

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 30th DAY OF JUNE 2009)

PRESENT

HON'BLE MR. JUSTICE A.K. YOG MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM MEMBER (A)

ORIGINAL APPLICATION No 431 OF 2003.
(U/S 19, Administrative Tribunal Act, 1985)

1. Virendra Kumar Pal son of Shri Raghunath Prasad, Resident of 88-F, Gujaini, Kanpur.
2. Radhey Shyam Shukla son of Shri Nand Kishore Shukla, son of 180, Gopal Ganj, Yashoda Nagar, Kanpur.

.....Applicants.

Rep. by Advocate: Sri K. K. Tripathi.

Versus

1. Union of India, Secretary, Ministry of Communication Department of Post Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, U.P Circle, Lucknow.
3. Post Master General, Kanpur Region, Kanpur.
4. Senior Superintendent of Post Offices, Kanpur (M) Division Kanpur.
5. Chief Post Master, Kanpur Head Office, Kanpur.

..... Respondents.

Rep. by Advocate: Shri S. Singh

O R D E R

(DELIVERED BY: JUSTICE A.K. YOG-MEMBER-JUDICIAL)

1. List revised. Perused the pleadings and the documents on record including the impugned order dated 26.3.2003 (Annexure A-1/compilation-I to the OA).
2. The two applicants (Virendra Kumar Pal and Radhey Shyam Shukla) joined together to file present OA on the ground that they have served the department for 5 and 10 years respectively and

[Signature]

under order of the Tribunal dated 30.05.2002. This Tribunal had directed Post Master General to consider the case of the applicant for regularization on their representation. According to the applicant, they were engaged on temporary basis on the post of Postman after they had successfully completed requisite training. It is also contended that both the applicants have been working at the time of filing OA. However, by means of order contained in the letter dated 27.1.2000 it was suggested to the PMG to great a break (artificially) in the service of the applicant so that they may not claim regularization apprehending trouble. Applicants filed OA No.285/2000, (Virendra Kumar Pal Versus Union of India and Others) and vide order dated 30.03.2002 disposed of the OA directing Chief Post Master General to consider the claim of regularization and decide their representation; copy of the said order has been filed as Annexure A-4/compilation-II. In compliance of the said order of the Tribunal, applicants filed representations; copies filed as Annexure A-5/compilation-II and Annexure A-6/compilation-II.

3. The applicants have categorically contended that they have served continuously for 5 and 10 years without complaint and they were otherwise eligible for regularization. Perusal fo impugned order shows that the concerned authority has rejected claim for regularization by quoting certain regularization/recruitment rules. There is no findings that applicants were not otherwise eligible and/or the facts stated by them are otherwise incorrect. Para 3 of the impugned order indicates that certain procedure is to be adopted for making regularization of the persons (like the
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applicant. The concerned authority has not disclosed any reasons as to why they have not adopted said procedure for considering regularization of the persons (like the applicants) department/authorities under article 12 of the constitution of India are not expected to act whimsically. If rules required certain procedure for regularization, all the facts of EDDA located at same station, the concerned authority should have directed for taking requisite steps for the same.

4. Respondents have filed counter affidavit (sworn by one S.S. Sahu) Superintendent of Post Offices (M) Division, Kanpur. Para 17 of the said counter affidavit reads:-

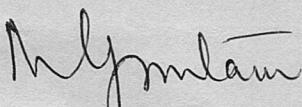
"17. That the contents of paragraph 4.6 of the petition are not admitted as stated. In reply it is stated that the Chief Postmaster vide his letter dated 27.1.2000 informed the postmaster General since there is no further need of Driver cum postman because the delivery work of Speed Post Articles is being done through the contractor therefore, he should relieve these officials from the said post to join their original posts. The averments made by the petitioners made in paragraph under reply are not correct and misleading"

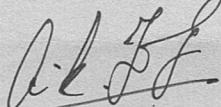
5. Interestingly the grounds for issuing order for creating break in service (as disclosed in afore quoted para 17 of the counter affidavit) does not find mention in the impugned order dated 26.3.2003. the fact that applicants have been allowed to continue for five years or above itself shows that vacancies exists and workload required engagement (like the applicants) and vacancies were required to be filled up from time to time as per statutory rules including by department which the department apparently has not done. In view of the above we quash impugned order dated 26.3.2003/Annexure-1 with direction to the respondent



authorities to take steps for filling up the post and consider case of the applicant and all other similarly situated persons/candidates eligible for regularization as per recruitment rules to be considered in accordance with law. Requisite steps be taken within three months of receipt of certified copy of this order and procedure for regularization/appointment on regular vacancies be ensured within three months thereafter. Copy of this order shall be sent to the applicants by speed Post AD within three ~~months~~ ^{4 weeks} from today.

6. OA stands allowed subject to above directions. No Costs.


Member-A


Member-J

/ns/