

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

THIS THE 4TH DAY OF November 2011

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)  
HON'BLE MR. D. C. LAKHA, MEMBER (A)**

**ORIGINAL APPLICATION NO. 1155 OF 2001**  
(U/S 19, Administrative Tribunal Act, 1985)

Ram Krishna, son of Sri Shrawan Kumar, resident of Town Mundera Bazar post office and Tehsil Chauri Chaura, District Gorakhpur.

.....Applicant

**V E R S U S**

1. Union of India, through Secretary, Ministry of Communication, Department of post, New Delhi.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Senior Superintendent of Post Offices, Gorakhpur.
4. Vijai Kumar Jaiswal son of Sri Pateshwar Prasad, resident of village and post Mundera Bazar, District Gorakhpur.

.....Respondents

Present for the Applicant: Sri Ashish Srivastava.

Present for the Respondents: Sri Anil Dwivedi.

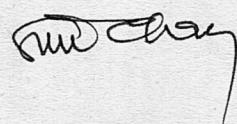
**O R D E R**

Instant O.A. has been instituted for the following relief/s:-

"(a). issue orders or direction quashing the impugned order passed by respondent no.3 dated 25.09.2001.

(b). issue directions to the respondents not to interfere in the working of the applicant.

(c). issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.



## (d). Award costs.

8(e). The respondents may be directed to accord all the benefits and privileges of continuity of services as EDBPM, Mundera Bazar, Chauri Chaura, Gorakhpur, as if no such termination order dated 25-9-2001 has ever been passed including the monetary benefits and the arrears may be directed to be paid alongwith interest @12%per annum."

2. The pleadings of the parties may be summarized as follows:-

It has been alleged by the applicant that respondent No.3 advertised the vacancy for the post of Branch Post Master, E.D.B.P.M. (Extra Departmental Branch Post Master) to be posted at Mundera Bazar, Chauri chaura, District Gorakhpur vide order dated 13<sup>th</sup> May, 1999, the last date for submission of the application was fixed 12<sup>th</sup> June, 1999. The applicant submitted his application for the said at the office of respondent no.3. After considering the candidature of the applicant, respondent no.3 got the police verification done about the applicant for his character and was satisfied by the report received <sup>from</sup> ~~by~~ the police department. After completion of all the formalities on 11<sup>th</sup> May, 2000 respondent no.3 issued a letter to the applicant that he has been selected as a successful candidate for the aforesaid post. That applicant was given charge

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of the post as Branch Post Master, Mundera, Bazar, post office Chauri Chaura, District-Gorakhpur on 12<sup>th</sup> May, 2000. After joining on this post applicant discharged the duties with devotion, dedication and sincerity. Respondent No.4 Vijai Kr. Jaiswal also applied for the above mentioned post, but due to non-fulfillment of conditions laid down in the advertisement his candidature was rejected and the applicant was given opportunity for that post. Respondent No.4 moved representation to the respondent No.02 & 03 against the selection of the applicant. That the respondent No.4 was I<sup>st</sup> division in High-school and the applicant passed High-school with II<sup>nd</sup> division. The respondent No.4 stressed only <sup>94</sup> one condition in his representation that he was I<sup>st</sup> division in High-school whereas, applicant passed with second division in High-school. O.A No. 554 of 2001 was also filed by the respondent No.4 Vijai Kr. Jaiswal and the direction was given by the Tribunal for considering the representation of the respondent No.4 within stipulated time and objections was also raised by the respondent No.4 that applicant did not hold any immovable property on the date of application and this was wrong fact alleged by the respondent no.4 and he had

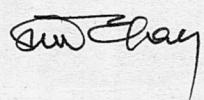


purchased landed property on 17<sup>th</sup> March, 1999 from Sri. Rajendra Prasad and the formalities of mutation were completed and Kisan Bahi was issued in favour of applicant, it is on dated 25<sup>th</sup> May, 1999. On 05<sup>th</sup> July, 2001 applicant was required to appear before respondent No.2 on 24<sup>th</sup> July, 2001 with all documents to submit reply of the representation submitted by respondent No.4 in order to prove his eligibility for the said post. A request was made by the applicant to respondent No.2 in order to supply the copy of the representation, but the respondent No.2 overlooked the request of the applicant. Respondent No.2 holding the license for running chemist shop, a letter was issued by the C.M.O., Gorakhpur on dated 27<sup>th</sup> December, 1999 that if there is a license in favour of a person then he can ~~sell~~ drugs. That the respondent No.4 was looking after the medical shop and there is no time to look after the post whereas, applicant is an unemployed person and totally dependent on his parents and he was in dire need of job for his livelihood. Respondents illegally and arbitrarily conducted the inquiry ignoring all the defence submitted by the applicant in his favour and arrived at a conclusion that the respondent No.4 was better in

