

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

original Application No. 289 of 1996

alongwith

original Application No. 1075 of 1996

Allahabad this the 21st day of February, 2003

Hon'ble Mr.Justice R.R.K. Triwedi, V.C.
Hon'ble Maj Gen K.K. Srivastava,Member(A)

O.A.No.289 of 1996

BALRAM YADAV, Son of Late Shri Mohan Lal, Village
Viyari Alias Bijlipur, Lalgopalganj, Allahabad.

By Advocates Shri A.B.L. Srivastava

Applicant

Versus

1. Union of India through the Secretary, Govt. of India cum Director General of Post, Ministry of Communication, Sanchar Bhawan, Sansad Marg, New Delhi.
2. The Director Postal Services, Allahabad Region Allahabad.
3. The Sr.Superintendent of Post Offices, Allahabad Division, Allahabad.
4. Shri Jai Chand, Son of Shri Ram Kishore.

Respondents

By Advocates Shri D.S. Shukla
Shri A. Tripathi

O.A.No.1075 of 1996

Moazzam Husain S/o Shri Azam Hussain, R/o Village & Post Office Piari Urf Bijlipur, District Allahabad.

By Advocates Shri B.Ram
Shri A. Tripathi

Applicant

Versus

1. Union of India through Secretary Posts, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices, Allahabad Division, Allahabad.
4. Shri Balram Yadav S/o Shri Mohan Lal Yadav, R/o Village & P.O. Piari Urf Bijulipur, District Allahabad, presently posted as E.D.B.P.M. Piari Urf Bijulipur.

Respondents

By Advocates Shri S.K. Anwar
Shri A.B.L. Srivastava

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

The question of facts and law in both the aforesaid cases are similar and both the cases can be disposed of by a common Judgment against which parties have no objection.

O.A.No.289/96

The facts of this case are that for filling the vacancy of Extra Departmental Branch Post Master (in short E.D.B.P.M.) of Branch Post Office, Piari Urf Bijulipur, Allahabad, a requisition was sent to the Employment Exchange, Allahabad for sponsoring the names of suitable candidates. In response to the aforesaid Employment Exchange forwarded four names, which are as under;

1. Jai Chandra Son of Ram Kishore
2. Bal Ram Yadav Son of Late Shri Mohan Lal (Applicant).
3. Mohd. Azam Hussain S/o Shri Azam Husain.
4. Krishna Deo Son of S.D. Tewari.

The respondent no.3 selected the applicant for appointment and appointment order was issued in his favour on 30.09.95. He joined the post on 06.10.95. It appears that a complaint was sent to ministry concerned by one of the aforesaid candidates mentioned above, which was forwarded to Director, Postal Services Allahabad-respondent no.2 for action. The respondent no.2 found appointment of the applicant as illegal vide his order dated 24.01.1996. In compliance of the said order, by impugned order dated 28.02.96 appointment of the applicant has been terminated. Aggrieved by this order the applicant has come before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

O.A.No.1075 of 1996

3. This O.A. has been filed by Shri Moazzam Hussain. He was one of the candidates sponsored by the Employment Exchange. However, he was not selected for appointment; first reason was involvement of the applicant in criminal case under Section 147/304/323/ 302 I.P.C. registered as case crime no. 261 A of 1989 at Police Station Nawabganj, Allahabad, the another ground taken was that there was no property in the name of the applicant showing independent income. Aggrieved by his non-selection on the post of E.D.B.P.M. the applicant has approached this Tribunal.

4. Counsel for the applicant-Shri A.B.L.- Srivastava (in O.A.No.289/96) has submitted that

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4. Counsel for the applicant-Shri A.B.L.- Srivastava (in O.A.No.289/96) has submitted that

applicant was duly selected for the post. His name was sponsored by the Employment Exchange and respondent no.2-Director, Postal Services was not justified in cancelling the appointment of the applicant by order dated 24.01.1996. The applicant had already joined the post and termination order can only be passed after giving opportunity to the applicant. Relying on the Judgment of Full Bench of this Tribunal reported in 1997(36) A.T.C. page 539 Tilak Dhari Yadav Vs. U.O.I. & Ors. it is submitted that respondent no.2-Director Postal Services had no authority under rules to review the appointment made by respondent no.3 and for this reason also the order cannot be sustained and is liable to be quashed. Shri D.S. Shukla, learned counsel for the respondents on the other hand submitted that appointment of the applicant was not legal as number of candidates was reduced to one and remaining 3 candidates were found in-eligible and Director Postal Services was justified in cancelling the appointment of the applicant as there was no choice left and the procedure adopted was contrary to the rules.

