

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 7th day of December 2000.

Original Application no. 1418 of 1998.

Hon'ble Mr. V.K. Majotra, Administrative Member  
Hon'ble Mr. Rafiq Uddin, Judicial Member

Raj Kumar Singh, S/o late Shri S.M. Singh,  
R/o village and post Durjan Pura,  
Distt. Ballia.

... Applicant

C/A Shri R.K. Pandey

Versus

1. Union of India through Secretary  
Ministry of Post and Telegraph,  
New Delhi.
2. Superintendent of Post Offices,  
Ballia, Distt. Ballia
3. Sub-Divisional Inspector, Bairiya,  
Distt. Ballia.

... Respondents

C/Rs Shri A. Sthalekar



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O R D E R(Oral)

Hon'ble Mr. V.K. Majotra, Member-J.

Respondent no. 2 initiated action vide letter dated 28.02.97 for filling up the posts of Branch Post Master in Post Office Durjanpur, Distt. Ballia. The applicant was selected for appointment vide letter dated 12.06.97 from amongst various candidates. The applicant joined the post on 12.6.97 (annexure A-5). The applicant has alleged that though he had been serving properly and without any complaint, suddenly on 4.12.98, respondent no. 2 issued order terminating the services of the applicant (annexure A-1). The applicant has further alleged that this order is in contravention of rule 6 (B) of E.D.A. (service and Conduct) Rules, as one months notice or salary in lieu thereof have not been given to the applicant alongwith the termination order, which is the requirement under the rules. According to the applicant, he was most suitable and meritorious candidate and has been removed by respondent no. 2 without affording the applicant an opportunity of defence. The applicant has stated that his services have been dispensed with in an illegal and arbitrary manner. Therefore, annexure A-1 dated 4.12.98 should be declared null and void and the respondents be directed to continue the applicant in service with all benefits.

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2. The respondents in their counter affidavit have stated that after the applicant joined, the selection matter was reviewed by the Director of Postal Services, Gorakhpur and it was found that the appointment of the applicant was illegal and against the norms prescribed for the purpose and, therefore, the services of the applicant were terminated under Rule 6 B ibid. The respondents have stated that under the Rule marks obtained in the High School examination is deciding factor for appointment for the post of Branch Post Master. Records showed that some candidates had obtained better marks than the applicant, thus his appointment was termed as illegal and consequently he was removed.

3. The applicant has filed rejoinder affidavit contending that 13 candidates had appeared for selection in question. As per the panel prepared by the respondents, the applicant was shown to have secured 68.4% marks in the High School Examination. Candidates at sl. no. 1 & 2, namely Guru Govind Singh and Shivji Singh respectively were shown to have obtained 71% and 69.8% marks in High School examination, respectively. Whereas the candidature of Guru Govind Singh was cancelled as he had been appointed in the Navy, and the candidature of Shivji Singh was cancelled as he did not ful-fill the eligibility criterion of movable or imovable property. In this manner, the candidate at sl no. 3 who ful filled

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the required qualification ~~comes~~ <sup>came</sup> out to be most  
meritorious candidate ~~and~~ <sup>and</sup> bagged appointment.

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

5. Learned counsel of the applicant contended that the services of the applicant have been terminated by the respondents after he has already put in service of  $1\frac{1}{2}$  years. Whereas the impugned order was passed by Director of Postal services, who is not appointing authority of the applicant and under the rule a Superior Officer than the appointing authority can exercise the jurisdiction only after affording opportunity to the applicant. Further more, no reasons were assigned in the impugned order ~~of~~ <sup>and by</sup> ~~for~~ <sup>was by</sup> the applicant ~~for~~ not giving salary of a month in terms of rule 6 B ibid.

6. Learned counsel of the respondents stated that he has not brought record with him today, so it is difficult to reach finding, whether the applicant had secured 68.4% marks as claimed by him and also to ascertain whether he was most suitable and meritorious candidate amongst the candidates. The applicant has made averment about having obtained 68.4% marks and being third most meritorious candidate, in his rejoinder affidavit dated 7.5.99. The case was fixed for final

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hearing. Neither the respondents ~~who~~ have rebutted the claim of the applicant made in the rejoinder affidavit earlier than the final hearing nor ~~they~~ <sup>b</sup> ~~should~~ have <sup>b</sup> ~~they~~ produced the relevant records today at the time of final hearing. We have no hesitation in going alongwith the applicant <sup>b</sup> ~~to~~ to hold that the applicant had obtained 68.4% marks in High School examination & Guru Govind Singh and Shivji Singh who were at sl. no. 1 and 2 respectively were removed from the panel for the reasons stated in the R.A. and described above. We are also in agreement with the learned counsel for the applicant that the Superior Authority i.e. Director of Postal Services, who reviewed the selection and on whose direction the impugned order was passed could not have reviewed the selection without affording an opportunity to the applicant who had served for 1½ years. Learned counsel for the applicant has relied upon the order dated 18.2.99 passed in OA 66 of 1998, Deo Kumar Pathak Vs. Union of India and others in a similar matter.

7. Having regard to the above reasons and discussion the O.A. succeeds. The order dated 4.12.98 (annexure A-1) is quashed and set aside with all consequential benefits.

8. No order as to costs.

Rajendra  
Member-J

Umapathi  
Member-A