

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

(1) C.A.No.367/95

Date of order: 19/2/95

Hari Mohan, S/o Sh.Bihari Lal Jatt, R/c village Thingla
Mant Town, Sawai madhopur, last employed Extra Departmental
Mail Man in the O/o Sub-Record Officer, RMS, Sawai madhopur
...Applicant.

Vs.

1. Union of India through Secretary to the Govt. of India,
Min. of Communication, Deptt. of Posts, Dak Bhawan, New
Delhi.
2. The Senior Superintendent of RMS, Jaipur Division, Jaipur.
3. Sub-Record Officer, RMS, Jaipur Division, Sawai madhopur.

...Respondents.

(2) O.A.No.373/95

Mohan Lal Yogi, S/o Sh.Mangi Lal Yogi, R/o Village
Thingla, Distt.Sawai madhopur, employed Extra Departmental
Mail Man, O/o Sub-Record Officer, RMS, Sawai madhopur.

Applicant

Vs.

1. Union of India through Secretary to the Govt. of India,
Min. of Communication, Deptt. of Posts, Dak Bhawan, New
Delhi.
2. The Senior Superintendent of RMS, Jaipur Division, Jaipur.
3. Sub-Record Officer, RMS, Jaipur Division, Sawai madhopur.

...Respondents.

(3) O.A No.191/98

1. Hari Mohan, S/o Sh.Bihari Lal Jatt, R/c village Thingla
Mant Town, Sawai madhopur, last employed Extra Departmental
Mail Man in the O/o Sub-Record Officer, RMS, Sawai madhopur
2. Mohan Lal Yogi, S/o Sh.Mangi Lal Yogi, R/c Village
Thingla, Distt.Sawai madhopur, employed Extra Departmental
Mail Man, O/o Sub-Record Officer, RMS, Sawai madhopur.

...Applicants

Vs.

1. Union of India through Secretary to the Govt. of India,
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2. The Senior Superintendent of RMS, Jaipur Division, Jaipur.
3. Sub-Record Officer, RMS, Jaipur Division, Sawai madhopur.

...Respondents.

Mr. Shiv Kumar - Counsel for applicants

Mr. V.S.Gurjar - Counsel for respondents.

CORAM:

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

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

Adjourned.

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

Facts of all these O.As are common and a common question of law is involved in the aforementioned 3 O.As, therefore, these O.As are disposed of by a common order.

2. Applicants Hari Mohan Jatt in O.A No.367/95 and Mohan Lal Yogi in O.A No.373/95 have prayed before this Tribunal to direct the respondents to assign the duties on the post of EDMM in Sub-Record Officer's office at Sawaimadhopur and to allow all consequential benefits including the arrears of salary alongwith interest at the market rate.

3. Applicants Hari Mohan Jatt and Mohan Lal Yogi in O.A No.191/98, have made a prayer to declare the order at Anxx. Al-A as arbitrary and illegal and sought relief to quash and set aside the impugned order and to direct the respondents to take the applicants on duty.

4. Facts of the cases as stated by the applicants are that to fill-up certain vacancies of Extra Departmental Mail Man, the names of eligible candidates were sponsored by the Employment Exchange, Sawaimadhopur, the names of the applicants were also sponsored alongwith others. The applicants were called for selection on 12.12.94 and order of appointment was issued to the applicants on 13.12.94 against the existing vacancies. The applicants took-over charges of the post on 13.12.94. It is stated that the applicants were worked only for one day and thereafter they were not assigned any duties after 14.12.94. It is also stated that the applicants are duly selected candidates after following the due process of law and they have been appointed by the competent authority. They took charge of the post in pursuance of the order of appointment issued by the competent authority but the respondents did not assign duties of the post to the applicants which was *prima facie* arbitrary, illegal and in colourable exercise of powers. It is also stated that once the applicants have taken over the charge of the posts, their services cannot be terminated without following the procedure laid down in the relevant service rules. No order of termination was ever issued, no show cause notice was issued to the applicants before the non-assignment of duties. Now the respondents are filling-up these two posts, therefore, the applicants have filed these three O.As for the relief mentioned above.

5. Reply was filed. It is stated in the reply that respondent No.2 had directed to respondent No.3 not to take the applicants on duty in pursuance of their orders of appointment dated 13.12.94. The facts involved in this O.A are disposed of in the judgment of the learned Mr. Justice Hari Mohan Jatt in O.A No.373/95.

Therefore the respondents are directed to take the applicants on duty in pursuance of their orders of appointment dated 13.12.94.

