

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH:  
ALLAHABAD

Original Application No.285 of 1998.

ALONGWITH

ORIGINAL APPLICATION NO.184 OF 1997

Allahabad, this the 21<sup>st</sup> day of April, 2006.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Hon'ble Mr. A.K. Singh, Member (A)Rajendra Pal Singh,  
S/o Sri Sampat Singh,  
E.D.D.A.,  
Pilkhana Post Office,  
District - Aligarh, U.P.

....Applicant in O.A. No. 285/98

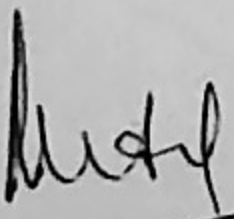
(By Advocate : Shri S.K. Om)

Versus

1. The Union of India, Through the Secretary (Posts), Ministry of Communication, Govt. of India.
2. The Director General (Posts), Dak Bhawan, New Delhi.
3. The Chief Postmaster General, U.P. Circle, Lucknow.
4. The Senior Supdt. Of Post Offices, Aligarh.

....Respondents in O.A. No. 285/98.

(By Advocate : Shri S. Singh)

O.A. No.184/97.Ashok Kumar Sharma  
S/o Sri Makhan Singh Sharma,  
Extra Departmental Pacru (E.D Pacru)  
in the office of  
Superintendent of Post Office,  
Aligarh R/o 19/280 Gambhirpur, Aligarh.



....Applicant in O.A. No. 184/97

(By Advocate : Shri S.K. Om/ Sri R. Verma)

Versus.

1. The Union of India, Through the Secretary,  
Ministry of Posts and Telegraphs (Communication)  
New Delhi.
2. The Director General (Posts), New Delhi.
3. The Chief Postmaster General, U.P. Circle,  
Lucknow.
4. The Post Master General Agra Region, U.P. Circle  
Agra.
5. The Senior Supdt. Of Post Aligarh.

....Respondents in O.A. No. 184/97

(By Advocate : Shri S. Singh)

#### O R D E R

By Hon'ble Mr. A.K. Singh, A.M.:

OA No. 184 of 1997, filed by one Ashok Kumar Sharma and OA No.285 of 1998 filed by Rajendra Pal Singh involve common points of law and identical facts and hence are being disposed of through one common order. Both the OAs have been filed against the decision of Respondent No.4 cancelling the selection of the applicants for the post of Postal Assistant vide order dated 27.1.1997.

2. Brief facts of the case are that the respondents issued an advertisement for selection to the post of Postal Assistant in Aligarh Region, Aligarh on 11.4.1996 inviting application from eligible

*[Handwritten signature]*

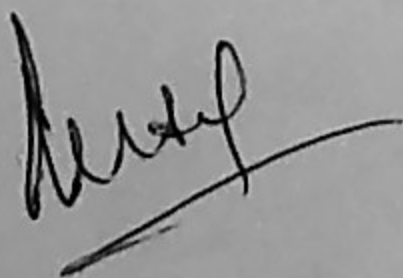


candidates. As these applicants were Extra Departmental Packers and consequently departmental candidates and 50% of the posts were to be filled in from amongst the departmental candidates, they were fully eligible to appear in the aforesaid selection. Accordingly, they appeared at the type test and as well as computer tests and were also interviewed on 20.8.1996 as per instructions laid down for such selections.

3. The applicants were declared successful at the aforesaid tests vide order dated 6.9.1996 and accordingly were sent for training of 75 days at Postal Training Centre at Saharanpur. While they were undergoing, training their services were suddenly terminated w.e.f. 3.2.1997 as per a communication received from Senior Superintendent of Post Offices, Aligarh, dated 27.1.1997.

4. Being aggrieved by the aforesaid decision of the respondents, applicants named above (herein to be referred to as 'applicants') have filed the present OA, on the following grounds :-

- (i) No show cause notice was issued to the applicants before passing of impugned order of cancellation of their





appointments to the above mentioned post and hence the same is bad in law.

