

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 339 of 2001

Thursday day, this the 22 day of March 2007

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. M. Jayaraman, Member (A)

Kesh Bhan Ram S/o Late Firanti Ram, R/o Village-Biradar,
P.O.-Khutauli, District Azamgarh.

Applicant

By Advocate Shri B.N. Singh

Versus

1. U.O.I. through Post Master General, Gorakhpur.
2. Senior Superintendent of Post Offices, Azamgarh.
3. Sub Divisional Inspector (P) Phoolpur, Azamgarh.
4. Govind Lal S/o Suryabali, R/o Dandwa Mustafalead,
P.O. Mirzapur, District Azamgarh.

Respondents

By Advocates Shri Saumitra Singh (Official respondents)
Shri S.K. Rai (for respondent no.4)

O R D E R

By M. Jayarman, Member (A)

Heard, Shri B.N. Singh, Counsel for the applicant,
Shri Saumitra Singh, Counsel for the official respondents
and Shri S.K. Rai, Counsel for the respondent no.4.

2. The applicant through this O.A. has prayed to quash
the impugned order dated 30.12.1999 and 15.03.2001 passed



by respondent no.3. It has been further prayed to direct the respondents to allow the applicant to work and pay him the regular salary.

3. The brief facts of the case are that the post of Extra Departmental Delivery Agent (for short E.D.D.A.), Khatauli, Phoolpur was fallen vacant due to retirement of one Shri Chhedi Lal. Accordingly a notification date 19.02.1999 was issued by the respondents inviting applications for regular appointment on the aforesaid post, which was reserved for SC candidates. In response, the applicant applied for the same within the stipulated time. After verification, the appointment order dated 07.07.1999 (annexure-12) was issued in favour of the applicant as he was found top in the merit list. The applicant took charge on 10.07.1999. However, suddenly on 30.12.1999 the applicant received a termination order, which according to the applicant was issued without any show cause notice or without affording any opportunity of hearing. It has been revealed from the records of the O.A. that applicant was terminated due to the complaint of one Shri Govind Lal-respondent no.4, in which Shri Govind Lal has submitted that the applicant had submitted a fake certificate for getting the appointment as E.D.D.A. The applicant has alleged that his appointment order was reviewed and cancelled by the higher authority i.e. Senior Superintendent of Post Offices, higher than the appointing authority i.e. Sub Division Inspector, which according to him is not just as per the law laid down in Full Bench Judgment of this Tribunal reported in A.T.J. 2004 (2) 1 R. Jambukeshwaran and other Vs. Union of India. The applicant in reply to the allegation of respondent no.4 has submitted that initially he submitted his income certificate dated 12.03.1999 in the name of his



father. However, on demand before the appointment order, he submitted the income certificate dated 26.03.1999 (annexure-7) in his own name. The applicant has further submitted that father of respondent no.4 who was working as Postal Assistant in same delivery zone, has misplaced the original certificate submitted by the applicant and submitted another certificate dated 19.08.1998. The applicant as regards to the controversy involved in the present O.A., has relied upon certain Judgments, which according to him, are squarely applicable in his case.

4. In reply to the above submissions of the applicant, the official respondents as well as respondent no.4 have filed their counter-affidavits. In the counter affidavit filed by the official respondents, they have alleged that respondent no.4 had submitted a complaint against the appointment of the applicant. Acting on the complaint of respondent no.4, the department had asked the applicant vide letter dated 27.9.1999 and 30.09.1999 to submit the original copy of the license and income certificate but the applicant did not submit the said documents. It is submitted by the official respondents that a show cause notice dated 11.11.1999 was issued to the applicant but the applicant has failed to submit the satisfactory proof before the respondents on 02.12.1999. Thereafter, on careful examination of all the documents submitted by the applicant, it was found that the applicant has no independent source of income at the time of submission of the certificate. Accordingly, termination order issued in favour of the applicant was cancelled. It has been further submitted by the respondents that aggrieved by the Order dated 30.12.1999 the applicant approached directly to Hon'ble High Court vide Writ Petition No.805 of 2000 and obtained stay order dated 06.01.2000 and in



compliance of the stay order the applicant was taken back in service w.e.f. 14/17.01.2000. However, by the Order dated 01.03.2000 the Writ Petition No.805 of 2000, filed by the applicant, was dismissed by the High Court, thereafter, applicant's services were again terminated vide order dated 15.03.2001 and respondent no.4 was appointed in his place, which is under challenge in the present O.A.

5. The respondent no.4 in his counter affidavit, has submitted that the applicant was wrongly appointed as E.D.D.A. as he submitted fake certificates alongwith his application. It has been further submitted by the respondent no.4 that applicant has not fulfilled the requisite qualification prescribed in the advertisement for the post of E.D.D.A. Rest of the argument submitted by respondent no.4 is repetition of the points submitted by the official respondents.

6. We have considered all the facts in this case. The short prayer made by the applicant in this O.A. is that apart from other inaccuracies and misgivings, he was appointed by the Sub Divisional Inspector vide appointment order dated 07.07.1999 (at page 33 of the O.A.) whereas his services were terminated on the orders of the higher authority namely Senior Superintendent of Post Offices, as made clear in the termination order dated 30.12.1999, vide annexure-1 to the O.A. In his view, this is not correct and not maintainable and in support of his plea he has submitted the Judgment dated 18.01.2004 of the Central Administrative Tribunal Full Bench at Madras 2004 (2) ATJ in the case of R. Jambukeswaran and others, wherein it has been held that the higher administrative authority has no power to review the order of appointment.

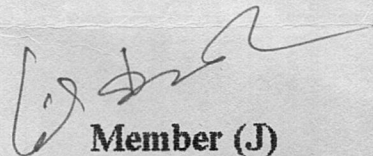


7. On perusal of the records and the averments made by counsel for the parties, we find force in the plea of the applicant. The counter affidavit in this case is filed by Senior Superintendent of Post Offices, Azamgarh and it clearly shows vide para-10 thereof that the said Senior Superintendent of Post Offices had issued a show cause notice and also heard the applicant in his Chamber on 02.12.1999 where after the impugned termination order was issued by Sub Divisional Inspector (P), Phoolpur. Respectfully following the ratio of Full Bench Judgment in the case of R. Jambukeswaran (supra), we are of the view that the termination order cannot be sustained and therefore, we set aside the same. However, it is open to the respondents to take necessary action in the matter in accordance with law.

8. With the above observation, the O.A. is allowed with no order as to costs.



Member (A)



Member (J)

/M.M./