
(2001) 05 AHC CK 0152
In the Allahabad High Court
Case No : C.M.W.P. No. 6056 of 2001

Asha Nand Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 504
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 3

Citation : (2001) 2 AWC 1583 : (2001) AWC 1583 : (2001) 2 UPLBEC 1351

Hon'ble Judges : O. Bhatt, J;M. Katju, J

Bench : Division Bench

Advocate : Rakesh Bahadur, T.P. Singh, R.C. Deepak, for the Appellant; S.N. Srivastava, Swaraj Prakash and Subhash Chandra Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for quashing the impugned judgment dated 31.1.2001, Annexure-1 to the petition passed by the Central Administrative Tribunal, Allahabad and for quashing the impugned order/notice dated 19.10.2000, Annexure-9 to the petition and for a mandamus directing the respondents not to interfere with the service of the petitioner on the post of Extra Departmental Branch Post Master, Hemdhapur (Pipraich), Gorakhpur and to pay salary and dues.

2. We have heard learned counsel for the parties.

3. It has been alleged in paragraph 2 of the petition that the post of Extra Departmental Branch Post Master was advertised and the petitioner applied for the same and was duly selected and appointed vide appointment letter dated 29.10.1999 and joined on 1.11.1999.

4. In paragraph 4 of the petition, it is alleged that there was no complaint against his work. In paragraph 5 of the same, it is alleged that respondent No. 4.

Jitendra Nath Srivastava complained to the authorities against the appointment of the petitioner on the post and thereafter filed original Application No. 389 of 2000 before the Tribunal challenging the appointment of the petitioner and prayed that Instead, he be appointed in the vacancy if the petitioner's appointment was set aside. A true copy of the application is Annexure-2 to the petition. The petitioner filed his reply to the application, true copy of which is Annexure-3 to the petition. However, the respondent No. 2. the Sr. Superintendent of Post Office. Gorakhpur, illegally and without giving opportunity of hearing to the petitioner passed the termination order dated 19.10.2000 terminating the petitioner's service.

5. The petitioner challenged the notice dated 19.10.2000 before the Tribunal. A true copy of the application No, 1236 of 2000 is Annexure-4 to the petition. The Tribunal stayed the order dated 19.10.2000 vide Annexure-5 to the petition. The respondents filed counter-affidavit vide Annexure-6 and 7 to the petition. The respondent No. 4 took a preliminary objection that the petition was not maintainable as petitioner had an alternative remedy of review, which was a statutory remedy and had not been exhausted before filing the petition. Hence the petitioner filed a revision before the respondent No. 3 the Post Master General, Gorakhpur, to which a reply was sent by the Assistant Director that the petitioner's revision application had been received and was under consideration. The Tribunal allowed the Application No. 389 of 2000 and dismissed Application No. 1236 of 2000 filed by the petitioner.

6. It is alleged in paragraph 16 of the petition that some ex parte inquiry had been held behind the back of the petitioner and his service was terminated on the ground of some charges which had cropped up during the ex parte Inquiry on the basis of which the notice/order dated 19.10.2000 has been passed. True copy of the notice dated 19.10.2000 is Annexure-9 to the petition. In paragraph 17, it is alleged that the respondents in their counter-affidavit filed an Application No. 1236 of 2000 did not deny the specific averment made by the petitioner that his termination was based on some ex parte inquiry held behind his back. In paragraph 19, it is alleged that vide order dated 18.10.2000 the Director Postal Services reviewed the matter of the petitioner's appointment and cancelled it vide order dated 18.10.2000 (Annexure-10 to the petition). In paragraph 25 of the petition, it is alleged that the advertisement in question dated 5.4.1999 and in particular condition No. 7 of the said notification could not override the statutory rules under the E.D.A. Conduct and Service Rule as also Rule 3 of the Post and Telegraph Manual. In paragraph 26 of the petition it is alleged that wrong and baseless allegations of conspiracy has been made against the petitioner and an F.I.R. has been filed against respondent No. 4. Hence this petition.