5. Shri A. Tripathi counsel for the applicant in O.A. No.1075/96 has submitted that the applicant could not be held disqualified for appointment as E.D.B.P.M. until he was convicted by the Criminal Court for the offence. Mere involvement in the case may not be disqualification for selection to the post of E.D.B.P.M. It is also submitted that the applicant had independent property and his income was reported to be of Rs.1000/- per month. The applicant had secured more marks than the respondent no.4 in High School and he had better

merit and ought to have been selected. The selection of respondent no.4 is illegal and arbitrary. Sri S.K. Anwar, counsel for the respondents on the other hand submitted that it is true that in High School applicant had secured more marks than the respondent no.4 but, as he was involved in the serious criminal case, it was not found desirable to select him for the office. It is submitted that under rules applicable, a person involved in such a heinous crime is required to be suspended immediately. Selection of such person could not serve any useful purpose to the department. It is submitted that no illegality has been committed in selecting the respondent no.4.

6. We have carefully considered the submissions made by the counsel for the parties in both the cases.

7. The legal position is well settled that if a person is appointed on a post and he joined, the appointment cannot be cancelled except by giving him a show-cause notice and opportunity of hearing. In the present case, respondent no.2 passed an order dt. 24.01.1996 cancelling the appointment without giving any such opportunity to the applicant-Balram Yadav in O.A.No.289/96. The impugned order dated 28.02.96 ^{was} passed against the applicant, under the dictates of respondent no.2 but, the reason behind was the order already passed by the respondent no.2. ^{The} Full Bench of this Tribunal in case of Tilak Dhari Yadav Vs. Union of India & Ors has already held that the superior authorities ^{has} no power to review and cancel the appointment of E.D.A.

The legal position laid down by the Full Bench is being reproduced as under:

"Rule 6 of P & T Extra Departmental Agent (Conduct and Service) Rules, 1964 does not confer a power on the appointing authority or any authority superior to the appointing authority to cancel the appointment of an E.D.A. who has been appointed on a regular basis in accordance with the rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee without giving him an opportunity to show cause?"

8. The present case is squarely covered by the order in the above mentioned case and in our opinion the applicant is entitled for the relief.

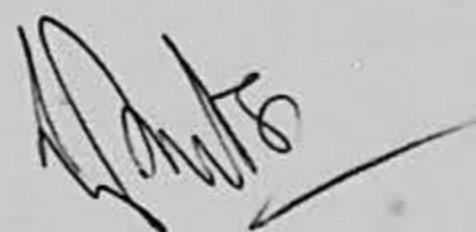
9. Coming to the case of Moazzam Hussain we are of the opinion that he was rightly not selected for appointment for the reasons of his involvement in criminal case of serious nature mentioned above.

Counsel for the applicant placed before us the F.I.R. lodged against the respondent no.4-Balram Yadav which was under Section 323/504/452 and 506 I.P.C. It was registered on 28.07.95 whereas the names were forwarded by the Employment Exchange on 27.7.95. The selection was completed on 30.09.95. Copy of F.I.R. has been filed with the rejoinder. The respondent no.4, thus, could not have opportunity to explain as to what happened in this case, whether any criminal case was registered and investigation was done and case was tried in criminal court or not. F.I.R. was lodged during the selection was made. The incident stated is of 17.07.95 whereas the F.I.R. was lodged after 11 days i.e. on 28.07.95.

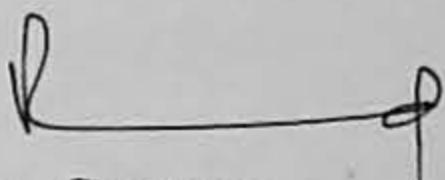
All these reasons are sufficient to ~~engage~~ respondent no.4 and he could not be held unsuitable for appointment as E.D.B.P.M. On the other hand, the applicant was involved in a serious case under Section 147/304/303/ and 302 I.P.C. which was registered as case no.261 A of 1989. Learned counsel for the applicant has not been able to explain whether the applicant has been acquitted in the case even today. The Hon'ble Supreme Court in the case of Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar 1997S.C.C.(L&S) 492 has held that a candidate involved in a criminal case even if found suitable, may be refused appointment on the ground of undesirability. In the present case, the legal position is well known that under Rule 10, a person involved in a criminal case of such a serious nature is required to be suspended immediately. No useful purpose will be served in selecting the applicant for appointment ~~as~~ ^{after} he was to be suspended immediately for being involved in a criminal case under Section 302 I.P.C. Thus, it was not desirable to select the applicant for appointment as E.D.B.P.M. As we have already observed that the position of the applicant-Moazzam Hussain has not been placed before us even today whether he has been acquitted or not, he is not entitled for any ^{any} relief.

10. Counsel for the ~~respondents~~ Shri D.S.Shukla also questioned the appointment of the ~~applicant~~ in O.A.No.289/96 on the ground that selection was invalid ^{number of} as ~~candidate~~ was reduced to one. In our opinion, the submission made is totally misconceived. Infact four persons were considered on merits but, they were not found suitable. In these circumstances, in our opinion, ~~and appointment~~ selection of respondent no.4 was justified.

11. For the reasons stated above, the O.A. No.289/96 is allowed. The impugned order dated 28-02-1996 is quashed. As the applicant is still continuing on the basis of interim order passed on 15.03.1996, he shall be allowed to continue on the post. The O.A. No.1075/96 is dismissed having no merit. There will be no order as to costs.



Member (A)



Vice Chairman

/M.M./