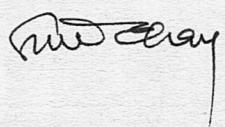
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position in comparison to the applicant and accordingly the illegal order was passed terminating the service of the applicant without serving show cause notice to the applicant. That the termination order is illegal, hence the O.A..

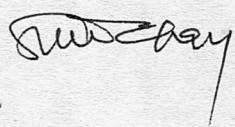
3. Official Respondents contested the case and filed Counter Reply and denied from the allegations made in the O.A.. It has further been alleged that the applicant did not exhaust the departmental remedies available to him and prior to approaching this Tribunal applicant was required to file an appeal before departmental authorities and hence the O.A. is liable to be dismissed on this ground. That the appointment of the applicant was found irregular on examination after direction of the Tribunal passed in O.A. No. 554 of 2001 filed by the respondent no.4. That the order of termination was passed after considering the entire matter and after affording opportunities to both the parties before passing impugned order. On account of retirement of one Sri Shrawan Kr. Sharraf from the post of Branch Post Master, Mundera Bazar, Chauri Chaura, District Gorakhpur fell vacant and notification was issued on dated 13<sup>th</sup> May, 1999 inviting the applications from the suitable candidates for that



post, numerous candidates submitted the application including the applicant and respondent No.4. Earlier the candidature of the applicant was found suitable for that post and the appointment was given to him vide letter dated 11<sup>th</sup> May, 2000 and he joined on 12<sup>th</sup> May, 2000. That Sri Vijay Kr. Jaiswal Respondent No.4 approached this Tribunal and filed O.A. No.554 of 2001 challenging the appointment of the applicant and the Tribunal vide order dated 11<sup>th</sup> May, 2001 disposed of the O.A. with direction to the respondent No.2 to decide the representation of Sri Vijay Kr. Jaiswal dated 22<sup>nd</sup> May, 2000, the representation was submitted by respondent No.4 with the allegation that he secured higher marks than the applicant in the High-school examination, he purchased landed property at Bhopa Bazar Tehsil Chauri Chaura and same was mutated in the name of the applicant on 20<sup>th</sup> August, 1999, whereas, applicant purchased the landed property at Mundera Bazar, Tehsil Chauri-Chaura and mutation took place in his name on 14<sup>th</sup> June, 1999 that the representation of the respondent No.4 was considered by Post Master General, Gorakhpur vide its order dated 19<sup>th</sup> September, 2001 and the Post Master General by speaking order arrived at the



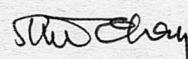
conclusion that both the person applicant and Sri Vijay Kr. Jaiswal applied for the post and the marks obtained by respondent No.4 in the High-school examination were higher than the applicant. As regards landed property the applicant submitted Kisan Bahi dated 25<sup>th</sup> May, 1999 and that landed property shown in his name and that inquiry was conducted prior to taking decision on the representation of the respondent No.4 by Tehsildar, Chauri Chaura and it was found in the inquiry that mutation in the name of the applicant took place on 14<sup>th</sup> June, 1999 and from this fact it is evident that the mutation took place in the name of the applicant ~~after~~ <sup>date</sup> ~~of~~ the last <sup>1</sup> of the submission of the application, and on the date of submission of application applicant was not possessing any landed property and on the basis of this fact Post Master General arrived at the conclusion that the appointment of the applicant was irregular and illegal and accordingly the services of the applicant was terminated vide order dated 25<sup>th</sup> September, 2001 and he has been paid the allowances for one month in lieu of his work. The allegation of the O.A. has been specifically denied. As the subsequent amendment have been carried out by the applicant in the O.A.

  
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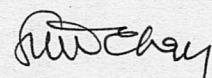
regarding the inquiry conducted in the matter by the Post Master General hence in response of the amendment made by the applicant official respondent also filed the Supplementary Counter <sup>50</sup> <sup>2</sup> Affidavit, which is not necessary to mentioned and <sup>7</sup> it shall be considered at the relevant place.

