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Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 08th Day of August, 2000.

Coram: Hon'ble Mr. Rafiq Uddin, Member (J.)

Hon'ble Mr. S. Biswas, Member (A.)

Original Application No. 728 of 1997.

Pankaj Kumar Chaturvedi,
son of Sri A.N. Chaturvedi,
Aged About 24 years
R/O 127/251, W-1,
Saket Nagar,
Kanpur.

. . . Applicant.

Counsel for the applicant : Sri O.P.Gupta, A dv.

Versus

1. Chief Post Master,
Head Post Office, Kanpur.
2. C.P.M.G. U.P. Circle,
Lucknow.
3. Union of India through Secretary,
Ministry of Communication, Government of India,
New Delhi.

. . . Respondents.

Counsel for the Respondents: Kumari Sadhna Srivastava, A

Order (Open Court)

(By Hon'ble Mr. Rafiq Uddin, Member (J.)

By means of the present O.A. the applicant
seeks a direction to the respondents to appoint

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him on the post of Lift-man and allow him to work on the post immediately in pursuance of letter dated 28.2.1997. The applicant also seeks a declaration that the post of Lift Operator remained alive even after 28.2.97 due to engagement of one Sri Dharam Deo Sharma on the same date and the action of respondents depriving of the applicant from appointment on the selected post is illegal, arbitrary and malafide.

2. The name of the applicant was sponsored by Employment Exchange for the selection of Lift Man in the Head Post Office, Kanpur. The applicant on the basis of requisition sent by the Employment Exchange submitted his application along with necessary documents on 6.1.97. The applicant was called for interview vide letter dated 24.2.97 and the same was held on 26.2.97. The applicant was also informed vide letter dated 28.2.97 by Chief Post Master Kanpur, (Respondent No.1) that the applicant has been selected for the post of Lift Man and he should appear in office along with all original documents. In pursuance of the aforesaid letter, the applicant appeared before the respondent No.1 on 3.3.97 along with original documents. The applicant was also directed to appear before C.M.O. for medical examination. The applicant was medically examined on 11.3.97 who sent his report to the Appointing Authority on the same date. The police verification of the applicant was also got done and the report was sent in the month of March 1997 by the authority

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concerned. The applicant, as such is entitled to be appointed on the post of Lift Man. The applicant however, ^{R did} was not issued any appointment letter inspite of continuous contact with the respondent No.1. The applicant was not informed about the delay in issuing his appointment letter. Consequently the applicant submitted representations dated 29.4.97, 3.5.97, 21.5.97, 14.5.97 and 28.5.97 to higher authorities, but without any result.

3. The applicant has further stated that one Sri Dharam Deo Sharma who was working as Wireman in the department was allowed to work against the post of Lift Operator from 28.2.97.

4. We have heard the arguments of the learned counsel for the parties and perused the record.

5. The learned counsel for the respondents on the basis of their pleadings has contended that since the requisite formalities for appointment on the post could not be completed before 28.2.97 and the sanction of the post expired on 28.2.97 itself, therefore no appointment could be made for want of sanction which is accorded by the Department of Posts. It is also contended that the ban on the creation of new posts still continues. It is further stated that as per recommendations of the Fifth Pay Commission, the pay scales and conditions of service for the post of Lift Man/ Lift Operator are to be revised, therefore, fresh notification/advertisement to the Employment Exchange is required in the light of revised rules

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hence no appointment can be made to the post of Liftman for want of sanction of post.

6. The main contention of the learned counsel for the applicant is that since one Sri Dharam Deo Sharma was ordered to work on the post of Lift Man from 28.2.97, it is clear that the respondents wanted to continue the sanction of the post of Lift man. The respondents committed illegality by appointing Sri Dharam Deo Sharma on the post of Liftman and deprived ^Q the applicant from the appointment on the said post. However, we find from the order dated 28.2.97 (Annexure A-9) that it is not an appointment letter of Sri Dharam Deo Sharma on the post of Lift Operator because it merely states that Sri Sharma is ordered to work as Lift Operator against newly sanctioned post till further orders. It is also noticed that subsequently vide order dated 26.7.97 (Annexure A-10) the engagement of Shri Sharma as Lift Operator was cancelled because the post of Lift Operator stood as 'Not created' and lapsed and all the process in this connection were cancelled.

7. The learned counsel for the applicant has also relied on a decision of the Apex Court namely Purshottam Vs. Chairman M.S.E.D. 1999 S.C.C. (L. & S.) 1050. In this case the Apex Court on the facts and circumstances of the case directed the respondents where to appoint the appellant/ due to erroneous decision ^{one R} of the respondents some-else was appointed on the post and the contention of the respondents that there

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was no vacancy and the term of the panel had already expired was rejected because appellant was not at fault if ^{one} some-else was posted on the post due to erroneous decision of the respondents. As such the right of the appointment was taken illegal. In the present case, however, we find that the respondents have not denied the correctness of the selection of the appointment to the post in question. They have merely stated that since the sanction to the post had expired on 28.2.97 and the sanction was not extended by the competent authority, therefore, it was not possible to ^{2. as above} ~~select~~ candidate namely the applicant to this post.

8. As regards the engagement of Sri Dharam Deo Sharma to the post, it is admitted case that on 28.2.97 the formalities necessary for appointment of the applicant to the post were not completed and he was simply ordered to work as Lift Operator. Sri Dharam Deo Sharma was working as Wireman in the same office and it appears that for a temporary and stop-gap arrangement till the applicant on the post. Therefore the engagement of Sri Sharma was not any hinderence in the appointment of the applicant to the post provided the same was available.

9. The learned counsel for the applicant has contended that the salary of Sri Dharam Deo Sharma during the period from 28.2.97 to 26.7.97 was paid as Lift man and hence it is proved that the post of Liftman was available even during that period and the applicant should have been appointed on the post. We do not find any force in the arguments because

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it is a clear case of the respondents that no sanction of the post of Liftman is available after 28.2.97 and there is no material to prove otherwise. Therefore ^{claim} name of the applicant for appointment as Lift man is not tenable. Mere selection does not confer any right to the post.

10. For the reasons stated above, we do not find any merit in the O.A. and the same is dismissed without order as to costs.

S. Basu
Member (A.)

D. Chakraborty
Member (J.)

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