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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
T.A. No. 75/92 and T.A. No. 5/95

Lucknow this the 01st day of August, 2000.

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

(1)T.A. No. 75/92(Civil Appeal No. 216/85)

Santosh Kumar aged 27 years son of Dwarka Prasad
R/o village Karenti, Pargana Bihar Tehsil Kumda,
District Pratapgarh.

Appellants

By Advocate Shri Surendran P.

versus

1. Ravindra nath aged 26 years son of Ram Krishna
Mishra r/o Maudara, Tari Pargana Bihar, Tahsil Kunda,
District Pratapgarh. Plaintiff-respondent.

2. Supdt. of Post offices, Pratapgarh Division
Pratapgarh.

3. Director of Postal Services, Allahabad Region,
Allahabad.

4. Post Master General U.P. Lucknow.

5. Government of India through Secretary
Telecommunication (Postal) New Delhi.

Defdts. Respondents.

By Advocate S/shri Sunil Sharma and R.K. Upadhyaya.

(2)T.A. NO.5/95(Civil Appeal No. 253/85)

1. Senior Superintendent of Post Offices,
Pratapgarh Division, Pratapgarh.

2. Director of Postal Services, Allahabad Region,
Allahabad.

3. Post Master General U.P. Lucknow.

4. Union of India through Secretary,
Telecommunications Postal New Delhi.

Defendant-Appelants.

By Advocate Shri Sunil Sharma.

versus

1. Ravindra Nath aged 26 years son of Ram Krishna
Mishra r/o Mau Dara Teri, Pargana Bihar Tehsil Kunda
District Pratapgarh.



2. Santosh Kumar aged 27 years son of Dwarika Prasad Resident of village Karenti Pargana Bihar, Tehsil Kunda District Pratapgarh.

By Advocates: S/Shri Plaintiff-Respondents.
Sri Surendran P. & R.K. Upadhyaya

O R D E R

BY D.C.VERMA, MEMBER(J)

As both the T.As arise out of a common order passed by Additional Munsif (6th) Pratapgarh in Civil Suit No. 153/82 Ravindra Nath vs. Superintendent of Post Offices Pratapgarh and 4 others, both the T.As have been heard together and are being decided by a common order. For better clarity of the points involved in the case, the brief facts are given below.

2. One Sharda Prasad was uncle of Ravindra Nath (Original plaintiff). Sharda Prasad was working as E.D. Post Master in the Branch Post office Karenti. Sharda Prasad died on 20.2.81. In the vacancy caused due to death of Sharda Prasad, Ravindra Nath was engaged to work as Incharge w.e.f. 21.2.81. To fill up the vacancy on regular basis, the vacancy was notified by the Department on 27.3.81. The applications were invited by 25.4.81. Ravindra Nath sent his application for consideration. Ravindranath's case is that he was found suitable and was appointed vide order dated 28.7.81.

3. On a complaint against the appointment of Ravindra Nath, the Director Postal Services issued an order on 1.8.1981 for cancellation of the appointment of Ravindra Nath, the original plaintiff. The Superintendent, Postoffices, accordingly issued orders on 3.8.81 cancelling the appointment of Ravindra Nath. Ravindra Nath filed Suit No. 153 of 1982 in the court of Munsif Kunda Pratapgarh titled 'Ravindra Nath vs. Superintendent Post Offices,



