

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1128 of 1998

Allahabad this the 01st day of September, 2004

Hon'ble Mr. A.K. Bhatnagar, Member (J)
Hon'ble Mr. D.R. Tiwari, Member (A)

Uma Shankar S/o Shri Jai Nath, R/o Village Lalpur, Post Office
Jalalpur, District Jaunpur.

Applicant

By Advocate Shri Bechu Ram

Versus

1. Union of India through its Secretary Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Superintendent of Post Offices, Jaunpur Division, Jaunpur.
3. Sub Divisional Inspector of Post Offices, Kerakat Sub Division, Jaunpur.

Respondents

By Advocate Shri Amit Sthalekar

ORDER (Oral)

By Hon'ble Mr.D.R. Tiwari, Member(A)

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing of the impugned order of cancellation by which the appointment of the applicant was cancelled on the post of E.D.D.A., Jalalpur. He has

further prayed for quashing of the impugned termination order Memo No. A/EDDA/Jalalpur dated 06.08.1998 (annexureA-1), by which the services of the applicant have been terminated.

2. Briefly stated the necessary factual matrix to decide the controversy is that on the retirement of regular incumbent, the post of E.D.D.A. Jalalpur fell vacant. The respondent no.3 advertised the said post and call names of the suitable candidates from the Employment Exchange. The Employment Exchange sponsored five names of suitable candidates, who fulfill the requisite qualification for the said post but only two persons applied for the said post within the stipulated period. The respondent no.3 as per the provisions of E.D.As.(Conduct & Service) Rules, 1964 found that the element of competition was remote, so he invited application from the open market by general notification dated 29.01.1998 (annexureA-2). Later on it was found that preference was to be given to a candidate of S.C./S.T. community and accordingly respondent no.3 issued the corrigendum dated 11.02.1998 by which it was specifically mentioned that the post is reserved for S.C./S.T. community. This was done in accordance with the instructions contained in D.G's letter dated 21.08.1997 (annexureA-5). The applicant is High School passed and the certificate is at annexure A-7. He had secured 441 out of 650 and passed Junior High School examination in Ist division (annexureA-8), and in High School, which is a preferential qualification he secured 319 out of 600(annexureA-9). After taking into account all the descriptive particular relating to his age, educational qualification and residential proof, he was adjudged most suitable and meritorious candidate and he was appointed to the post of E.D.D.A. Jalalpur Kerakat, Jaunpur and took charge on 04.04.1998 (annexureA-6). Since then he had been working very satisfactorily but all of a sudden on 06.08.1998 respondent no.3 took the charge of said post from the applicant and obtained his signatures on the charge report forcefully. The action taken by respondent is illegal, unjust and improper.(AnnexureA-15).

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3. The applicant has assailed the impugned order(annexure-1) on multiple grounds mentioned in paragraph no.5 and its sub paragraphs. The main ground may be stated that the cancellation order passed by respondent no.2 is illegal and arbitrary, it is contrary to the relevant service rules of E.D.As(Conduct and Service) Rules, 1964. The termination order issued by respondent no.3 at the behest of the higher authority is equally illegal, unjust and improper. It has been contended that this has been done without any show cause notice and without holding any inquiry and no opportunity of hearing was provided to the applicant. It has been further contended that appointment of the applicant has been made on regular basis after adopting procedure prescribed under law and rules. It has been submitted that impugned order dated 06.08.98, terminating the services of the applicant is contrary to provision of Article 14 and 16 of the Constitution and it also contravenes the principle of natural justice as respondents no.2 and 3 have not any reason for cancellation/termination of services of the applicant.

4. The respondents on the other hand have resisted the claim of the applicant by filing a detailed counter affidavit. They have submitted that the Employment Exchange was requested to sponsor the name of minimum 3 and 5 candidates fixing last date of receipt of nomination before 28.11.1996. List of 5 candidates mentioned in paragraph no.5(a) of the counter affidavit was received. Accordingly, registered notices were issued to all candidates. However, registry addressed to Shri Vijay Kumar and Shri Toofani were received back on 21.01.1998 with remarks "Bar Bar Jane per nahi milte", "Vapas and Praptkarta Bombay rahta hai" and the registered letter addressed to Shri Suresh Kumar was returned back in March, 1998 with remarks "Bar Bar Jane Per Nahi Milte". Since on the basis of only 2 candidates, appointment process cannot be completed, S.D.I. Kerakat invited applications from open market on 29.01.1998 so as to reach latest by 28.02.1998. It was mentioned in the open advertisement that S.C./S.T. and O.B.C.



candidates will be preferred if they fulfilled all the conditions for the post, then 14 applications including that of the applicant were received and the applicant was appointed vide Memo No.A/Jalalpur dated 04.04.1998 after completing all the formalities required.

