

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO. 196 of 1992.

this the 01st day of December, 1998.

HON'BLE MR D.C. VERMA, JUDICIAL MEMBER.

Babu Ram, aged about 27 years, s/o of Shri Shiv Charan, resident of C/o Sri S.D. Kuril, 538-K/296, Tieveeni Nagar, Lucknow.

2. Shankar Prasad Sharma, aged about 23 years, s/o of Shri Ram Chandra Sharma, resident of 19/102 Indira Nagar, Lucknow.

3. Raghuvir Prasad, aged about 19 years, son of Sri Lekhram, resident of F-3035, Rajajipuram, Lucknow.

4. Ram Karan, aged about 24 years, son of Shri Shivraj, resident of Post & Telegraph Colony, Aliganj, Lucknow.

5. Bhagwati Prasad Joshi, aged about 22 years, s/o Sri Kanti Bal Bhagwati Joshi, resident of C/o Sri K.D. Joshi, Joshi Bhawan, Kuranchal Nagar, Sector-D, Post Indira Nagar, Lucknow.

6. Ramadhar, aged about 25 years, son of Sri Hariram, resident of post and Telegraph Colony, Aliganj, Lucknow.

7. R.C. Mishra, aged about 23 years, son of Shri Shrinath Mishra, resident of F-3035, Rajajipuram, Lucknow.

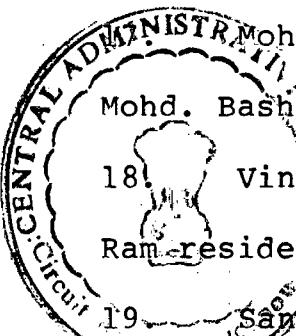
8. Mukesh Kumar, aged about 19 years, son of late Bal Kishan Srivastava, resident of C/o Sri Anoop Kumar Srivastava, Dalibagh, Lucknow.

9. Vahidul Hasan, aged about 28 years, son of Shri Mohammad Avaz, resident of Sarvodaya Nagar, Lucknow.

10. Upendra Kumar Singh, aged about 19 years, s/o Ram Chhabila Singh, resident of Type III/3, Dak Tar Colony, Lucknow.

11. V.K. Rao, aged about 25 years, son of Sri Krishna Murari Lal Sharma, resident of 6th Lane Nishatganj, Lucknow.

12. Govind aged about 19 years, S/o Sri Suresh Chandra Gupta, resident of 227/4, Azad Nagar, Astbal yahiyaganj, Lucknow.
13. Kallu Ram, aged about 22 years, S/o Shri Lekh Ram, resident of F-3035, Rajajipuram, Lucknow.
14. Ram Kumar, aged about 20 years, son of Sri Suraj Bali, resident of F-3035, Rajajipuram, Lucknow.
15. Guljar, aged about 20 years, son of Sri Munna, resident of 1/6, Dak Tar Colony, Malviya nagar, Lucknow.
16. Sanjay Kumar, aged about 21 years, son of Sri kailash Chandra, resident of 76 Dak Tar colony, Aliganj, Lucknow.

 Mohd. Saleem, aged about 21 years, son of Mohd. Basheer, resident of G.P.O. compound, Lucknow.

18. Vinod Kumar, aged about 25 iyears, son of Chet Ram resident of 151/171 Nala Ratsana, Lucknow.

19. Santosh Kumar Maurya, aged about 20 years, son of Late Shrikrishna Maurya, resident of 82/62, Maurya Bhawan, lal Kuyan, Lucknow.

20. Durga Prasad Gupta, aged about 27 years, son of Late Ram Sagar Gupta, residengt of Sarvodaya Nagar, Lucknow.

21. Manoj Kumar, aged about 22 years, son of Shri Hanuman Prasad Sonkar, resident of 512/257, 5th lane Nishatganj, Lucknow.

22. Brij Kishore, aged about 20 years, son of Sri Ram Khelevan, resident of C/o Prarey Lal Verma, resident of Digdiga , Gomti Nagar, Lucknow.