7. A counter-affidavit has been filed by the respondent No. 4. In paragraph 4 of the same, it is alleged that the post was advertised and several applications were received in response to the same. Out of them, only three candidates qualified

for the post. In the merit list, the best candidate was the contesting respondent, i.e., Jitendra Nath Srivastava and Vidya Sagar was found to be the second best candidate while the petitioner Asha Nand Singh was found to be third best candidate. The appointment was to be made out of the above three candidates who fulfilled all the conditions. Vidya Sagar the second best candidate had withdrawn from the contest as he was appointed as teacher in a Junior High School. Out of the remaining two candidates, the writ petitioner was selected and given appointment by order dated 29.10.1999. In paragraph 5 of the counter-affidavit, it is stated before the Tribunal the contesting respondent pointed out that Ash Nand Singh [the present writ petitioner) was being favoured by the appointing authority as he was lower in merit than the contesting respondent. In paragraph 6, it is alleged that the respondent No. 4 complained against the appointing authority to the higher authorities that the appointing authority did not act fairly and that he had ignored the merit of respondent No. 4. When no action was taken, the respondent No. 4 filed Original Application No. 389 of 2000 before the Tribunal and challenged the appointment of the petitioner. He also gave details of the investigation made by the authorities in respect of the criminal case against the petitioner. In paragraph 8 of the same, it is stated that the appointing authority in order to save himself from any legal action by the higher authorities for making an illegal appointment of the writ petitioner passed an order of termination simpliciter of the writ petitioner vide order dated 19.10.2000. Against that order, the writ petitioner filed Original Application No. 1236 of 2000 before the Tribunal. In paragraph 11 of the counter-affidavit, it is stated that the appointing authority (respondent No. 2 in the present writ petition) was in collusion with the writ petitioner and hence he did not file counter-affidavit in Original Application No. 1236 of 2000 and hence the interim order in favour of the writ petitioner was extended to 31.1.2001. The respondent No. 4 [contesting respondent) made a request to the Tribunal that the case be finally heard. In paragraph 15, it is stated that the Tribunal considered the detailed arguments of both the parties and rightly dismissed the petition of the writ petitioner and allowed the petition of the respondent No. 4. In paragraph 16 of the counter-affidavit, it is stated that the appointing authority was in collusion with the writ petitioner and was trying to protect and help him. In support of this fact the contesting respondent filed the relevant documents which the petitioner has concealed. Hence a copy of the rejoinder-affidavit has been filed by the contesting respondent in Original Application No. 389 of 2000, which has been annexed as Annexure-C.A.-4 to the counter-affidavit. In paragraph 17 of the same it is stated that the writ petitioner is guilty of concealing of material facts. In paragraph 21 of the counter-affidavit it is stated that the writ petitioner was guilty of an offence and he was prosecuted. A detail of the criminal case has been given in the said paragraphs, in paragraph 26 of the same, it is stated that after the decision of the Tribunal the revision of the petitioner has become infructuous. In paragraph 27 of the same. it is stated that the petitioner's service was terminated in pursuance of the order of the Tribunal and hence, there was no need for further inquiry. We have also perused the rejoinder-

affidavit.

8. The allegation in paragraph 4 of the counter-affidavit that respondent No. 4 was higher in merit than the petitioner has not been specifically denied in paragraph 4 of the rejoinder-affidavit. All that has been said in paragraph 4 of the rejoinder-affidavit is that the appointing authority did not consider the respondent No. 4 suitable for appointment since there was a complaint against him. It appears that the alleged complaint is that there was an F.I.R. against respondent No. 4 filed by one Yogendra Singh. In this connection, the Tribunal in paragraph 7 of its order has observed that the District Magistrate, Gorakhpur in his letter has stated that there was no adverse material on the police record against Jitendra Nath Srivastava. The F.I.R. was in a non-cognizable report u/s 323/504, I.P.C. registered on 18.6.1999. The villagers mentioned his character to be good and register No. 8 shows no offence against Jitendra Nath Singh and he was not a previous convict. The Tribunal has observed that Jitendra Nath Singh was thus certified from character and antecedent angle by the authority at the time when his name was considered for appointment and he fulfilled the conditions stipulated in the notification dated 5.4.1999. Hence the reason for refusing to appoint him was not tenable. Jitendra Nath Srivastava was not convicted by any Court even at the time of appointment of respondent No. 4. Hence, he could not be denied appointment. In fact, the Tribunal has observed in paragraph 8 that Asha Nand Singh was himself proceeded against under Sections 323, 325, 504, I.P.C. and hence on the same logic, he also could not have been appointed.

9. We have carefully perused the order of the Tribunal and find no illegality in the same. The reasoning given by the Tribunal is fair and proper and calls for no interference. Admittedly Jitendra Nath Srivastava was higher in merit than the writ petitioner and he should have been offered appointment.

10. For the reasons mentioned above there is no merit in this petition. It is dismissed accordingly.