CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

O.A./~~CCA/TA/RA~~ No. 302/01 with 07/00

Date of Decision _____

Smt. Bimla Devi - T. P. Singh Applicant(s)

Sri R. K. Tripathi & Sri A. Tripathi Counsel for the Applicant(s)

V E R S U S

U.O. India & ors. Respondents(s)

Sri V. V. Mishra Counsel for the Respondents(s)

CORAM :

Hon'ble Mr. D. R. Tiwari V.C./Member (A)

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

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?

2. To be referred to the Reporters or not?

3. Whether their Lordship wish to see the fair copy of the judgment.

4. Whether to be circulated to all the Benches.

SIGNATURE

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD.

ALLAHABAD, THIS THE 18th DAY OF August 2005

QUORUM : HON. MR. D.R. TIWARI, A.M.
HON. MR. K.B.S. RAJAN, J.M.

ORIGINAL APPLICATION NO.302 OF 2001

Smt. Bimla Devi, wife of, Sri Vipin Bihari, Extra Departmental Branch Post Master, Paswara, Distt. Mahoba..... .....Applicant.

Counsel for applicant : Shri R.K. Tripathi.

Versus

1. Union of India through Secretary (Postal), Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Kanpur Region, Kanpur.
3. Superintendent of Post Office, Banda Division, Banda.
4. Up Mandaliya Nirikshak, Dakghar, Up Mandal, Mahoba.
5. Sri Rama Shankar, Son of, Parshu Ram, E.D.M.C. Paswara, District Mahoba.

....Respondents.

Counsel for Respondents : Sri V.V. Mishra.

With

ORIGINAL APPLICATION NO.07 OF 2000

Tej Pratap Singh, Son of Pahalwan Singh, R/O Damaura, P.O. Paswara, District Mahoba.

.... Applicant.

Counsel for applicant : Shri A. Tripathi.

Versus

1. Union of India through Secretary (Postal), Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Kanpur Region, Kanpur.

3. Superintendent of Post Office, Banda Division, Banda.

4. Smt. Bimla Devi, E.D.B.P.M., Paswara, Mahoba.

……. ……Respondents.

Counsel for Respondents : Sri V.V. Mishra.

O R D E R (Oral)

HON'BLE MR. D.R. TIWARI, A.M.

Having grounded on identical facts involving the common question of law, we are disposing of these two O.As. by this common order. O.A. No.302 of 2001 would be the leading case.

2. By O.A. No.302/01 filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the impugned order dated 16.3.2001 (Annexure A-5) coupled with the prayer for issuance of direction to the respondents not to interfere in the peaceful functioning of the applicant as E.D.B.P.M., Paswara, District Mahoba whereas the applicant of O.A.No.07/2000 has prayed for quashing the impugned order of appointment of Respondent No.4 i.e. applicant of O.A. No.302/01 along with the prayer for issuance of direction to respondents to appoint the applicant as E.D.B.P.M., Paswara, Mahoba.

3. Before we proceed to discuss the facts and legal question involved in these O.As., we would like to dispose of the M.A. No.1212/05 filed on 17.3.2005 and the M.A. No.1807/05 filed in reply to M.A.No.1212/05. By the aforesaid M.A., the applicant has sought to amend the prayer clause so as to quash the order dated 14.3.2001 as the said order was not served on the applicant and has come to know about it through the Counter Affidavit filed by the

respondents. The prayer has been made to condone the delay in filing the said application. The respondents have filed the reply wherein it has been submitted that the applicant was informed about the order dated 14.3.2001 by S.D.I., Mahoba on 16.3.2001 but she refused to receive the same deliberately. In support of this, the respondents have enclosed a detailed report of the S.D.I. dated 21.3.2001, which was sent to Superintendent of Post Offices, Banda Division. The report of the S.D.I. dated 21.3.2001 appears to be genuine and cannot be doubted. We are of the considered view that the applicant's M.A., which is highly belated, cannot be allowed. Hence, the M.A. No.1212/05 is accordingly rejected.

4. Filtering out the details, the relevant factual matrix to decide the controversy, as per the averments made in O.A., is that the permanent incumbent of Paswara Branch Post retired on attaining the age of 65 years and the post of E.D.B.P.M. fell vacant with effect from 2.8.1998. To fill up the vacant post, the notification was issued and Employment Exchange sponsored five names. All the five candidates were requested to submit their applications with all relevant documents. Only two candidates responded. Finding no element of competition another general notification was issued vide Memo No.B-2/39/5/98 dated 18.8.1998. After following the prescribed procedure in Post & Telegraph E.D.A. (Conduct & Service) Rules, the applicant was appointed on 24.5.1999 (Annexure No.1). It has been submitted that after the applicant took over the charge of E.D.B.P.M., Paswara, her appointment was challenged by one T.P. Singh by filing O.A. No.07/2000 before this Tribunal which is still pending. The Counter affidavit filed in O.A. No.07/2000 (Annexure A-2) admits that the applicant fulfilled all the

requirements and qualifications for the post of E.D.B.P.M. The departmental inspection reports by respondent Nos.4 and 5 (annexure Nos.3 and 4) have stated that her work has been found excellent.