4. We have heard Mr. Ashish Srivastava, Advocate for the applicant and Mr. Anil Dwivedi, Advocate for the respondents and perused the entire facts of the case.

5. From perusal of the record it is evident that vide notification dated 13<sup>th</sup> May, 1999 applications were invited from the eligible candidates for the post of E.D.B.P.M., Mundera Bazar, Chauri Chaura, district Gorakhpur, the post fell vacant as a consequence of retirement of Sri Shrawan Kr. Sharraf from the post of Branch Post Master, Mundera Bazar, Chauri Chaura, District Gorakhpur. The applicant, respondent No.4 and several other persons submitted their applications along-with documents and the applications were considered by the respondents and the respondents arrived at the conclusion that the applicant is fulfilling all the requirements as provided in the notification and he deserves to be appointed on the post of

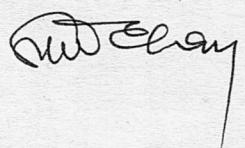


Branch Post Master, Mundera Bazar and accordingly appointment letter was issued. Respondent No.4 being aggrieved from the act of the respondents of issuing appointment letter to the applicant challenged the order of appointment of the applicant before the Tribunal by filing O.A. No.554 of 2001 and the O.A. was disposed of on 11<sup>th</sup> May, 2001 annexure-5 is the copy of the order passed by the Tribunal in the O.A.. It was ordered by the Tribunal "The O.A. is disposed of accordingly with the direction to respondent no.2 to consider and decide the representation of the applicant (annexure-7) dated 22.5.2000 within three months from the date of copy of this order filed before him by reasoned and speaking order after hearing the applicant and respondent No.4." It has been alleged by the respondents in response to the direction of the Tribunal in the above mentioned O.A. an inquiry was conducted by P.M.G. and both the parties' applicant and respondent No.4 were provided opportunity to adduce their evidence. Inquiry was also conducted by the Tehsildar regarding property purchased by the applicant and respondent No.4 and on the basis of evidence available to the P.M.G. he arrived at the conclusion that the case of the respondent No.4



was better in comparison to the applicant and accordingly the order was passed for issuing termination order of the applicant from the service and in response to the result of the inquiry termination letter (annexure-12) was issued.

6. From perusal of the above mentioned fact it is evident that the termination order of the applicant was passed in the background of inquiry conducted for disposal of the representation of the applicant in pursuance of the direction of the Tribunal. We have also perused the order passed by this Tribunal in O.A. No. 554 of 2001 dated 11<sup>th</sup> May, 2001 and from perusal of this we are of the opinion that the respondent No.2 was entitled to conduct the inquiry on the representation of the applicant and to pass appropriate order on the representation <sup>of</sup> Vijay Kr. Jaiswal and the order of termination was passed under some inquiry conducted by respondent No.2 in pursuance of the direction of the Tribunal. We have also perused the order passed by respondents in connection of selection of the applicant on the post of Branch Post Master, Mundera Bazar, Annexure-A-15 and from perusal of the order it is evident that candidature of the respondent No.4 Vijay Kr.



Jaiswal was rejected on the ground that according to him he purchased a land, but mutation has not taken place in favour of the applicant upto the date of submission of the application whereas, applicant filed Kisan Bahi in order to show that mutation had already taken place in his favour. Candidature of Sri Vijay Kr. Jaiswal was rejected on the ground that he is running a chemist shop at Chauri Chaura Bazar and license is in his favour of chemist shop that as per terms of the license only license holder can sell the drugs, moreover, in order to run Post Office, Mundera Bazar, respondent No.4 will have to close his shop, and hence irrespective of the fact that respondent no.4 secured higher marks in High-school than the applicant his candidature was rejected. Ram Krishna applicant who was found in better position to Vijay Kr. Jaiswal and hence appointment was given to him. From perusal of Annexure-21 dated 19<sup>th</sup> September, 2001 it is evident that proper inquiry was conducted by the respondent no.2 in order to dispose of the representation of the applicant by speaking order in pursuance of the direction of the Tribunal and the inquiry was conducted through Tehsildar. It is undisputed that Sri Vijay Kr. Jaiswal secured higher marks in