(ii) Respondents in cancelling the appointment of the applicants, have relied on the guidelines that "only those candidates will be selected who acquire 10% less marks vis-à-vis the marks obtained by the last successful candidate in the previous open Direct Recruitment category concerned." If in the last open Direct Recruitment held in 1995, the percentage of marks obtained by the last successful candidate was 53.52%. Hence, the bench mark for the present selection in the case of departmental candidates was fixed at 43.52%. Since the applicants in both OAs namely Shri Ashok Kumar Sharma and Shri Rajendra Pal Singh could not achieve the bench mark so fixed their appointment were cancelled by the Chief Post Master General, Lucknow, on review, which was not correct in law. Applicants place reliance on the judgment dated 2.9.1994 passed in OA No.700 of 1991 decided by Calcutta Bench of Tribunal in the case of Deepak Kumar Das Vs. Union of India and others, wherein our learned brothers have held that even if any procedural irregularity

Arup



occurred in any selection and applicant had already been appointed, then it is incumbent on the respondents to give a show cause notice before cancelling their selection and in the absence of such a notice, the cancellation of appointment would be illegal. Since the facts of the present case are similar and no such notice has been given to them, the applicants argue that the cancellation of their appointment by the respondents is bad in law.

(iii) The applicants further argue that they have also been discriminated vis-à-vis, one Veerpal Singh, who was junior to them as per select list as his name figured much below them in the panel of selection and had also not qualified in the written test by securing the bench mark so fixed the respondents waived this condition without good and sufficient reasons. But they did not extend the same consideration to them despite repeated representations made to that effect. Hence, this action of respondents in discriminating them against a similarly placed person is illegal, arbitrary and violates Articles 14 and 16 of the Constitution of India.

Amr



Accordingly, the applicants pray for the following relief(s) :

- (1) To quash the impugned order of termination/cancellation of the appointment of applicants dated 4.12.1996 and 27.1.1997 of Respondent Nos. 3 & 4 i.e. of Reviewing and Appointing Authorities respectively.
- (2) To direct the respondents to post the applicants as Postal Assistants with consequential benefits from the due date i.e. the date of termination/cancellation of their appointment (w.e.f. 3.2.1997).
- (3) To direct the respondents to pay the cost of this petition.

Or

- (4) To grant any other relief as this Tribunal considered proper and just in the circumstances of this case.

5. Respondents, on their, part have opposed the OA on the following grounds:

- (1) Though the petitioners, who are Extra Departmental Agents and were fulfilling the condition for recruitment to Postal Assistant Cadre, against Departmental Quota and had also passed the prescribed tests and were declared successful vide memo dated 6.9.1996 in the recruitment to the cadre of Postal Assistant and accordingly were sent for training, their selection was found erroneous, on review, by the Chief Post Master General, U.P. Circle, Lucknow and hence on his direction respondent NO.4 cancelled the appointment of the applicants vide order dated 4.12.1996. Copies of the aforesaid Memo were endorsed to other authorities also including the Principal,

*[Handwritten signature]*



Postal Training College Saharanpur for arranging relief of the applicants from the Postal Training Centre Saharanpur. On relief from the aforesaid Training Centre, on 3.2.1997, the applicants rejoined their duty at their present posts as Extra Departmental Delivery Agent and are working in that position since then.

- (2) That since the impugned order has no relation with the conduct of the applicants; there is no legal requirement for issue of any show cause notice to them before cancellation of their appointments.
- (3) Respondents concede that the applicants preferred a representation against the impugned order of cancellation to Post Master General and Director General, in which they had also desired to know the reasons for cancellation of their appointment but received no response from these authorities, as it was not considered "desirable".
- (4) That in the case of Shri Veerpal Singh, the bench mark was waived by Respondent No.3, "as he belongs to preferencing community while the applicants belong to other community."

On the basis of the above, respondents submit that the OAs in question are devoid of merits and accordingly should be dismissed.

Handwritten signature

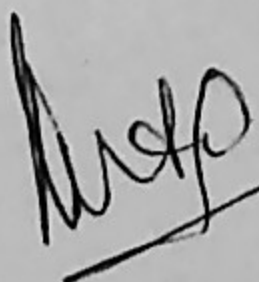


6. The applicants as well as respondents were heard in person through their respective counsel on 4.1.2006 and were also allowed to file their written submissions. In their oral hearing as well as in their written submissions, learned counsel reiterated their arguments and submissions made in their original application and counter affidavit respectively.

