(Open Court)

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 22nd day of September, 2003.

Original Application No. 64 of 1997

WITH

Original Application No. 1263 of 1997.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.
Hon'ble Mr. D.R. Tiwari, Member- A.

Umesh Chandra Tiwari S/o Late Lakhan Kishore Tiwari
R/o Vill. Awaga, Post Office- Salempur,
Distt. Deoria, Ex. EDDA, Bankata Sub Post Office,
Distt. Deoria.

.....Applicant in O.A 64/1997.

Counsel for the applicant :- Sri Avanish Tripathi
Sri Bechu Ram

V E R S U S

1. Union of India through Secretary,
M/o Communication (Posts), Sansad Marg,
Parliament House, New Delhi.

2. Chief Post Master General,
U.P. Circle, Lucknow.

3. Senior Superintendent of Post Offices,
Deoria Division, Deoria.

4. Sub Divisional Inspector (Postal),
East Sub Division, Deoria.

5. Chandrama Roy, S/o Sri Bhagwati Roy
R/o Vill. Bankata Sirset, Distt. Deoria.

.....Respondents in O.A 64/1997.

Counsel for the respondents :- Km. Sadhna Srivastava

Chandrama Rai S/o Sri Bhagwati Rai
R/o Vill. and Post- Bankata, Distt. Deoria.

.....Applicant in O.A 1263/1997.

Counsel for the applicant :- Sri S.C. Srivastava

V E R S U S

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1. Union of India through Secterary,
   M/o Telecommunication, D/o Post.
   New Delhi.

2. Deputy Divisional Inspector (Post Offices),
   Eastern Sub Division, Distt. Deoria.

3. Sub Post Master, HSG II, Bankata,
   Distt. Deoria.

.....Respondents in O.A 1263/1997.

Counsel for the respondents :- Km. Snadhna Srivastava

O R D E R (Oral)

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

The questions of facts and law are similar in both the O.As and they can be decided by a common order against which counsel for parties have no objection.

2. The facts, in short, are that Sri Lakhan Kishore Tiwari, who was serving as EDDA in Branch Post Office Bankata, Distt. Deoria died on 27.02.1994 while in service. The applicant in O.A No. 64/96 Sri Umesh Chandra Tiwari was given provisional appointment as E.D.D.A by order dated 05.09.1994 which was subject to the approval of Circle Office. The condition mentioned in the order was as under :-

> " Shri Umesh Chandra Tiwari should clearly understand that his appointment is purely temporary, if ever, it is decided by the C.O, not to approve the appointment, the provisional appointment will be terminated without notice."

Copy of the order has been filed as annexure A-6. The aforesaid engagement of the applicant was terminated by order dated 20.06.1996 on the ground that the family is not considered to be in indigent condition, as all other sons are employees. By another order dated 17.11.1996,

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respondents appointed Sri Chandrama Rai (Respondent No.5) as Extra Departmental Delivery Agent (EDDA), Bankata aggrieved by which applicant filed O.A No. 64/1997.

3. The applicant in O.A No. 1263/1997 Sri Chandrama Rai was given appointment as EDDA on 17.11.1996. His services were terminated by order dated 08.11.1997 under rule 6 (A) and (B) of E.D Agent (Conduct and Service) Rules, 1964.

4. The facts were that the applicant Sri Chandrama Rai had passed high school examination in 1978 with Roll No. 317096. He had shown his date of birth 03.1[illegible].1963 and marks secured by him were 245 out of 500. He had passed in second division. However, in 1991, he again passed High school with Roll No. 922332. In subsequent examination, date of birth mentioned by him was 01.04.1973. Complaint was received about the aforesaid fact. In Employment Exchange, the applicant had relied on marks-sheet of 1991 and his date of birth was mentioned by the Employment Exchange as 01.04.1973. On this ground appointment of Sri Chandrama Rai was terminated, ~~as stated above~~ aggrieved by which he has filed O.A No. 1263/1997.

5. We have heard Sri Avanish Tripathi and Sri B. Ram, learned counsel for the applicant in O.A 64/1997. None has appeared for the applicant in O.A 1263/1997. Km. Sadhna Srivastava has appeared in both the O.As for respondents.

