Deputy Secretary, U.P Education Board, Regional Office, Varanasi.
8. Sri Arbind Kumar Yadav son of Sri Udairaj Yadav, R/o Village and Post Nandana, Tehsil Burhanpur, District Azamgarh.

.....Respondents in O.A. No.261/02.

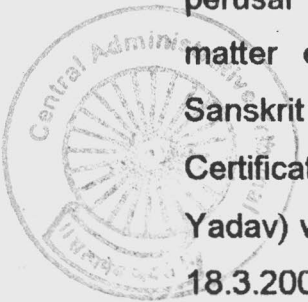
(By Advocates: Sri Irshad Ali/Sri S. Singh/Sri K.P. Singh)

ORDER

By Mr. Justice Khem Karan, V.C.

Since both these O.As raised common controversy and as the facts are almost similar, so both are being disposed of by this common order with the consent of parties counsel.

2. A vacancy on the post of E.D.M.C Lohara, Azamgarh was notified on 31.12.2000 by the office of Dy. Regional Inspector, Post Office, Azamgarh (respondent NO.3 in O.A. No.261/02) for being filled in from Backward class candidates. The minimum educational qualification was 8th pass and minimum age was 18 years. Admittedly, Arvind Kumar Yadav (applicant in O.A. No.975/02) and Madan Lal (applicant in O.A. No.261 of 2002) belonging to backward class, applied for said post by submitting applications and testimonials. It appears that Arvind Kumar Yadav got appointment letter dated 30.3.2001. Madan Lal gave a complaint to the respondents NO.1 to 3 by registered post on 2.8.2001 (Annexure 3) saying that documents filed by Arvind Kumar Yadav were forged and fabricated and so had he not been given appointment on the basis of those forged testimonials, he (Madan Lal) would have been offered that appointment on the basis of marks obtained by him in the High School and intermediate examination. It transpires from perusal of pleadings on record that Postal Authorities concerned got the matter enquired into by obtaining verification report from Sampurnand Sanskrit University, Varanasi. According to this report, Purva Madhyama Certificate and marksheet for the year 1999 (as submitted by Arvind Kumar Yadav) was not issued by the said University nor the verification report dated 18.3.2001, was issued for it. This letter dated 4.12.2002 (CA-2 in O.A. No.975/02) from Up Kulsachiv, of the University said that Roll No. 44461/1310A in Purva Madhyama 2nd year of 1999, was not allotted to Arvind Kumar Yadav. Madan Lal filed O.A. No.261/02 for quashing the



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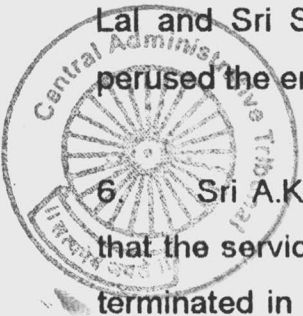
appointment letter dated 30.3.2001, issued in favour of Arvind Kumar Yadav and for directing the respondents to give appointment to him on the post of EDMC/Lohara from 30.3.2001 and to pay salary to him since then. Subsequently, the services of Arvind Kumar Yadav were terminated, vide order dated 1.8.2002.

3. Arvind Kumar Yadav has filed O.A. No.975/02, praying for quashing termination order dated 1.8.2002 passed by Dy. Regional Inspector, Post Office West, Sub Division, Azamgarh and for directing the respondents not to interfere with his working as EDMC in Head Post Offices, Azamgarh. He has contended that this termination is bad for want of show cause notice or for want of giving him reasonable opportunity of hearing and is also in breach of Circular issued by Assistant Director General (ED and DRG). He has tried to say in paras 4.10 to 4.12 of O.A. that in the marksheet issued by Sampurnanand Sanskrit University, Varanasi, an error crept in, in noting his date of birth as 28.10.1982 in place of 1.5.1982, which he got corrected by moving an application and corrected marksheet was Annexure 6.

4. The stand of the official respondents of Postal Department in both the O.As is that Arvind Kumar Yadav obtained appointment on the basis of forged and fabricated marksheet and verification report and so they were well justified in terminating his services, in terms of Condition No.3 of appointment letter dated 30.3.2001 (Annexure 2 in O.A. No.975/02) and it was not necessary for them to have recourse to formal disciplinary proceedings or to give any show cause notice etc. Stand of Madan Lal in O.A. No.975/02 is the same as in his own O.A. No.261/02 and likewise stand of Arvind Kumar Yadav in O.A. of 975/02 is the same as in his own O.A. and there appears to be no need for repeating the same here again.

5. We have heard Sri A.K. Srivastava holding brief of Sri Irshad Ali appearing for Arvind Kumar Yadav, Sri Anand Kumar appearing for Madan Lal and Sri S. Singh, appearing for Union of India and others and have perused the entire material on record of both the O.As.

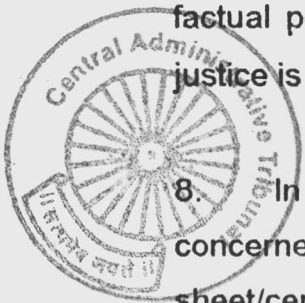
6. Sri A.K. Srivastava, learned counsel for the applicant has contended that the services of the applicant (Arvind Kumar Yadav) could not have been terminated in this way by simpliciter order, without having recourse to formal Disciplinary proceedings or without giving him a show cause notice, so



deserves to be quashed on this ground alone. Learned counsel has also drawn our attention to communication NO. 19-21/97-ED and TRG dated 13.11.1997 (Annexure 8 in O.A. of 975/02), so as to say that in such cases where appointment are said to have been obtained in an illegal or irregular way, the action as should be taken by an Authority next higher to the Appointing Authority and appointment should be cancelled only after giving a show cause notice and opportunity of hearing.