7. We have given our thoughtful consideration to all facts and circumstances of this case, the argument advanced by both sides and have also perused the records.

8. We find that the respondents have clearly admitted the averments made by the applicants when they state:-

The petitioners appeared in the examination and was (were) declared successful vide memo dated 6.9.1996 for recruitment to the cadre of Postal Assistant in Aligarh Division against outsider quota and the result was communicated to the petitioners including other successful candidates. The petitioners alongwith other candidates was (were) ordered to be attached to Aligarh Head Office for Practical Training of 15 days w.e.f. 17.12.1996 to 21.12.1996 and after completion of this training, were ordered to attend the theoretical training to be imparted at P.T.C. Saharanpur from 6.1.1997. While





petitioners were undergoing this training at P.T.C. Saharanpur, they were informed vide memo dated 27.1.1997, that after review of the result of the aforesaid examination by the Chief Post Master General, U.P. Circle, Lucknow, the selection of the petitioners were found erroneous and accordingly their appointment for the post of Postal Assistant was cancelled vide memo dated 4.12.1996 of Senior Superintendent Post Offices, Saharanpur. A copy of the memo was also sent to Principal Postal Training Centre for relief of the applicant from their post forthwith.

Accordingly the petitioners were relieved on 3.2.1997 from the Training Centre Saharanpur. The petitioner, after being relieved from Training Centre joined their duties at their present post as Extra Departmental Delivery Agent, Pilkhana, and are working there since then.

9. Respondents have made these averments in their counter affidavits in respect of both the applicant namely Shri Ashok Kumar Sharma in O.A. NO.184 of 1997 and have made common points in support of their cases.

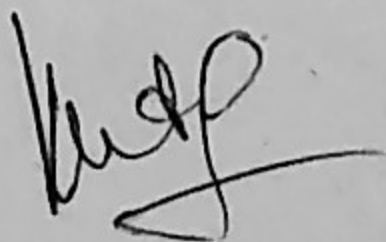
10. From the version of the respondents we find that they have not advanced any convincing reason for cancellation of the appointment of the applicants specially when an altogether different view was taken in respect of a similarly placed person. Moreover when they were eligible for the post and were selected for appointment as Postal Assistant by the Competent

Kudip



Authority after they successfully completed at the selection there does not appear to be any valid reason or justification for cancellation of their appointment subsequently. The counter affidavit of the applicant is completely ~~salient~~ on this point. Even when the applicants made representations to Director General Post & Telegraphs, New Delhi vide their letters dated 12.9.97 & 22.9.97 and copies of the same were also duly endorsed to Chief Post Master General Lucknow for redressal of their grievances as well as to know the reasons for cancellation of their appointments, there was no response from them. The action of respondents in cancelling the appointment of the applicants without any valid reasons is clearly arbitrary. In the case of Praveen Singh Vs. State of Punjab and others (reported in 2001 (2) SLJ 275 SC) their Lordship of Supreme Court observed that administrative or quasi-judicial authority empowered to make selection and appointment although is free to adopt the procedural aspect, cannot be allowed to act contrary to fair play, good conscience and equity. Arbitrariness is impermissible under Article 14 of the Constitution of India. Their Lordships have further held that 'Arbitrariness being opposed to reasonableness is an antithesis to law'.

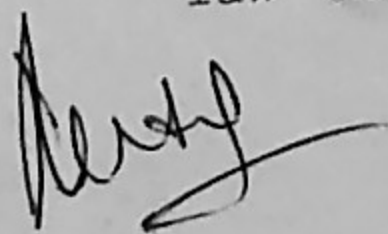
11. Hence impugned order of cancellation of appointment of the applicants without assigning any valid





reasons for the same is not only arbitrary but also bad in law. Hence it does not stand the test of judicial scrutiny. It has been held by the Hon'ble Supreme Court of India in S. Govind Raju Vs. KSRTC and another (Reported in AIR 1986 SC page 1680) that "once a candidate is selected and his name is entered in the select list for appointment in accordance with the regulations (he) gets a right to be considered for appointment as and when vacancy arises. Removal of name from the select list has serious consequences. He forfeits his right of <sup>consideration for</sup> employment (to the post) in future. Principles of Natural Justice will be attracted and he will be entitled for an explanation. The Apex Court has held the same view in another case of Sarwan Kumar Jha Vs. State of Bihar decided on 13.11.1990 {reported in (1991) 16 ATC - 937 SC}.

