

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 5th day of July 2002

Original Application no. 1227 of 1998.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Urva Dutt, S/o late Sri Hari Dutt,
R/o Jhaluwajala Kham (Kaladhungi)
Distt. Nainital.

... Applicant

By Adv : Sri B. Ram & Sri M.K. Updhayaya

Versus

1. i Union of India through Secretary,
Department of Posts,
Ministry of Communications,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Post Master General,
Bareilly Region,
Bareilly.
3. Senior Supdt. of Post Offices,
Nainital Division, Nainital.
4. Post Master, Haldwani,
Nainital.

... Respondents

By Adv : Sri S.C. Tripathi

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA filed under section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 15/20.10.1998 of respondent no. 2 cancelling the selection/appointment of the applicant as postman and order of respondent no. 3 dated 27.10.1988 (Ann A-1) and has prayed that the above orders be

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quashed and the respondents no. 3 and 4 be directed not to relieve the applicant from the said post of Postman.

2. The facts, in brief, giving rise to this OA are that the applicant was employed as Extra Departmental Branch Post Master (in short EDBPM) Dewalchaur Post Office since November 1990. The applicant appeared in departmental examination for promotion as Postman/Village Postman held on 23.11.1997 and was declared successful and his name was placed at sr. no. 6/7 of the select list issued on 5.3.1998 (Ann A-4). The applicant completed the prescribed training successfully. After completion of training respondent no. 3 by order dated 7.4.1998 (Ann A-8) allotted the applicant to Haldwani Head Post Office and by order dated 11.4.1998 of respondent no. 4 (Ann A-9 & A-10) he was appointed against the vacant post of Postman (temporary leave Reserve). By impugned order dated 27.10.1998 the appointment of the applicant has been cancelled on the direction of PMG Bareilly respondent no. 2 vide his letter dated 15/20.10.1998. Hence this OA which has been contested by the respondents by filing counter affidavit.

3. Sri M.K. Updhayaya learned counsel for the applicant submitted that in the notification dated 30.7.1997 number of vacancies were not declared. Applicant was declared selected and as ordered by respondents completed the mandatory training. Joined as Postman at Haldwani Head Post Office on 11.4.1998 on regular basis. Therefore, the appointment of the applicant cannot be cancelled without show cause and without an opportunity.

Such ~~an~~ ^{their} action of the respondents is illegal, arbitrary and against the settled ^{the principles} ~~presession~~ of law. The learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in case of Shrawan Kumar Jha Vs. Union of India & Ors, 1991 SCC (L&S) 1078 and also the judgment of this Tribunal dated 28.5.1996 in OA 544 of 1989. The learned counsel also argued that in the light of Judgment dated 19.5.1998 of Ahmedabad Bench of this Tribunal in B.C. Thakkar & Ors Vs. Union of India & Ors 1989 (1) ATJ 88, the applicant should not be made to suffer because of respondents committing an error if any and rectifying it. The learned counsel has also cited the judgments of Principal Bench of this Tribunal in Lakhmi Chand Vs. Union of India & Ors (1998) 37 ATC 599 and judgment of Hon'ble Supreme Court in MS Usmani & Ors Vs. Union of India and others (1995) 29 ATC 289.

4. The learned counsel for the respondents resisting the claim of the applicant submitted that the vacancy position was declared and only 5 vacancies were there against which 6 candidates were appointed. This was a mistake which had to be corrected. Since the applicant was lowest in merit his appointment was cancelled. Besides the applicant is not been thrown out of service. Instead he is being brought back to his original post. The learned counsel also submitted that the case law relied upon by applicant's counsel is applicable in respect of direct recruits for promotion to the next higher grade and has no bearing in the instant case.

5. We have heard learned counsel for the parties, considered their submissions and perused records. It is not disputed that the applicant passed the promotion examination for Postman/Village Postman held on 23.11.1997 and admittedly the name of the applicant is at ser. no 6 in the select list.

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It is also not disputed that the applicant completed the required training successfully and joined as Postman at Haldwani Head Post Office on 11.4.1998. Therefore, the question before us is whether the action of the respondent no. 2 directing the respondent no. 3 to cancel the appointment of the applicant is correct or not. The respondent no. 2 reviewed the appointment and took decision to cancel the appointment of the applicant and consequently directed respondent no. 3 to cancel the same. The law laid down in such matter is that such a decision cannot be taken without giving opportunity to the person affected.. In the present case respondent no. 2 instead of giving show cause to the applicant took decision to cancel the applicant's appointment which is not tenable in the eyes of law. Such an action is arbitrary and illegal and is liable to be set aside in view of this Tribunal judgment in case of Shiv Shankar (supra). Ahmeadbud Bench of this Tribunal in BC Thakkars' case (supra) has observed "There is no reason why the petitioners should have subjected to the liability to appear in any subsequent examination because of the respondents committing an error and rectifying it and resorting to Rule of declaring the passed candidates as deleted from the list of successful candidates." and ^{in furtherance} held that "The petitioners have a right to be retained in the list of candidates declared successful and to be appointed on regular basis as and when the vacancies for their quota arises." We are in respectful agreement with this view. The Principal Bench of this Tribunal in Lakhmi Chand (supra) has held that order of revision involves civil consequences and has been issued without affording an opportunity to the applicant to present his case and such an order

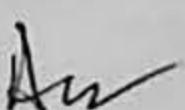
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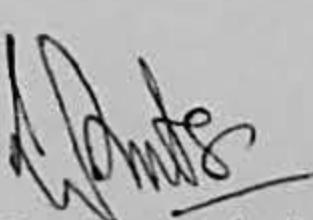
cannot be passed without complying with audi alteram partem rule. Party should be given an opportunity to meet his case before an adverse decision is taken. In MS Usmani case (supra) Hon'ble Supreme Court has held the order reverting appointees to their original posts with bottom seniority without affording any opportunity as unjust and illegal and violative of principles of natural justice. The Hon'ble Supreme Court in case of Shrawan Kumar case (supra) has held that holders of appointment order are entitled to opportunity of hearing before cancelling their appointment.

6. In the light of law laid down in above cases, we have no doubt in our mind that the action of respondent no. 2 and 3 are arbitrary unjust and illegal. The respondents have violated principles of natural justice by not giving the opportunity to the applicant. Cancellation orders of respondents no 2 and 3 without complying with rules of natural justice are liable to be set aside.

7. In the facts and circumstances and our aforesaid discussions the OA is allowed. The impugned orders of respondent no. 2 dated 15/20.10.1998 and respondent no. 3 dated 27.10.1998 are quashed. We direct that the applicant will continue in the appointment of Postman and will not be reverted to the post of EDBPM by respondents.

8. There shall be no order as to costs.


Member (J)


Member (A)

Dated : 05/07/2002

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