

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 12th day of December 2003.

Original Application no. 1393 of 1998.

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

Smt. Kunkum Devi, W/o Sri Shashikant,
R/o Vill and PO Naumunda,
Distt. Kushinagar,
employed as EDBPM,
Naumunda (Sukrauli) in the
Distt : Kushinagar.

... Applicant

By Adv : Sri J.M. Sinha & Sri A Tripathi

Versus

1. Union of India through the Secretary,
Ministry of Communication, Deptt. of Posts,
Dak Bhawan,
NEW DELHI.
2. P.M.G., Gorakhpur Region,
Gorakhpur.
3. D.P.S., O/o PMG Gorakhpur Region,
Deoria Division,
Gorakhpur.
4. Sr. Supdt. Post Offices,
Deoria Division,
Deoria.

... Respondents

By Adv : Km Sadhna Srivastava

ORDER

Hon'ble Maj Gen K.K. Srivastava, AM.

In this case, filed under Section 19 of the A.T.
Act, 1985, the applicant has prayed for quashing the order
dated 19.8.1998 (Ann A1) with direction to the respondents
to pay full admissible wages and allowances for the period

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from 24.3.1993 to 6.8.1997, during which the applicant was prevented from working on the post by the arbitrary, malafide and ultravires orders dated 23.9.1993.

2. The facts, in short, are that the applicant was appointed in the respondent's establishment by order dated 11.8.1992 after due selection. The appointment of the applicant was reviewed by the higher authorities on the complaint of another candidate one Shri Dinesh Kumar. Respondent no. 4 cancelled the appointment of the applicant vide memo dated 22.3.1993 and the services of the applicant was terminated. The applicant filed OA no. 506 of 1998 and this Tribunal by order dated 2.4.1993 stayed the operation of order dated 22.3.1993 with direction to the respondents not to relieve the applicant from the post of Extra Departmental Branch Post Master (in short EDBPM), if she had already not been relieved. OA no. 506 of 1998 was finally decided by order dated 27.5.1997 quashing the termination order dated 22.3.1993 with direction to the respondents to appoint the applicant on the post. In pursuance of the order of this Tribunal dated 27.5.1997, the respondents issued memo dated 6.8.1997 taking back the applicant on the same post. However, though the period from termination to the date of reinstatement has been treated as duty for all purposes, the applicant is aggrieved that she has not been allowed the wages which she is entitled to. Hence this OA, which has been contested by the respondents by filing counter affidavit.

3. Sri A. Tripathi, learned counsel for the applicant submitted that the termination order dated 22.3.1993 was an illegal order and, therefore, she is entitled for back

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
wages. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in case of The Maharaja Sayajirao University of Baroda & Ors Vs. Shri R.S. Thakkar, AIR 1988 (SC) 2112 and also Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others, 1999 SCC (L&S) 596. The applicant has also placed reliance on the judgment of Ahmedabad Bench of this Tribunal in case of Y.P. Makwana Vs. Union of India & others, 2003 (1) ATJ 352. Relying on the ^{above} judgments learned counsel for the applicant submitted that since the order was illegal, therefore, the applicant is entitled to full back wages.

4. Opposing the claim of the applicant, Km sadhana Srivastava, learned counsel for the respondents submitted that the applicant had claimed back wages in the earlier OA no. 506 of 1998, but the Tribunal did not grant the same. Therefore, since the claim regarding back wages was raised and not granted by this Tribunal in the earlier OA, the claim is barred by principle of constructive resjudicata. Learned counsel for the respondents further submitted that the applicant did not work on the post, two persons cannot be paid for one post. The applicant has been given all the benefits except back wages.

5. We have heard learned counsel for the parties, considered their submissions and perused the record.

6. Learned counsel for the applicant has placed reliance on the various judgments of Hon'ble Supreme Court and judgment of Ahmedabad Bench of this Tribunal for payment

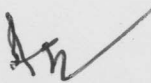
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of back wages. In this connection we would like to observe that we find substance in the arguments of learned counsel for the respondents that the applicant cannot now claim back wages specially when this was claimed in the earlier OA, but was not granted by this Tribunal. Therefore, the law laid down in the various cases relied upon by the learned counsel for the applicant shall not be applicable in this case as they are easily distinguishable in this case. We also find substance in the arguments of learned counsel for the respondents that two persons cannot be paid for one post. Since the applicant did not work on the post, in our opinion the respondents have committed no illegality in issuing the order dated 6.8.1997 that the applicant shall not be entitled for back wages. The respondents have given all the benefits i.e. counting ^h ~~her~~ services, ^h seniority etc to the applicant.

7. For the reasons stated above, we do not find any merit in this case. The OA is accordingly dismissed with no order as to costs.


Member (J)


Member (A)

/pc/