5. They have further submitted that a representation of Shri Vijay Bahadur Singh against this appointment letter was received in the Office of respondents on 13.04.1998 and the file relating to appointment was called from S.D.I. for disposing the said representation. An inquiry was held for this purpose and it was found that the remarks of Postman given on the 3 registered letters were not genuine and it was decided that the appointment should have been made from the first list received from the Employment Exchange and the S.D.I. before canceling the list and calling for fresh applications from open market should have checked up the genuineness of remarks. It was found that 3 candidates mentioned above were residing there and the entire process was vitiated and the Postman has played mischief. Therefore, appointment made vide memo dated 04.04.1998 was ordered to be cancelled and S.D.I. was directed to make fresh appointment calling for fresh applications from the Employment Exchange. They have further argued that termination of services is a termination simplicitor and the rules provided in this regard have been followed. They have invited attention to proviso to Rule 6 B of E.D.As.(Conduct and Services) Rules. They have also invited our attention to letter dated 13.11.1997 annexed with counter affidavit of D.G.(Post) which invest the power in superior or reviewing authority to cancel the irregular appointment and make fresh appointments. It is also provided in the same letter that cases of erroneous appointments should be viewed with serious concern and suitable disciplinary action should be taken against the officers and staff responsible for such appointments, and while do so the appointing authority will ensure that a proper show cause notice is issued to the E.D.Agents and his representation, if any, is forwarded to the next

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higher authority for taking it into account before passing the final orders. As such, respondents have pleaded that the order canceling the appointment is valid and legal, and the O.A. deserves to be dismissed.

6. We have heard at length the counsel for both the parties and perused the pleadings.

7. During the course of arguments, counsel for the applicant placed reliance on the following Judgments:-

- (i) 1991 (1) A.T.J. 455 (C.A.T. Madras) V. Antony Selvaraj Vs. U.O.I. & Others.
- (ii) (1997) 36 A.T.c. 539 (Full Bench) C.A.T. AD Tilak DhariYadav Vs. Union of India.
- (iii) 2002(3) A.T.J. 104 (CAT Bangalore) Shri Ravi S Bankar Vs. Superintendent of Post Offices, Haveri & others.
- (iv) 2002(1) A.T.J. 664(CAT Mumbai) Shri Sanjay Vasantryao Hage Vs. Union of India and others.
- (v) 2002 S.C.C. (L&S) 1128 Jaswant Singh & Others Vs. State of M.P. & others.

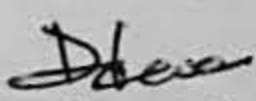
8. In view of these decisions, counsel for the applicant has argued that the case is fully covered by the Full Bench Judgment of this Tribunal in the case of Tilak Dhari Yadav(supra). The Judgment is to the effect that no authority administratively higher in rank than the competent appointing authority has power to review the appointment, which has been made after following the prescribed procedures.

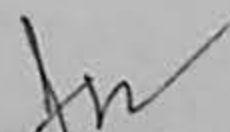
9. Counsel for the respondents has relied on the Executive instructions dated 13.11.1997 and has contended that there is no illegality in cancellation, and termination of services of the applicant is just and proper. They have also submitted that the action taken by the respondents are in the nature of termination simplicitor and there is no need to hold an inquiry in this regard.

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10. The crucial question, which falls for consideration, in the facts and circumstances of the case, is validity of the impugned order. The contention of counsel for the respondents that it is a termination simplicitor cannot be accepted in view of the fact that they have conducted the inquiry regarding delivery of registered letters to 3 candidates behind the back of the applicant. Another ground of the respondents that proper procedure has been followed under the relevant rule of E.D.A.(Conduct and Service) Rules, 1964 and they have followed the instructions of the letter dated 13.11.97 of D.G.(Post). This contention is negated in view of Full Bench Judgment of this Tribunal in the case of Tilak Dhari Yadav in which we find a decision to the same effect in the case of N. Jambukashi Vs. Union of India and others (O.A.No.57/99) decided by the Full Bench of this Tribunal at Hyderabad on 10.02.1995, wherein it has been held that Rule 6 of the Extra Departmental Agents(Conduct and Service) Rules, 1964 did not confer power upon the higher administrative authority to revise the order of appointment purported to have been passed by the lower authority. The higher authority has no inherent power or otherwise to revise the order of appointment passed by the lower administrative authority. It may not be out of place to mention that the Full Bench of this Tribunal in the case of R. Jambukeswaran has held the instructions dated 13.01.1997 to be invalid and has quashed the same.

11. In the result, O.A. succeeds and is allowed. The impugned order canceling the appointment of the applicant and termination order dated 06.08.1998 ^{is} are quashed. The respondents are directed to reinstate the applicant as E.D.D.A., Jalalpur within a period of three months. No order as to costs.


Member (A)


Member (J)

/M.M./