23. Mahendra Kumar Tiwari, aged about 20 years, son of Sri Murari Lal Tiwari, resident of 512/167,6th lane Nishatganj, Lucknow.

Applicants.

By Advocate : Shri J.P. Mathur.

Versus.

Union of India through Secretary, Posts, New Delhi.

2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director, Postal Services, Lucknow Region, C.P.M.G. Office, Lucknow.
4. Chief Post Master, G.P.O., Lucknow.

Respondents.

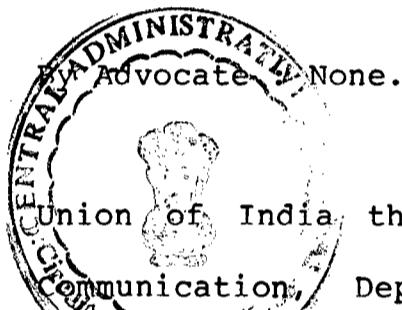
By Advocate : Km. Asha Choudhary.

with

Original Application No. 412 of 1992.

Gopal Krishna, S/o Sri Ram Bharosey, aged about 26 years, resident of 538-Ch/14, Loni Katra, Khadara, Lucknow.

Applicant.



Versus.

Union of India, through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Parliament Street, New Delhi.

2. The Chief Post Master General, U.P. circle, Lucknow.
3. The Director Postal Services, Office of the Chief Post Master General, U.P., Circle, Lucknow.
4. The Chief Post Master, Lucknow G.P.O., Lucknow.

Respondents.

By Advocate : None.

O R D E R

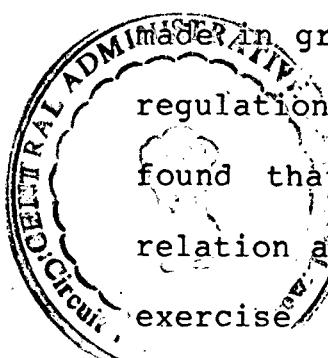
As above O.A.s involve common question of facts and law, both the O.A.s are tagged together and are being disposed-of by a common order.

O.A. No. 196/92

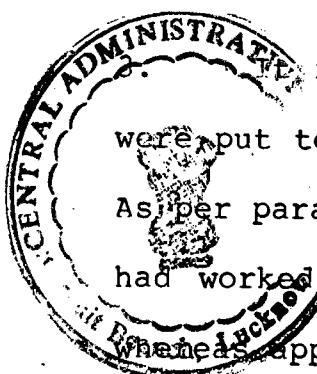
All the 23 applicants of this O.A. claimed to have been engaged as Ferrash, Paiker, Chowkidar, Mali & Watcherman on different dates between 29.5.91 to 1.2.1992. The applicants were disengaged by the impugned order dated 3.4.92 (Annexure-1) and other

impugned order (Annexure-2) of the same date. According to the learned counsel for the applicants the applicants were disengaged without giving any show-cause and without giving any reason in the impugned orders.

2. The respondents' case is that due to promotion and retirement, posts were vacant and, therefore, out of the 23 applicants, 17 were appointed on casual labour basis and 7 were appointed as contingency paid wagers. These appointments were made to meet the as a measure of load of work and administrative exigencies and/stop gap arrangement from time to time. It has also been alleged that the appointment of the applicants were


made in gross violation of the departmental rules and regulation on the subject and subsequently it was found that the lower officers appointed their own relation and favourite on casual basis in colourable exercise of powers to circumvent the departmental rules and regulations and orders on the subject. In support of this, the respondents have filed list of nine persons who are applicant No. 1, 5, 10, 11, 15, 18, 21, 22 & 23 respectively who are related to the officers of the department. It has also been submitted by the learned counsel for the respondents that the procedure for recruitment against Group 'D' post is given in Post & Telegraph Manual Volume IV. As per rules, the departmental posts of Group 'D' are to be filled up by "Extra Departmental Agent" (in short E.D.A), having three years service in the department to their credit. Remaining vacancies can, however, be filled-up through direct recruitment out of the candidates sponsored by the Employment Exchange after passing the prescribed test. Further submission of the learned counsel for the respondents is that though the names

of 190 persons were sponsored by the Employment Exchange against 24 vacancies, in the meantime, the applicants were appointed by local officers to clear the extra load of work. The learned counsel has also submitted that rule has now been changed and all the posts of Group 'D' are to be filled-up on the basis of seniority-cum-fitness amongst the Extra Departmental Agent already working in the department. As none of the applicants belong to category of E.D.A., they are not eligible for appointment against Group 'D' post. Further, it has been submitted that none of the applicants had completed 240 days in one calander year.