6. Learned counsel for the applicant in O.A 64/1997 submitted that the view taken by the respondents that the family was not considered to be in indigent condition, is not correct. The father of the applicant died on 27.02.1994 leaving behind his widow and 4 sons. Out of 4 sons, two sons

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namely Sri Suresh Tiwari and Sri Vyas Muni Tiwari were employed but they were living separately and their income cannot be traeted to be income of the family of deceased employee and the claim of the applicant for appointment on compassionate grounds has been illegally rejected. He has placed reliance on the judgments of Hon'ble Punjab and Haryana High Court in case of A. Kumar Vs. State of Haryana 2003 (1) ATJ 492, Anwar Farooqui Vs. U.O.I and Ors. 1998 (3) ATJ 386 and R.B. Krishnayappa Vs. Karnatka Electricity Board, Bangalore 1998 (2) ATJ 104.

7. Km. Sadhna Srivastava, learned counsel for the respondents on the other hand has submitted that the father of the applicant was due to retire on 30.04.1994 and he died on 27.02.1994 which is two months before his attaining the age of superannuation and when an employee died in such mature age, the family cannot termed to be in indigent circumstances. All the four sons were major, two sons were employed and there was no other libility. It is submitted that in these facts and circumstances, the view taken by the Central Relaxation Office was justified.

8. We have carefully considered the submissions made by counsel for the parties. Besides the facts that two brothers of the applicant are admittedly in employment, the applicant has also agricultural property from which he claims that he is earning Rs. 600/- per month. The brothers of the applicant are employed though one is in Bihar in Primary Section of Central School and another borther is employed in Co-Operative Suger Mills. Considering all these facts and circumstances, it is difficult to say that the family was in indigent circumstances. Much has been said about the fact that two borthers have been living separately before the death of his father but no evidence

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has been placed before us for accepting such separation. It normally happence in Eastern U.P. that maximum number of family members serve out-side the state of U.P. but they support their family, though living in far away places. This situation cannot be ignored. The cases cited by the learned counsel for the applicant are distinguishable on facts. In these circumstances, in our opinion, the Circle Relaxation Committee has rightly taken the view that the family was not in indigent condition and the order calls for no interference of this Tribunal.

9. The another dispute is about the appointment of respondent No.5 and the applicant in O.A. No.1263/1997. It cannot be disputed that he has passed high school twice. We have perused the mark-sheet of both the examinations which have been annexed with the counter reply. The subject-wise comparison is as under :-

1978			1991		
Subject	Marks	Date of Birth	Subject	Marks	Date of Birth
Hindi	42		Hindi	57	
Math	47	03.07.1963	Math-I	39	01.04.1973
History	58		Science-I	73	
Civics	47		Civics	63	
Sanskrit	51		Sanskrit	63	
			Social Science	66	

10. From the aforesaid it is clear that attempt on the part of the applicant was malafide. Most of the subjects were common in both the examinations and he wanted to take advantage of the date of birth mention in second attempt, with difference about more than 10 years. In the facts and circumstances, the respondents rightly terminated the appointment of the applicant and cancelled the selection. In these circumstances, no interference is called for by this Tribunal.

11. Now, on account of termination of appointment of Sri Chandrama Rai, the vacancy has again arisen and regular selection is required to fill up the same. In these circumstances, the respondents should hold fresh selection from amongst those whose names were forwarded by the Employment Exchange in response to the notification issued in the year 1996.

12. For the reasons stated above, the O.A No. 1263/1997 is dismissed. O.A No. 64/1997 is disposed of finally with direction to respondents to hold the selection again from among those candidates whose names were forwarded by the Employment Exchange including Sri Chandrama Rai whose second mark-sheet of 1991 shall be ignored. As the matter is very old, the respondents are directed to complete the selection within two months from the date of communication of this order and the selected candidate may be given appointment. The respondent No. 5 i.e. Sri Chandrama Rai shall continue till the regularly selected candidate is appointed.

13. There will be no order as to costs.