13.12.94, but respondent No.3 had ignored the directions of respondent No.2, therefore, the applicants cannot take benefit out of an illegal order of respondent No.3. It is further stated that preference was to be given to casual labourers who worked more than 240 days in one calendar year, therefore, respondent No.2 had given directions to respondent No.3 not to allow the applicants on duty, but respondent No.3 ignored the directions. It is further stated that the applicants only worked for a day by virtue of the illegal orders of their higher authority, therefore, the applicants cannot claim any benefit out of the illegal orders. It is also stated that against respondent No.3 action for disobedience is being taken and the appointment of the applicants was purely provisional as per the terms and conditions of the appointment order, therefore, the applicants have no case and these O.AEs are devoid of any merit and liable to be dismissed.

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

7. The learned counsel for the applicant has argued that services of the applicants can be terminated after their joining within a period of 3 years under Rule 6 of E.D. Agents (Conduct & Service) Rules but no such action was taken by the respondents, therefore, nonassigning the duties to the applicants without any rhyme or reason and not paying the salary to the applicants is *prima facie* illegal. On the otherhand the learned counsel for the respondents has argued that respondent No.2 gave directions to respondent No.3 not to allow the applicants to take-over the charges but in spite of this fact, respondent No.3 allowed the applicants by ignoring the directions of his higher authority. Therefore, the applicants cannot take advantage of the illegal action of respondent No.3 and the applicants have no case in this way.

8. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole record.

9. It is not disputed that the applicants were selected on the post of E.D. Mail Man for the office of the Sub-Record Officer, Sawaimadhopur after following the due process of selection and thereafter, the applicants were given appointment on 13.12.94. It is also an undisputed fact that appointment to the applicants was given by the competent authority and they took the charge of the posts in pursuance of the appointment order dated 13.12.94, issued by the competent authority. It is

also not disputed that after 14.12.94, no work was assigned to them.

10. No order of termination under Rule 6 of the E.D. Agents (Conduct & Service) Rules, has ever been issued to the applicants. No notice to show cause or opportunity of hearing was given to the applicants before taking the decision by the respondents not assigning duties of the post on which they were appointed and they have joined in pursuance of the order of appointment issued by the competent authority.

11. Although temporary/provisional appointment of E.D Agents with stipulation that it would be terminable at any time without assigning any reason can be terminated on administrative grounds as per provisions given in Rule 6 of the E.D Agents (Conduct & Service) Rules. But no such order has ever been passed/issued by the competent authority under the said Rules. Appointment of E.D Agent can not be cancelled by an authority higher in rank to the appointing authority. In other words, higher authority than the appointing authority has no power to review the appointment of E.D Agents as it has been held by catena of judgments of different Tribunals. In Tilak Dhari Yadav Vs. UOI & Ors., Full Bench of Allahabad Bench of the Tribunal has reiterated that authority higher than the appointing authority has no power to review the appointment of an E.D.Agent.

12. In the instant case, it is abundantly clear that the respondents did not assign the duties to the applicants without giving an opportunity of hearing to the applicants. No order of termination has ever been issued against the applicants and it also appears that the respondent departmental authorities have tried to fill-up these two posts which is evident from the letter at Annex.A1-A filed with O.A No.191/98. Therefore, we are of the considered view that action of the respondents not to assign any duty to the applicant is *prima facie* illegal, arbitrary and in contravention of the Rules and provisions of the Constitution of India. Since the appointment of the applicants is still subsist or it has not been terminated by any order of termination, therefore, appointing any other person on the post which the applicants are holding is also not sustainable in law.

13. The learned counsel for the applicants also submits that the posts on which the applicants were appointed in pursuance of order dated 13.12.94 are still lying vacant and there is no trouble to take the applicants on duty on the posts on which

they were originally appointed.

After the hearing of the learned counsel for the applicants, we are of the opinion that the applicants are entitled to the relief claimed by them. The learned counsel for the applicants has also informed us that the application for leave to file a writ petition in the High Court of Allahabad has been filed and the same has been accepted and the

(15)

they were appointed. The learned counsel for the respondents did not object the said contention.

14. We, therefore, allow all these 3 O.As and direct the respondents to assign duties to the applicants of the post on which they were appointed vide order of appointment dated 13.12.94 within 4 weeks from the date of receipt of a copy of this order. The applicants are not entitled to salary on the basis of the principles of no work no pay. But the period w.e.f 15.12.94 till the date of rejoining by the applicants will be regularised according to the rules and it will not be treated as break in service for the applicants. The letter at Annex.A1-A filed with O.A No.191/98 is hereby declared as honest. The respondents are directed not to make any appointment on the post of E.D. Mail Man in the office of the Sub-Record Officer, Sawaimadhopur against the applicants as they are already appointed on these posts.

15. With the above directions these 3 O.As are disposed of with no order as to costs.

Sd/-
(N.P. Newahi)

Member (A).

Sd/-
(S.K. Agarwal)

Member (J).

TRUE COPY ATTESTED

Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR

Both parties' copy has been
served in file No. 367185
21/11/2000

R.D.
21/11/2000