5. All of a sudden, the respondents passed order dated 16.3.2001 (annexure-5) and the applicant has been disengaged. This action has been challenged on various grounds mentioned in para 5 of the O.A. The main grounds are that the applicant was regularly selected and the termination has been done without any show cause and hence, principle of natural justice has been violated. This Tribunal, after hearing the counsel for parties, granted interim relief by order dated 22.3.2001.

6. In order to better appreciate the controversy, it may be useful to have a bird's eye view of the facts of the O.A. No.07/2000. The applicant, after his candidature was rejected, filed the above said O.A. on the ground that he was the most meritorious candidate as he secured 65.69% marks in High School examination as against the respondent No.4, who secured only 60.83% marks. He has also drawn attention to D.G. Post letter No.17497/90 EDA Training dt. 10.5.1991 (Annexure A-3) which stipulates as under :-

> "When the Constitution of India guarantees equal opportunity to all for their advancement, the reasonable course would be offer ED appointments to the person who secured maximum marks in the examination which made him eligible for the appointment provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED allowances."

Hence, it has been pleaded that his O.A. deserves to be allowed on this ground alone.

7. The respondents, on the other hand, have contested the O.A. by filing a detailed Counter affidavit. It has been submitted that the applicant was appointed as EDBPM, Paswara vide Memo dated 24.5.1999 and took over the charge of the post on 26.5.1999. Subsequent to the appointment, a complaint was filed by Shri Tej Pratap Singh, one of the candidates, who participated for selection for the same post. On receipt of the complaint the higher authority reviewed the case and found that the applicant's appointment was made against the provisions of the Rules and the Appointing Authority was directed to terminate the appointment of the applicant vide letter dated 1.2.2001 (CA-1). In compliance of the said direction, the service of the applicant was terminated under Rule 6 of the EDA (Conduct of Service) Rules, 1964 vide order dated 14.3.2001. A provisional arrangement was made (Annexure CA-2 and CA-3). The applicant, thereafter, approached this Tribunal and obtained the stay order and is still continuing as EDBPM, Paswara, District Mahoba. As such, it has been pleaded that the O.A. deserves to be dismissed.

8. During the course of the argument, the counsel for the applicant reiterated the points raised in applicant's pleading. Additionally, he has argued that the respondents cannot be allowed to blow hot and cold simultaneously. He has submitted that through their counter affidavit filed in O.A. No.07/2000, they have supported the case of Bimla Devi whereas in the counter affidavit filed in this case contrary view has been taken. This contention of the applicant's counsel is misconceived, as there is no change in their stand

if seen minutely. Their stand regarding property qualification continues, though, it is not correct. He has also contended that the applicant has served for more than four years and the interest of justice required that some alternative arrangement may be made by the respondents. He has further contended that the decision of the Full Bench in the case of H. Lakshmana and others Vs. The Superintendent of Post Offices, Bellary and others - 2003(1) ATJ (CAT, Bangalore) 277 was delivered on 2.12.2002 would not apply in the instant case as the appointment has been made in 1999. The judgment of the Full Bench would have prospective effect and as such, the appointment in question is legal and cannot be disturbed.

9. The counsel for the applicant in T.P. Singh (supra) relying on the decisions of the Full Bench submitted that possessing of adequate means of livelihood is neither an absolute condition nor a preferential condition for appointment to EDBPM post. He relied on the following decisions: -

i) H. Lakshamana & others Vs. Superintendent of Post Offices, Bellary - 2003(1) ATJ 277 - Full Bench, Bangalore.

ii) Rana Ram Vs. Union of India - 2004(1) ATJ 1 Full Bench, Jodhpur.

He further submitted that the applicant had more marks than the respondent No.4 and accordingly the appointment of respondent No.4 be set aside with the direction to the respondents to appoint the applicant.

10. Counsel for the respondents, during the course of argument followed the points mentioned in the counter affidavit of the respondents. He rather strongly contested that the belated amendment application be dismissed. In view of the review by the high authority, the O.A. No.302/01 be dismissed.

