

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 567/2002

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This the 4th day of July, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Sushil Babu Dubey S/O Jai Narain Dubey,
Gramin Dak Sewak Mail Delivery,
Haidarpur, Distt. Auraiya. Applicant

(By Shri D.P.Sharma, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Communication,
Department of Posts, New Delhi.
2. Superintendent of Post Offices,
Etawah Division, Etawah.
3. Asstt. Superintendent of Post Offices,
Auraiya. Respondents

(By Shri D.S.Mahendru, Advocate)

O R D E R (ORAL)

Applicant has challenged the termination of his services as Gramin Dak Sewak Mail Delivery (GDSMD) w.e.f. 12.2.2002 vide impugned order Annexure A-1 dated 12.2.2002.

2. The post of GDSMD (formerly Extra Departmental Delivery Agent [EDDA]) fell vacant due to retirement of its incumbent one Shri Jai Narain Dubey due to his invalidation. Applicant's application for appointment on the said post in place of his father, i.e., the previous incumbent was rejected by respondents. Having been authorised to make appointment of an eligible ST candidate on the said vacant post, Assistant Superintendent of Post Offices (ASPOs) invited nominations of the eligible candidates from the District Employment Office. It is undisputed that when no

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application was received from any ST candidate, it was decided by the authorities to make appointment on the said post from amongst OBC candidates. Applicant was appointed on the said post although he had secured 48.16% marks in the High School Examination vis-a-vis the claim of Shri Mahendra Pratap Singh who had secured 55% marks which were the highest among all the five candidates. Applicant was so appointed in preference to Shri Mahendra Pratap Singh because Shri Mahendra Pratap Singh had not submitted proof and certificate of independent source of income. It has been contended on behalf of applicant that later on while the services of applicant were dispensed with, Shri Mahendra Pratap Singh was appointed instead. It is alleged that applicant had not been issued any show cause notice. Applicant has sought quashing and setting aside of Annexure A-1 and reinstatement with effect from the date of termination of his services. Shri Mahendra Pratap Singh had filed MA No.2169/2002 for intervention in the matter. The same was dismissed by this Court on 19.5.2003 as not pressed.

3. Admittedly, the District authorities had later on conducted an enquiry into the complaint of applicant against Shri Mahendra Pratap Singh. It is undisputed that the District authorities found that no such person as Shri Mahendra Pratap Singh S/O Shri Bharat Singh R/O Tatarpur, P.O. Haidarpur (Auriya) existed. Obviously, appointment of Shri Mahendra Pratap Singh against the post vacated by applicant on termination of his services was wrong and obtained by the concerned person by fraud.

4. Although O.M. dated 26.5.1995 as stated by the learned counsel of respondents does not prescribe fulfilment of the condition of income/property for the

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post of EDDA, such a requirement is restricted to a candidate seeking appointment as EDBPM/EDSPM. If the candidature of Shri Mahendra Pratap Singh had been genuine, production of income/property certificate could not have been insisted upon from him under the aforesated instructions and his claim for the post in question would have been fully justified. Now that as there is no such person as Shri Mahendra Pratap Singh and as applicant was the next person in merit, interest of justice warrants that he should be reinstated thereon, as there is nothing against applicant and in merit too he is on top, the fraudulent claim of Shri Mahendra Pratap Singh having become ineffectual.

5. Having regard to the above discussion and in the interest of justice, although the impugned order cannot be set aside in view of the circumstances which obtained at the relevant time, respondents are directed to consider applicant for appointment as EDDA, Auriya on the basis of his merit as if the candidature of Shri Mahendra Pratap Singh never existed. Respondents shall accomplish the above exercise within a period of one month from the date of communication of these orders and pass appropriate orders.

6. The OA is allowed in the above terms. No costs.

V. K. Majotra
(V. K. Majotra)
Member (A)

/as/