Pratapgarh and 4 others'. The relief was to set aside the order dated 1.8.81 and 3.8.81 and to uphold the order dated 28.7.81, by which Ravindra Nath, the plaintiff had been appointed. In the Civil Suit, one Santosh Kumar was impleaded as defendant No. 5. The fact shows that after the order dated 3.8.81, ~~ANNEXURE-3~~, impugned in the Civil Suit, was passed, the vacancy was notified on the same date i.e. 3.8.81 (Annexure-3). This selection was stayed by the Post Master General and subsequently cancelled vide order dated 5.2.82. Thereafter, the vacancy was again notified on 9.2.82 (Annexure A-4). The selection was made and Santosh Kumar was selected and appointed. In March, 1982, the Civil suit No. 153/82 was filed by Ravindra Nath in which Santosh Kumar was impleaded as defendant No. 5. No interim order was granted in favour of Ravindra Nath the plaintiff of the Civil Suit. The learned Munsif, after exchange of pleadings gave his judgment on 20.5.85 and decreed the Civil Suit. The order dated 1.8.81 of the Director Postal Services for cancelling the appointment of Ravindra Nath and the order dated 3.8.81 passed by Superintendent of Post offices in consequence of the order dated 1.8.81 was held invalid. The appointment of defendant no. 5 namely Santosh Kumar was set aside. A direction was given to Superintendent of Post office pratapgarh (defendant No. 1) to treat the appointment order dated 28.7.81 as valid and to provide all consequential benefits for the period the charge was taken and the charge was given back to the plaintiff of the suit.

4. Against the judgment and order dated 20.5.85 of the learned Munsif pratapgarh, Santosh Kumar (defendant No. 5 of Suit No. 153/82) filed Civil ~~Suit~~ Appeal in the court of District Judge pratapgarh

against Ravindra Nath(plaintiff of Suit No. 153/82) and the Department. This Civil Appeal was registered as No. 216/85.

5. The official respondents namely Senior Superintendent of Post Offices, pratapgarh, Director of Postal Services, Post Master General, U.P. and Union of India through Secretary, Telecommunications Postal, New Delhi who were defendants in the original suit No. 153/82, filed Civil Appeal No. 253/85 against Ravindra nath (original plaintiff) and Santosh Kumar (defendant No. 5 of the Civil Suit).

6. Both the above appeals were pending in the District Court Pratapgarh. The Administrative Tribunals Act, 1985 was notified on 1.11.1985. In view of section 29 of the A.T. Act, 1985, both the appeals have been transferred to this Tribunal. Civil Appeal No. 216/85 Santosh Kumar vs. Ravindra nath and others has been registered in this Tribunal as T.A. No. 75/92. The file of other Civil appeal filed by the Superintendent Post offices was found tagged with T.A. no. 75/92. So, by a subsequent order dated 10.10.95, the Civil Appeal No. 253/85 was directed to be given a separate Number and was accordingly registered as T.A. no. 5/95.

7. Heard the learned counsel for the parties at greath length. We have also gone through the judgment and order dated 20.5.85 passed in Civil Suit No. 153/82. The prayer made by the plaintiff of the Civil Suit No. 153/82 was to declare the orders dated 1.8.81 and 3.8.81 as invalid. The other prayer was to treat the appointment order dated 28.7.81 as valid and to allow the plaintiff(Ravindra nath) to work with all consequential benefits.

8. The learned Munsif framed the issues. While deciding the first issue in respect of the impugned

order dated 1.8.81 and 3.8.81 the learned Munsif held that both the orders are invalid. We have examined the contents of the order dated 1.8.81 whereby the Director, Postal Services cancelled the appointment order. Consequent thereto, the Superintendent Post Offices passed the other impugned order dated 3.8.81. By this order, the Superintendent of Post Offices cancelled the appointment order of Ravindra Nath in compliance of the order dated 1.8.81 passed by Director Postal Services. The question before us is whether Director Postal Services can cancel the order of appointment made by Superintendent of Post Offices. In a catena of decisions it has been held by various courts including this Tribunal that the authority who has been given some statutory powers ~~or~~^r is to apply his own mind *and* cannot pass an order on dictates of the higher authority. In a Full Bench case 'Tilak Dhari Yadav vs. Union of India and others' decided by Allahabad Bench of the Tribunal in O.A. 910/94 it has been held that "Rule 6 of the Post and Telegraph Extra Departmental Agents(Conduct and Service) Rules, 1964, does not confer the power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an /Extra Departmental Agent who has been appointed on a regular basis in accordance with rules, for reasons other than unsatisfactory service or for administrative reasons unconnected with the conduct of the appointee without giving him an opportunity to show cause." IN the present case, the applicant Ravindra Nath was appointed on 28.7.81 and his appointment was cancelled vide order dated 3.8.81 on the dictates of the Director Postal Services. There is nothing on record that any show cause was given to



Ravindra Nath. Thus, the order dated 3.8.81 is invalid on two grounds; firstly because no show cause was given to Ravindra Nath before issue of the order dated 3.8.81 and secondly, because the order dated 3.8.81 has been issued on the dictates of the order dated 1.8.81 passed by Director, Postal Service. The order dated 1.8.81 is invalid because the Director Postal Services being a superior authority had no right to issue an order for cancellation of appointment order passed by Superintendent of Post offices. In view of the above, both the orders dated 1.8.81 and 3.8.81 are invalid.