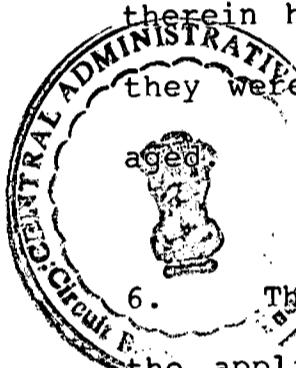


It is not the case of the applicants that they were put to any test before being engaged/appointed. As per para 4.1 of the O.A., the applicant No. 1 to 16 had worked on different posts as a casual employee, whereas applicant No. 17 to 23 were part timers. There is no recital in the pleadings of the applicants that any of the applicant worked for 240 days. It has been claimed that the applicants ^{who} ~~but~~ were appointed on casual basis were being paid the salary as a regular employee of the cadre. There is no document, however, on record to show that the applicants were paid salary as a regular employee of the cadre. The respondents's case is that those xxxx who were engaged on daily wages basis, were paid minimum of the scale.

4. From the facts brought-out on record and discussions made above, it is clear that none of the applicants had worked for required number of days. The applicant No. 17 to 23, who were admittedly, part timer are not eligible for regularisation in the light of the decision of the apex court in the case of Union of India Vs. Vishamber Dutt (1997 (1) A.T.J.

263 (S.C.). It is also found that the appointments were grossly made in violation of Rules prescribed to fill-up the post. Therefore, none of the applicants have been able to establish their claim. This O.A., therefore, fails on merit.

5. The learned counsel for the applicant has placed reliance on the decision of this Tribunal given in the case of T.J. Joseph & T.C. Anthony Vs. Sub-Divisional Officer, Telephone, Alleppey and others (1989) 10 A.T.C. 142). The facts of the cited case is totally different. There was a specific departmental orders in respect of Casual wireman. The applicant therein had worked between 4 years to 16 years and they were not selected because of their being over aged.



6. The other case cited by the learned counsel for the applicant is Daily Rated Casual Labour employed under P & T Department through Bhartiya Dak Tar mazdoor Manch Vs. Union of India & others (AIR 1987 SC 2342). The question involved therein was regarding denial of minimum pay in the pay-scale of regularly employed workmen. Such a question is not involved in the present O.A. Thus, none of the two decisions cited by the learned counsel help the applicants of the present O.A.

O.A. No. 412/92. The brief facts as contained in the O.A. is that the applicant-Gopal Krishan was also disengaged vide order dated 3.4.92. The applicant was worked as Driver Speed Post. The name of the applicant alongwith others were sponsored by the Employment Exchange. The applicant was asked to produce the driving licence, motor mechanic certificate and certificate of educational qualification. After due process, the applicant was selected and appointed as Casual

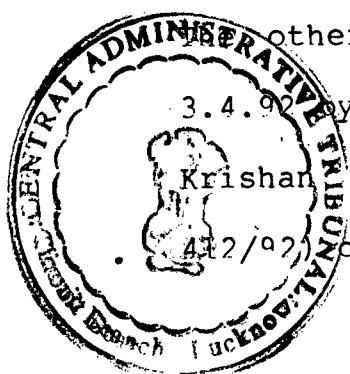
labour-cum-driver and was paid monthly emoluments of Rs.1362/- per month w.e.f. December, 1991. The payment receipts in respect of salary for the month of January to May, 1992 have been annexed as Annexures 5 to 9 of this O.A. Subsequently, revised D.A. was paid vide Annexure-10. The applicant had worked from 4.12.91 to 4.4.92 as appears from the experience certificate issued by Chief Post Master (Anneuxre-12). The services of the 16 outsiders were terminated by the impugned order dated 25.3.92 (Anneuxre-13). The applicant's name was not included in that list. However, by a subsequent order dated 3.4.92 the name of the applicant was also included alongwith other 16 persons. This order dated 3.4.92 so far as against the applicant, is impugned in the present O.A.