11. We have carefully heard the counsel for the parties and perused the pleadings.

12. From what has been discussed in the preceding paras, the following two issues emerge which require indepth deliberation and adjudication: -

i) Whether it is necessary in the case of appointment of E.D. Sub Post Masters/Branch Post Masters, preference may be given to those candidates whose (adequate means of livelihood) is derived from landed property or immovable assets; and

ii) The applicability of decision of the Full Bench in respect of cases decided before the decision of the Full Bench was delivered.

13. In so far as the question (i) above is concerned, different views were expressed by different benches of this Tribunal and it was decided to resolve the issue and the Full Bench Bangalore in the case of H. Lakshamana (supra) after discussing various issues involved have stated as under: -

> "15. We have already reproduced above, the extracts of the instructions on the subject with respect to the income and ownership of the property. It has clearly been provided that a person who takes over the agency must be one who has adequate means of livelihood. The plain language clearly shows that adequate means have to be looked into of the person who has taken over the agency. It is, therefore, not to precede to taking over of the work or a civil post. The department may be within its rights to frame the relevant rules and instructions to provide for adequate means of livelihood to ensure the rights of the Government after the agency is given but

no discrimination could be made before the civil post is so awarded to any person.

16. Equality of opportunity and equal treatment for similarly placed persons is the hallmark of our Constitution. Articles 14 and 16 of the Constitution specifically bar discrimination between the similarly situated persons. There is no discrimination that is permitted in this regard between the persons having adequate means or persons not having adequate means. Any such attempt would be violative of Articles 14 and 16 of the Constitution. This fact had not been disputed at the Bar.

17. However, it was contended that the rights of the Government have also to be taken care of in this regard. We have already referred to above and at the risk of repetition; we take liberty of mentioning that such rights can be taken care of after the civil post is awarded on its merits. Care can be taken in this regard afterwards and necessary instructions or rules can be framed as already referred to above. In case the selected candidate is not in a position to furnish enough security or some reasonable condition that may be imposed, he will not be given the said civil post but he cannot be discriminated at the initial stage. Equality of opportunity cannot be a casualty in this regard. The State on that count, therefore, cannot be discriminated."

The Full Bench also relied on the sole known decision in the case of Indra Sahni and Others Vs. Union of India & others, 1992 SUPP(3) SCC 217, which is reproduced below :-

"It may not be permissible to debar a citizen from being considered for appointment to an office under the State solely on the basis of his income or property-holding. Since the employment

under the State is really conceived to serve the people (that it may also be a source of livelihood is secondary) no such bar can be created. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Article 16."

Thereafter it was further held "possessing of adequate means of livelihood in terms of circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the above said post".

In the instant case also, the applicant in O.A. No.07/2000 was not appointed, as he did not have a landed property in his own name though he was holding the property jointly. He was having the higher marks in the matriculation examination than the Respondent No.4, who was offered the appointment. In view of this legal position, the applicant of O.A.No.07/2000 is entitled to the appointment for the post of EDBPM, Paswara.

14. With regard to the question of application of the decision of Full Bench in the instant case, it may be stated that the counsel for applicant in O.A. No.302/01 has strongly submitted that the condition of possessing the adequate means of livelihood is neither an absolute condition nor a preferential condition which was declared only on 2.12.2002 and, therefore, the Full Bench decision in the aforementioned case would have no application in the facts and circumstances of the present case when the appointment was made in the year 1999.

15. We have considered this aspect and bestowed our careful consideration to the entire matter. We are unable to accept the said contention of the learned counsel for the simple reason as held by the

Apex Court in Suresh Chandra Verma Vs. Chancellor, Nagpur University (AIR 1990 SC 2023), the relevant portion of which reads as under: -

> "Para-9. It is unnecessary to point out that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise".

We may also refer to the judgment in case of M.A. Murthy Vs. State of Karnataka and others, 2003 SCC (L&S) 1076, which is as under: -

> "Para-8. Normally, the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective over ruling which is a feature of American jurisprudence is an exception to the normal principle of law".

In view of the above legal position, we hold that the ratio of the Full Bench judgment would have retrospective effect and would apply to the appointment of the applicant in the case of Bimla Devi (supra).

16. In the facts and circumstances mentioned above, and the discussions made hereinabove, O.A. No.302/01 is devoid of merit and is dismissed. O.A. No.07/00 succeeds on merit and is allowed. We further direct the respondents to appoint the applicant of O.A. No.07/2000, who is more meritorious candidate to the post in question within a period of one month from the date of receipt of a copy of this order.

No order as to cost.

J.M. A.M.

Asthana/