7. On the other hand, Sri S. Singh, learned counsel for the respondents has contended that the services have been dispensed with in terms of appointment letter dated 30.3.2001. According to him, it was clearly mentioned in appointment letter dated 30.3.2001 that if any, certificate/document submitted by him is found to be false or fabricated appointment will be terminated without any notice. Sri S. Singh says that the applicant accepted this condition of appointment also while accepting the offer of appointment and so cannot complain that he was not given any show cause notice or opportunity of hearing. Sri Anand Kumar has gone a step ahead, by saying that in such cases where fraud has been committed in securing the appointment, the principles of natural justice do not come into play, for removing the effect of fraud or for removing the person concerned from the position, he obtained by practicing fraud. With a view to support this argument, Sri Anand Kumar has referred to a Division Bench decision of Hon'ble High Court in the case of Ramesh Prasad Patel Vs. Union of India and others (2006 ALL. CJ 1573) and to R. Vishwanatha Pillai Vs. State of Kerala and Ors. [2004(2) Administrative Total Judgments page 555. In Ramesh Prasad Patel's case (supra), their Lordships have, after noticing a number of judicial pronouncements of the Apex Court, ~~have~~^s observed that fraud vitiates all proceedings and where commission of fraud is writ large and no other conclusion is possible, observance of principles of natural justice would be a futile exercise. In other words, according to their Lordships if factual position is almost undisputed, adherence to the principles of natural justice is not required.

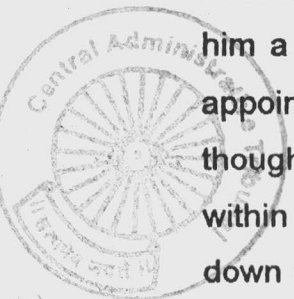
8. In the case, in hand what remarkable is that according to the University concerned, Arvind Kumar Yadav was not issued any such mark sheet/certificate bearing Roll No.44461/1310A. The copy of letter is CA-1 in O.A. No.975/02. It is also stated in it, that verification report dated 18.3.2001 was also forged and fabricated as it was never issued by University. Arvind



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Kumar Yadav has not been able to convince us as to how this report (CA-1) can be said to be without any basis or can be said to be irrelevant in the context of marksheet or certificate filed by him for obtaining the appointment. Discrepancy in the date of birth is altogether a different point. Arvind Kumar Yadav says that he passed Purva Madhyama Pariksha in 1999 from Sampurnanand Sanskrit University, Varanasi with Roll No.44461/1316A (Annexure 5) but letter dated 25.10.2002 issued by Kulsachiv (Pariksha) of that University says that according to the records, Arvind Kumar Yadav was not allotted such Roll Number in the year 1999. If the Authority, on verification from the University came to the conclusion that certificate or marksheet was forged and fabricated, we think it was justified in terminating the services of the applicant without notice, in terms of Condition No.3 of the appointment letter dated 30.3.2001. Applicant himself accepted that condition by accepting appointment and now he cannot say that termination is bad for want of notice. Breach of Circular dated 13.11.1997 will not invalidate the impugned order of termination in view of clear cut condition No.3 in the appointment letter dated 30.2.2001 and in view of law cited in Ramesh Prasad Patel 's case (supra). The marksheet or certificate filed by the applicant, was forged and fabricated, and no other conclusion is possible even after enquiry. There appears no reason with us to perpetuate the fraud by directing the authority concerned to pass order after giving opportunity of hearing. We are of the view that the termination order is perfectly justified in the facts and circumstances of the case and it cannot be quashed.

9. Sri A.K. Srivastava has contended that since Arvind Kumar Yadav has had been working since then on the post of E.D.M.C and so in view of law laid down by Delhi High Court in Parimal Singh Vs. Union of India and others reported in V-2002 (2) All India Services Law Journal page 25, he should not be disturbed. It is true that Arvind Kumar Yadav is still working on the said post on the basis of interim order dated 6.9.2002 passed in O.A. No.975/02 but we are of the view that in the facts and circumstances as discussed above, we will not be justified in allowing him to continue and thereby to give him a premium of fraud practiced by him on the Authorities in securing the appointment. In Parimal Singh's case (supra), the facts were different. There though the applicant was overage, but erroneously behaved himself to be within age limit and got appointment. In any case, His Lordship did not lay down any law that if such a person has continued for six or seven years, he should be allowed to continue even if he secured the appointment by



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practicing fraud. So we come to the conclusion that the O.A. No.975/02 filed by Arvind Kumar Yadav is to be dismissed in toto whereas O.A filed by Madan Lal is to be disposed of with a direction that appointment should be offered to the next person in order of merit in the selection in question, within a period of two months from the date of certified copy of this order is produced before the respondent No.4.

10. So the OA. No. 975/02 filed by Arvind Kumar Yadav is dismissed. O.A. No.261/02 filed by Madan Lal is disposed of with a direction to respondent No.4/Dy. Regional Inspector of Post Offices West, Sub Division, Azamgarh to offer appointment to the next person in order of merit in the selection in question, within a period of two months from the date a certified copy of this order is produced before him. If Madan Lal is the next man in the order of merit then it will be offered to him and if there is some one else then it will be offered to him.

No order as to costs.

Let copy of this order be placed on the record of O.A No.261/02.



Sd/- Sd/-
A.M. V.C.

CERTIFIED TRUE COPY
Dated.....

[Signature]
11/5/07

Kalimullah
अनुमान अधिकारी (न्यायिक)
Section Officer (Judicial)
केन्द्रीय प्रशासनिक अधिकरण इलाहाबाद
Central Administrative Tribunal
Allahabad Bench Allahabad