9. The learned counsel for Santosh Kumar and the Department has submitted that subsequent notification issued after 3.8.81 and the appointment of Santosh Kumar has not been challenged in the present O.A. In our view even if that be, that would not affect the rights of the Original plaintiff Ravindra Nath. The appointment of Ravindra Nath has been held valid. The order cancelling the appointment of Ravindra Nath has been held invalid. Consequently, Ravindra Nath could not have been removed from the post he was occupying in the light of appointment order dated 28.7.81.

10. The learned counsel for Santosh Kumar has submitted that after a subsequent notification Santosh Kumar was appointed by the Department and Santosh Kumar has been working on the said post. Only because the Department appointed Santosh Kumar on a subsequent date, the right of Ravindra Nath who had been appointed earlier, cannot be extinguished.


11. Shri Sunil Sharma, the learned Counsel for the Department submitted that the post office is in Karenti and Ravindra Nath does not belong to village Karenti. In T.A. No. 5/95, a ground has been taken

that Ravindra nath has no residence at village karenti and it was mandatory condition for selection of appointment. It was on this ground that appointment of Ravindra Nath was cancelled by the respondents ~~xxx this ground that the appointment of Ravindra Nath was cancelled by the respondents.~~ On this point, reference to para 3(li) of the communication No. 17-104/93-ED&TR dated 6.12.93 may be made. Para 3(ii) is as follows:

"The Board also decided that having regard to the judgment of the CAT, it may be clarified that while making selections for appointment to E.D posts, permanent residence in the village/delivery jurisdiction of the ED Post office need not be insisted upon as a precondition for appointment. However, it should be laid down as a condition of appointment that any candidate, who is selected, must before appointment to the post take up his residence in the village/delivery jurisdiction of the ED Post office as the case may be."

12. In view of the above, it ~~was~~ not necessary that a person to be appointed on E.D. post must be a permanent resident in the village/delivery jurisdiction of the E.D. Post office. It is not the case of the Department that Ravindra Nath (plaintiff of the Civil Suit) had not been able to provide space for post office. The learned counsel appearing on behalf of Ravindra Nath has, on the other hand, submitted that there was space and after appointment Ravindra Nath has been performing his duty. No doubt, the circular referred to above is of the year 1993, but the same is based on a decision of the orders passed earlier by the Tribunal and the condition of the residence as interpreted by the Tribunal, would be taken even on the date when Ravindra nath was appointed.

13. In view of the above, in our view, both the T.As namely T.A. No. 75/92 filed by Santosh Kumar and T.A. No. 5/95 filed by the Department have nomerit and stand dismissed with the result that the order of the learned Munsif Pratapgarh passed in the original Suit No. 153/82 Ravindra Nath Vs. Superintendent of Post Offices and others, would stand and the order of Director, Postal Services dt. 1.8.81 and of the Superintendent of Post Offices dated 3.8.81, as held, is invalid. the order dated 28.7.81 by which Ravindra Nath was appointed, is held valid. Ravindra Nath would be deemed to continue in service throughout the period for purposes of seniority in service only with no back wages or allowances. Ravindra Nath shall be given back his charge in the Post office, Karenti. The respondents may, however, consider shifting of Santosh Kumar to some other near post office where the vacancy may be found by the respondents. The compliance of the order of giving relief to Ravindra Nath shall be made within a period of one month from the date of communication of this order. *costs easy.*


MEMBER (A)


MEMBER (J)

LUCKNOW: DATED 01.8.2000

Shakeel/