

Lakhan Lal Meena, S/o Shri Shyam Lal Meena, aged about 24 years, R/o B-6, Mahesh Nagar, Tonk Phatak, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary to the Govt. of India, Deptt. of Posts, New Delhi.
2. Post Master General, Rajasthan, Eastern Regiona, Ajmer.
3. Superintendent of Post Offices, Beawar Division, Beawar.
4. District Employment Officer, Employment Exchange, Sawai Madhopur.

...Respondents.

Mr.Ajay Pal Singh - Counsel for applicant

Mr.M.Rafiq - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application, the applicant makes a prayer to quash the impugned order dated 3.1.96 and to direct the respondents to impart the remaining training to the applicant and thereafter give him appointment on the post of Postal Assistant and to pay the salary and other benefits from the date on which his batchmates were appointed.

2. The facts of the case as stated by the applicant are that respondent No.2 invited applications for the post of Postal Assistant. In response to the advertisement dated 7.12.94 and applicant being eligible, has submitted his application also. It is stated by the applicant that he was selected for the post and has also completed the job training under Post Master, Beawar from 8.7.95 to 22.7.95. It is further stated that the applicant was also asked to deposit security of Rs.3,200/- vide letter dated 3.7.95 and he was awaiting the call for institutional training but when he approached the respondents he was given the impugned order dated 3.1.96. It is stated that the applicant was registered with Employment Exchange, Sawai Madhopur on 6.7.93 which was valid upto 6.7.96 but without any communication/show cause notice or affording an opportunity of hearing, the impugned order was passed by respondent No.4, which is patently illegal and liable to be quashed as no law requires compulsory registration for the post of Postal Assistant. Therefore the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is admitted that the applicant has applied in response to the advertisement dated 7.12.94 and he was selected and the training of 15 days was imparted to him from 8.7.95 to 22.7.95. But it is stated that on verification, the Employment Exchange Officer, Sawai Madhopur, has informed the respondents that the registration of the applicant was not continuing as he secured employment in November 1993. Therefore, the applicant was not found eligible for the post and he was not appointed on the post in question. It is denied that the action of the respondents has been arbitrary, unjust and illegal in any way. Therefore, it was stated that this O.A is devoid of any merit and liable to be dismissed.

4. No counter has been filed by the District Employment Exchange Officer, Sawaimadhapur, who has been impleaded as respondent No.4 in this O.A.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant has argued that the applicant was registered with Employment Exchange, Sawaimadhapur w.e.f. 6.7.93 and his registration was valid upto 6.7.96. Therefore, before deleting the name of the applicant from the Register of the Employment Exchange Office, no opportunity of hearing/show cause, was provided to him. It has also been argued that the applicant did not join the post for which he was selected in November, 1993, therefore, there is no basis, not to appoint the applicant on the post of Postal Assistant and refusal to appoint the applicant on the post was unjust, arbitrary and illegal. In support of his contention, he has referred to the leading case decided by the Apex Court in the country, Excise Superintendent Malkapatnam Vs. K.B.N.Visweshwara Rao & Ors, (1996) 6 SCC 216.

7. On the other hand, the learned counsel for the respondents supported the action of the respondents and argued that there is nothing illegal, arbitrary or unjust in denying the appointment of the applicant on the post of Postal Assistant, in the circumstances mentioned above.

8. We have given thoughtful consideration to the rival contentions of both the parties and also gave respectful consideration to the legal citation as cited by the learned counsel for the applicant.

9. It is not disputed that the name of the applicant was registered with the Employment Exchange, Sawaimadhapur on 6.7.93 and valid upto 6.7.96 but the Employment Exchange Officer, Sawai Madhopur, deleted the name of the applicant from the

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record on the ground that the applicant was given job in November, 1993. No opportunity of hearing/show cause notice was given to the applicant before deleting the name of the applicant from the Register maintained by Employment Exchange Office, Sawaimadhopur. The contention of the applicant has been that in response to his selection in November 93, he did not join the post as it did not suit to him. Had the Employment Exchange Officer given him a show cause notice or opportunity of hearing before deleting the name or communicated to him regarding the action taken, the applicant might have explained the position and the Employment Exchange Officer might not have deleted the name of the applicant from his record and the impugned order dated 3.1.96 might not have passed by the respondents. In Union of India Vs. Laxmichand, 1998 ATC 599, it has been held that if order involved civil consequences and has been issued without affording an opportunity to the applicant to present his case, such an order cannot be passed without complying with audi alteram partem. Admittedly, no opportunity to show cause was given to the applicant before deleting his name from the Register maintained by the Employment Exchange Officer, Sawai Madhopur and before passing the impugned order dated 3.1.96. Therefore, deleting the name of the applicant from the Register maintained by the Employment Exchange Officer, Sawai Madhopur and passing the impugned order dated 3.1.96 is in violation of principles of natural justice.

10. No rule/circular has been produced by the respondents to support their action. Even no reply was filed by respondent No.4, District Employment Exchange Officer, Sawai Madhopur. The recruitment Rules for the post of Postal Assistants have not been placed before us and it has not been made very specific that the applicant must have been registered with Employment Exchange, so as to consider his eligibility for the post although in the advertisement there is a mention to this effect But in view of the decision given in Excise Superintendent, Malkapatnam Vs. K.B.N.Visweshwara Rao, we are of the considered view that every candidates who have applied in response to the advertisement must have been considered and if he is found suitable, he should be appointed. But in this case we notice that the applicant was selected, imparted training for 15 days and thereafter, his name was not considered for appointment and other persons who have taken training with him were appointed, on the ground that his name was not continuing in the Register maintained by the Employment Exchange, Sawai Madhopur. Since the action of the Employment Exchange Officer, Sawai Madhopur, appears to be at the back of the applicant and no rule/circular has been shown/produced before this Tribunal so as to say that a person who selected for employment, his name shall be deleted

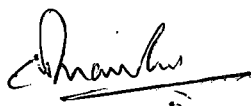
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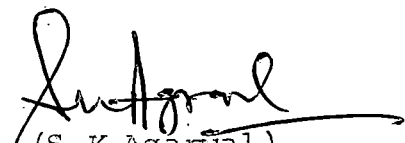
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from the record maintained by the Employment Exchange, even though he might have not joined on the post. Therefore, in the absence of any rules and the principles of natural justice has been violated in this case, we feel that the action of the respondents in issuing the impugned order dated 3.1.96 was unjust and improper. Therefore, the impugned order dated 3.1.96 is liable to be quashed, and the applicant is entitled to the relief sought for.

11. We, therefore, allow this O.A and direct the respondents to appoint the applicant within 15 days from the date of receipt of a copy of this order. The applicant is not entitled to any pay and allowances on the basis of the principle of no work no pay but he is entitled to the seniority of his Batch.

12. No order as to costs.

  
(N.P. Nawani)  
Member (A).

  
(S.K. Agarwal)  
Member (J).