12. In this case, the applicants' names not only figured in the select list for appointment to the post of Postal Assistant, but they were only appointed to the post and accordingly sent for training. The orders of appointment consequently became operative after the applicant joined the service. They were also eligible for appointment under the rules, for the post in question and that is why they were allowed to sit for the aforesaid examination. Hence they acquired a vested right to hold the post. It is an established law that once a Person is empanelled for appointment





and subsequently appointed to the post, he acquires a vested right to hold the post to which he was entitled. The impugned orders of cancellation of their appointment without complying with the principles of natural justice, like issue of a show cause notice and without giving them an opportunity for personal hearing etc. is thus violative of the principles of natural justice and hence not sustainable in law. Reliance is placed in this regard on Supreme Court decision in the case of Sarwan Kumar Jha Vs. State of Bihar (Reported in (1991) 16 ATC-937 SC)

13. As regards the allegation of discrimination leveled by the applicants, we find that applicants have certainly been discriminated vis-à-vis one Veerpal Singh, another candidate, who was similarly placed. There is no explicit explanation for doing so. However respondents have dropped some hints in Para 22 of their counter affidavit dated 24<sup>th</sup> of May 1998 in O.A. No.285 of 1998 (Rajendra Pal Singh Vs. Union of India and others). Para 22 of their counter reads as under:-

"22. That in reply to paragraph 5(6) of the petition, it is submitted that the case of Shri Beerpal Singh was decided under the orders of respondent NO.3, (Chief P.M.G., Lucknow) as he belongs to preferencing community while

*[Handwritten signature]*

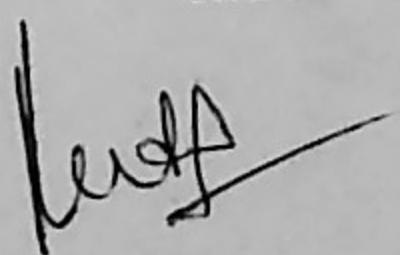


the petitioner belongs to other community." Nothing can be made out of the aforesaid averment. Though not specifically brought out in their counter affidavit, by the respondents, the applicants refer to condition No.2, of advertisement dated 2.4.1996, as one of the possible grounds for cancellation of the aforesaid orders of appointment of the applicants. Condition No.2 which, reads as under :-

"केवल वे अतिरिक्त विभागीय एजेंट ही विचार करने के लिये पात्र होंगे जिन्होंने पिछली बार विचार किये बाहरी उम्मीदवारों की तुलना में कम से कम 10 प्रतिशत अंक कम प्राप्त किये हों अर्थात् यदि पिछली भर्ती में चुने गये अन्तिम बाहरी उम्मीदवार ने 75 प्रतिशत अंक प्राप्त किये हों तो ऐसे अतिरिक्त विभागीय एजेंटों के मामले में विचार किया जायेगा जिन्होंने कम से कम 65% प्रतिशत अंक प्राप्त किये हों।"

According to this condition, "only those candidates will be selected who acquire upto 10% less marks vis-à-vis the lowest marks obtained by the last successful candidates in the open Direct Recruitment held, previous to the aforesaid recruitment." Since the applicants failed to obtain the required bench marks, as per the above guideline, their selection was found erroneous by the Chief Post Master General, Lucknow i.e. respondent No.3, and on his direction, respondent No.4 namely Senior Superintendent of Post Offices, cancelled the order of appointment of the applicants, even after the same had become operative as the applicants had already joined their training in Postal Training College, Saharanpur.