The case of the respondents is that the applicant of this O.A. was also engaged without following the procedure prescribed for appointment. Though the names were called from the Employment Exchange, but before any ^{action} could be taken for selection from amongst the sponsored names, the applicant was engaged locally to manage the office work and to cope-up with the work involving public utility services. No interview was taken nor any regular appointment was made. The applicant of this O.A. had also not completed 240 days.

9. I have perused the pleadings of the case. As per Rejoinder filed in this case ~~xxxxxx~~ 23 outsiders including seven contingency paid were disengaged w.e.f. 2.4.92 as they were not sponsored by the Employment Exchange and were the candidates of the Dy. Chief Postmaster Lucknow G.P.O. The applicant's case is that his name was sponsored by the Employment

Exchange and was not amongst 23 irregularly appointed persons.

9. By the order dated 25.3.92, 16 persons were disengaged. The applicant's name was not in the order dated 25.3.92. The persons disengaged vide order dated 25.3.92 made a representation. The said order was stayed. Subsequently another order to disengage 17 persons was issued on 3.4.92. The order dated 3.4.92 contained the name of the applicant of this O.A., in addition to earlier 16 names of the order dated 25.3.92. By another order of the same date i.e. 3.4.92, seven other persons were disengaged. Thus, by the two orders of 3.4.92, 24 persons were disengaged. Except the applicant of this O.A. (O.A. No. 412/92).



Other 23 persons challenged the two orders of 3.4.92 by filing O.A. No. 196/92. The applicant-Gopal Krishan has, by filing a separate O.A. (O.A. No. 412/92) challenged the order of his disengagement.

10. The case of the applicant of O.A. No. 412/92, stands on a little different footing. The name of the applicant was sponsored by Employment Exchange, whereas names of 23 others (applicants of O.A. No. 196/92) were not sponsored by the Employment Exchange. The applicant of O.A. No. 412/92 has, therefore, by filing a separate O.A., claimed that as his name was forwarded by the Employment Exchange and he was interviewed and then selected, therefore, his disengagement is not valid.

11. The respondents' case is that though the names were called from the Employment Exchange, but before any action could be taken, the applicant was engaged. Meaning thereby, that though the name of the applicant was sponsored by the Employment Exchange, his merit was not tested alongwith others whose names were sponsored by the Employment Exchange. The respondents

further case is that the applicant was not interviewed and only after perusing his papers, the applicant was engaged to cope-up with the work involving public utility services.

12. After perusing the pleadings and documents on record, I find that there is nothing on record to show that the applicant had worked ^{for} 240 days. It is also not on record that the applicant was interviewed alongwith others whose names were sponsored by the Employment Exchange. It is not the case of the applicant that the merit of the applicant was tested/examined alongwith others whose names were forwarded by the Employment Exchange. Thus, if as an individual case, after perusing the applicant's papers the applicant was engaged to cope-up with the work, his engagement would not be in accordance with the prescribed rules and procedure.



13. As the applicant's appointment was not made after following the due procedure, the applicant cannot claim his disengagement as invalid. The case of the applicant, therefore, is also similar to the applicants of O.A. No. 196/92.

14. It was submitted by the learned counsel for the applicants in O.A. No. 196/92 that the applicants were disengaged without giving any show-cause and without giving any reason in the impugned order. In my view, the submission of the learned counsel has no merit. A Casual labour is engaged ^{on} day-to-day basis and, therefore, show-cause notice is not required in such cases.

15. In view of the discussions made above, both the O.A.s namely O.A. No. 196/92 & O.A. No. 412/92 have no merit and both O.A.s are dismissed. No costs.

Sd/-
MEMBER (J)