

OPEN COURT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 17th day of April, 1997

Original Application No.815 of 1996

Distt-Bijnore.

CORAM :-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Smt. Chitra Devi,

W/o Sri Sudhir Singh,

R/o Village Bhojpur,

PQ. Bhojpur Distt-Bijnore.

(By Sri MP Singh, Advocate)

. Applicant

Versus

1. Union of India through Director General(Posts)
New Delhi.

2. Post Master General, Dehradun Region,
Dehradun.

3. Superintendent of Post Offices,
Bijnore.

(By Kmi Sadhna Srivastava, Advocate)

. Respondents

ORDER (O r a l)

By Hon'ble Mr. S. Das Gupta, A.M.

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the order dated 4-7-1996 by which the appointment of the applicant as Extra Departmental Branch Post Master (EDBPM for short) was cancelled.

2. The applicant was one of the candidates sponsored by the Employment Exchange in response to a request sent by the respondents for filling up the vacant post of EDBPM, Bhojpur. He was selected and

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He was ^Lselected and appointment on the post. It is stated that he was working with full satisfaction of the superior authorities and there was no blemish in his work and conduct and yet by the impugned letter dated 4-7-1996, respondent no.3 cancelled the appointment of the applicant. The impugned order has been assailed on the ground that the same has been passed in colourable exercise of power as respondent no.2 is interested in accommodating his own man on the post on which the applicant was working. It has also been pleaded that the respondent no.3 is ^{not} the appointing authority of the applicant and yet the order ~~of~~ cancelling ~~the~~ appointment has been passed under the instructions of respondent no.2 and the third plea is that the order is violative of Articles 14 and 16 of the Constitution of India as no opportunity of hearing was afforded to the applicant before passing the impugned order.

3. The respondents have contested the case by filing a counter affidavit, in which it has been brought out that the Employment Exchange had sponsored the names of 5 candidates including the applicant. Notice Notices with Acknowledgement ~~due~~ were sent to all the five candidates on 4-7-1995 directing them to submit their application within 10 days. However, only one registered letter addressed to the applicant was delivered on 6-7-1995 and the rest were returned undelivered in Post Office Bijnore on 17-7-1995 with the remarks that the addresses were not available for one reason or the other. Thus, only one application was received and that was from the applicant. As such, in this circumstance, in order to broaden the zone of consideration, the respondents asked the Gram Pradhan to sponsor the names of more candidates. Accordingly, three more candidates were sponsored and amongst them ^{W.P.} the applicant was selected, although one of the remaining

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candidates had obtained 46.2% marks in the High School, while the applicant had obtained 39% marks in the said examination. It has further been brought out that a complaint was received subsequently from one of the candidates sponsored by the Employment Exchange to the effect that the registered letter of four other candidates were irregularly returned by the Branch Post Master, Bhojpur. In view of this irregularity, a decision was taken to cancel the appointment of the applicant.

4. Admittedly, the applicant was appointed after a process of selection. As such, a right had accrued to her to continue on the post and ~~as~~ such ~~the~~ right could not have been taken away without affording an opportunity. This view, however, will not be tenable if the appointment itself is void ab initio in which circumstance the principles of natural justice requiring giving an opportunity would not arise. This ^{is} settled law which has been consistently followed by the various courts/tribunals.

5. The requirements for appointment as EDBPM are set out in Section III of the EDA (Conduct & Service) Rules. The primary consideration for the appointment is educational qualification. The minimum qualification for EDBPM is Matriculation or equivalent. It has also been specifically stated that the candidates securing the highest marks in the said examination shall be selected. Such candidates, of course, should fulfil other conditions like ^{being} ~~having~~ residents of the area, having adequate income and also being in possession ~~of~~ ^{and} provide proper accommodation for its office. There is no denial by the applicant in the RA that the other candidates, namely, Sri Raj Kumar Singh has secured 46.2% marks in the High School whereas the applicant had secured only 39% marks. Thus, prima facie, the selection of the applicant in ^{preference} ~~comparison~~ to Sri Raj Kumar Singh is in contravention of the instructions contained in Section III of the

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of the EDA(Conduct & Service) Rules. A Full Bench of the Tribunal had held in the case of S.Ranganayakulu that these instructions will have force of statutory law and any violation thereof would render the appointment invalid.

6. The applicant has sought to improve upon his case in the rejoinder affidavit by stating that Sri Raj Kumar Singh does not have proper accommodation for operating the Post Office. There is yet another plea taken that the applicant is a handicapped person.

7. Whether or not Sri Raj Kumar Singh has proper accommodation for operating the Post Office is to be determined by the respondents. A bald allegation that he does not have proper accommodation cannot persuade us to decide against him. As regards the applicant being handicapped person, there is nothing in the Rules which indicate that a handicapped person should be given preference. ~~However, she is not selected on the ground that she did not receive the highest marks in the High School Examination, there would be no contravention of any statutory rules or instructions.~~

8. We have carefully considered the plea that the appointment was cancelled not by the appointing authority but by the higher authority. There are a number of decisions by various Benches of the Tribunal that an authority higher than the appointing authority has no power of terminating the services of E.D.A. in exercise of their review jurisdiction. This is, however, not a case of termination of service but cancellation of appointment. We have already pointed out that when an appointment is in contravention of statutory rules, such appointment is void ab initio and, therefore, it can be cancelled

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by the higher authorities.

9. In view of the foregoing, we find no merit in this case and the application is dismissed accordingly. The parties shall, however, bear their own costs.

[Signature]
Member (J)

[Signature]
Member (A)