

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No. 491/2007

This, the day of 22nd May, 2008.

Hon'ble Shri Justice Khem Karan, Vice Chairman

Hon'ble Sri Shalendra Pandey, Member (A)

Tulsi Ram Yadav aged about 36 years son of Sri Devi Parsed, resident of Village Mahmood Nagar, Post Office Gugauli, District- Balrampur (presently working as Gramin Dak Sewak, Mail Deliverer, Branch Post Office, Gugauli (Via Tulsipur), District- Balrampur.

Applicant.

By Advocate: Shri R.C. Singh

Versus

1. Union of India through the Secretary, Ministry of Communication (Department of Posts), New Delhi.
2. Superintendent of Post Offices, Gonda Division, Gonda.
3. Assistant Superintendent of Post Office, Balrampur.
4. Post Master, Head Post Office, Balrampur.

Respondents

By Advocate: Sri S.P. Singh

ORDER (ORAL)

By Hon'ble Shri Justice Khem Karan, Vice Chairman

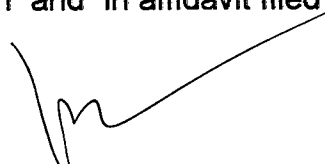
Applicant, Tulsi Ram Yadav, has filed this O.A. for quashing order dated 31.7.2007 by which, the authority concerned has cancelled Memo dated 24.7.2007 and has directed for maintaining status quo in respect of the applicant. There is also a prayer for asking the respondents to allow the applicant to join on the post of Postman Group 'D', pursuant to the order dated 24.7.2007.

2. Brief facts, giving rise to this O.A., are that applicant was initially inducted as Extra Delivery Agent (EDDA) in Gugauli Post Office, vide order dated 14.9.91 (Annexure (2)). When his services were terminated vide order dated 8.8.1992 (Annexure -3), he filed one O.A. No. 395 of 1992, challenging the same. This Tribunal allowed the O.A. No. 395/92 vide its order dated 2.1.2001 (Annexure A-4), setting aside the termination and directing ~~the~~ reinstatement of the applicant. Applicant alleges that in compliance of

direction dated 2.1.2001 of this Tribunal, applicant was taken back in service vide order dated 26.2.2001 (Annexure A-5) and he started working and getting salary. The respondents in the said O.A. filed one Writ Petition No. 645(S/B) of 2001 before the Hon'ble High Court at Lucknow Bench, challenging the order dated 2.1.2001. It is said that no interim orders have been passed in the writ petition, staying the operation of the order dated 2.1.2001. The writ petition is still pending. Vide its letter dated 19.2.2007, Superintendent of Post Offices, Gonda Division, Gonda issued the scheme of examination for the post of Postman/ Village Post Master for the year 2007. The applicant says that he also applied for the post and was declared successful in the examination, ~~was~~ held, and was sent for training vide office memo dated 6.7.2007 (Annexure A-6). He goes on to say that after completion of the training, he was posted in Head Post Office Balrampur vide order dated 24.7.2007 (Annexure -7). He also alleges in para 4.09 that on being relieved from Branch Post Office, Gugaoli, he joined on 26.7.2007 on the post of Postman but was not allowed to work as regular postman. Thereafter came the impugned order dated 31.7.2007. He challenges it on the ground, inter-alia, that it is non-speaking and arbitrary and also in violation of Principles of Natural Justice. According to him, his selection, training, appointment etc. could not have been set at naught in this way, without getting him to know as to why the same was being done.

3. The respondents have filed reply. They say the appointment of the applicant is being assailed in writ petition No. 645 (SB) of 2001 and the order dated 24.7.2007 has been kept in abeyance vide order dated 31.7.2007. They state it was owing to mistake on the part of office, that the applicant was permitted to appear in the examination held in 2007. They go on to state that orders dated 24.7.2007 were kept in abeyance vide order dated 31.7.2007, after report of APO.

4. In Supplementary reply, copy of the application moved by the present applicant in the said Writ Petition for dismissal of that petition has been annexed, so as to say that in that application and in affidavit filed in support



thereof, applicant clearly admitted that he was not being permitted to join because of pendency of the writ petition.

5. We have heard Sri R.C. Singh appearing for the applicant and Sri S.P. Singh for the respondents and perused the entire material on record. There is no dispute on the point that earlier termination order dated 8.8.92, was quashed by this Tribunal vide its order dated 2.1.2001 in O.A. No. 395/02. There is further no dispute that in writ petition No. 645(SB)/2001, so filed by the opposite parties of that O.A., no interim orders have been passed so far, staying the operation of Tribunal's order dated 2.1.2001. While the applicant has averred that pursuant to the orders dated 2.1.2001, he was taken back in service vide order dated 26.1.2001 and was also paid arrears of pay on 21.5.2001, and started working. There is no denial from the side of the respondents that he appeared in the selection, so held on 15.4.2007 for postman/ Village Post Master and was declared successful and on the basis of his success, was sent for training vide office memo dated 6.7.2007. There is further no dispute that he was posted in Balrampur Head Post office vide order dated 24.7.2007. What the respondents submit in their reply is that it was due to mistake, that the applicant was permitted to participate in the selection that took place on 15.4.2007. We have not been able ^{to understand} as to how it is being said that there was any mistake on the part of the office in permitting the applicant to participate in the said selection. As on today, the order of Tribunal dated 2.1.2001 stands and has not been quashed by any court. So for all legal purposes, the applicant was in service on the date he was allowed to participate in the selection. In any case, order by which the memo dated 24.7.2007 was quashed, is totally non-speaking. No reasons have been disclosed as to why Memo dated 24.7.2007 by which the applicant was posted to work at Head Post Office Balrampur, has been cancelled or put in abeyance. Any order likely to adversely affect a person, should contain reasons and so ^{the} impugned order, being non-speaking, is bad in law. If the authority was proposing to cancel the said memo for any reason, it should have put the applicant on notice.

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6. The arguments of Sri S.P. Singh¹⁰ that the applicant has himself stated in his application moved in the writ petition that he has not been allowed to join, so O.A. itself is not maintainable. There is no denial of the averment made in para 4.4 of the O.A. where it has been clearly averred that pursuant to the order of the Tribunal, the applicant was taken back vide order dated 26.2.2001, and was paid arrears of salary on 21.5.2001. So, we think moving of application by the applicant in the writ petition for dismissal of the writ petition will not take away the effect of the pleadings here. We are of the view that impugned order dated 31.7.2007 deserves to be quashed and the respondents are to be directed to put him in the same position, in which he was before passing of the impugned order dated 31.7.2007.

7. So, the O.A. is finally disposed of and the impugned order dated 31.7.2007 is set aside with a direction to respondent No. 2 to place the applicant in the same position in which he was pursuant to order dated 24.7.2007, before passing of the impugned order dated 31.7.2007, within a period of two months from the date, a certified copy of this order is produced before him. No order as to costs.


MEMBER (A)

HLS/-


VICE CHAIRMAN