It is on record that in case of Veerpal Singh, the Chief Post Master General relaxed this condition,





without giving any adequate or valid reasons for the same. The Memo No.SSP/Con/96 dated 28.11.1997 issued by the Superintendent of Post Offices, Aligarh, in this regard, reads as under :-

"Whereas in pursuance of C.P.M.G., U.P. Circle, Lucknow memo No.Rectt/M-12/PA-SA/Agra/96/6 dated 4.12.1996, the result of Shri Veerpal Singh (Roll No.ALG-60) was cancelled vide this office memo No.SSP/Con/96 dated 27.1.1997".

The memo under reference further states that after review of the result of the said candidate Shri Veerpal Singh at Directorate level "and in view of the instructions contained in Chief PMG, UP Circle, Lucknow DO letter No.Rectt/M-12/PA-SA/Agra/96/6 dated 24.11.1997, the orders for cancellation of selection of Shri Veerpal Singh (Roll No. ALG-60) issued vide this office memo of even number dated 27.1.1997 is hereby cancelled with immediate effect." (Memo No. Rectt./M-12/P.A-S.A/Agra 96/6 dated 27.1.1997.

14. The above order, clearly, is a non speaking. No reasons are recorded therein for condoning/relaxing the requirement of condition NO.2 for recruitment of Postal Assistants as notified vide advertisement dated 2.4.1996. Hon'ble Supreme Court in Satyen Mukherje's case has clearly held that a non-speaking order is no order at all in the eye of law.

15. It is, therefore, established on record that the above order is arbitrary and hence does not stand the

*[Handwritten signature]*



test of judicial scrutiny. The respondents have tried to cover in the short comings in the order in para 22 of their counter affidavit in O.A. No.285 of 1998, which is equally non-speaking. Moreover, it is a settled law, that deficiencies in an order cannot be made up by filing a counter affidavit. The above order discriminating applicants vis-à-vis, Veerpal Singh in as much as preferential treatment has been extended to the latter without any valid and sufficient reason.

16. The relaxation of condition NO.2 in the case of Veerpal Singh also suggests that this condition is also not inflexible and hence, the applicants who were similarly placed were entitled to the same treatment and consideration.

17. As such, we hold that impugned orders of cancellation/termination of the appointment of the applicants to the post of Postal Assistant are grossly violative of Articles 14 and 16 of the Constitution of India. Article 14 reads as under:-

***"The State shall not deny to any person equality before the law or the equal protection before the laws within the territory of India".***

This obviously means that State will observe the principles of equality amongst equals in all matters.

18. Impugned orders also infringe Article 16 of the Constitution, which lays down:

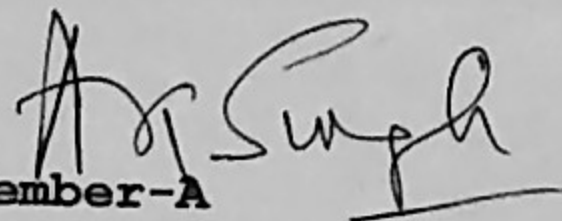
*Heop*

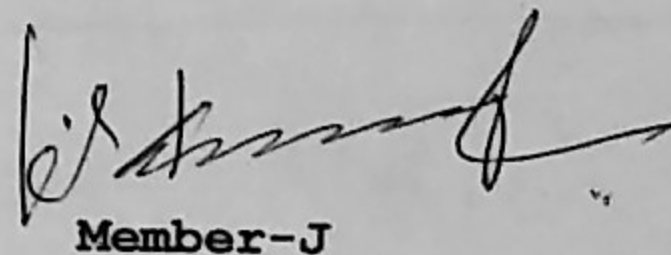


"16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State...."

Since the impugned orders, clearly infringe Article 14 and 16 (1) of the Constitution of India, the same are accordingly quashed and set aside. Consequently respondents are directed to restore the appointment of the applicants to the post of Postal Assistant with effect from the date of their joining the training course in pursuance to memo No. B1/Gen/-34/Trg.-Class/IV dated 20.12.1996. Applicants will also be entitled for all consequential benefits including seniority, promotion etc. on reinstatement, which are available to a regular employee in that grade.

19. Both the O.As are accordingly allowed with no order as to costs.

  
Member-A

  
Member-J

Manish/-