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the High-school examination in comparison to the applicant, the percentage of Vijay Kr. Jaiwal was 62.5% in the High-school examination whereas, applicant secured 55.8% and if two person are holding same qualification as per notification then case will be considered who secured higher marks along-with other conditions and merely securing higher marks in High-school examination ~~will not~~ never entitle a candidate to be appointed on the post in question and other conditions are also required to be fulfilled. In order to show that respondent No.4 Vijay Kr. Jaiswal was holding an agricultural land and it was alleged that after purchase of agricultural land of plot No.118/0.066 hectare and mutation was taken place in his favour on 20<sup>th</sup> August, 1999. Sri Ram Krishna also purchased a land prior to last date of submission of application and from perusal of the extract of Khatauni filed during the inquiry it was disclosed that mutation of the agricultural land was taken ~~place~~ in favour of the applicant on 14<sup>th</sup> June, 1999 whereas, the last date of submission of application was 12<sup>th</sup> June, 1999 from this fact it is evident that on the last date of submission of application the proceedings of mutation was not finalized in favour of the applicant as well as

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respondent No.4. If after expiry of the last date of submission of the application form the mutation took place in favour of the applicant and respondent No.4 then it is immaterial that in whose favour the mutation took place and also on the date when the order was passed for the selection of the applicant there was mutation in favour of the applicant as well as respondent No.4 and both are equally placed and the percentage of marks of the respondent No.4 Vijay Kr. Jaiswal was higher in High-school. One disqualification has also been alleged of respondent No.4 by the learned counsel for the applicant that he was holding a chemist license and running a shop at chauri chaura Bazar and under these circumstances it will not be possible for respondent No.4 to run the Post Office, but during inquiry respondent No.4 expressed his intention that incase he is appointed on the post of Branch Post Master then he will close his chemist shop and this fact ought to have been considered by the respondents at the time of giving appointment to the applicant, but this fact was not considered. Under these circumstances from all these circumstances the respondent No.2 arrived at the conclusion that the case of the respondent No.4 is better in

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comparison to the applicant and appointment ought to have been given to him. Much has been argued by the applicant that inspite of the fact that notice was issued to respondent No.4, but he did not turned up to contest the case and it shows that the respondent No.4 <sup>is</sup> <sub>^</sub> no more interested to be appointed as Branch Post Master at Branch Post Office, but no inference can be drawn from this fact, as the respondent No.4 filed O.A. and produced the evidence during the inquiry before the respondent No.2 hence there is no reason to draw this inference against respondent No.4 that he is no more interested, incase respondent No.4 is no more interested to be appointed as Branch Post Master, Mundera Bazar, then the opportunity can be given to the applicant who is second according to list of eligible candidates, but having into account the material available on record the candidature of the respondent No.4 is <sup>in</sup> better footing and parity must be given to him, incase he declines to avail the opportunity for appointment then only the next person in the list may be given offer of appointment. Moreover, it is evident from the circumstances that the applicant <sup>produced</sup> <sub>purchased</sub> a Kisan Bahi in his name and it was <sup>opposite</sup> <sub>on</sub> the last date of submission of

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application dated 25<sup>th</sup> May, 1999 and it is evident from the fact that the mutation was taken place in favour of the applicant on 14<sup>th</sup> June, 1999 hence this Kisan Bahi cannot be accepted as genuine and inference can only be drawn that this Kisan Bahi (annexure-24) was interpolated by the applicant.

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7. It has been argued by the applicant that prior to termination from service no notice was served, in order to consider this argument of the learned counsel for the applicant it will be material to consider the circumstances in which the order of termination was passed by the respondents. The order of termination (Annexure-A-12) cannot be taken into isolation without considering the report of the respondent No.2 in connection with the representation of the respondent No.4. We have stated above that the representation of respondent No.4 was considered as per direction of the Tribunal in the O.A. and there was direction of the Tribunal that opportunity shall be given to the applicant of the O.A. and Ram Krishan to produce evidence and from perusal of the report *of appeal* that both the parties were provided sufficient opportunity to produce their defence hence it cannot be said that no notice was given to the applicant prior to passing order of termination

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having into account the circumstances in which the order of termination was passed there was no need for issuing show cause notice and the facts were in the knowledge of the applicant (Ram Krishan) that under what circumstances the order of termination has been passed and prior to passing the order of termination proper inquiry was conducted by respondent No.2 after providing the opportunity to the applicant and respondent No.4 and considering the background of the matter in our opinion there appears no justification and necessity for the respondents to issue show cause notice prior to passing the order of termination. Moreover, the order of appointment of the applicant was challenged before this Tribunal and appointment of the applicant was temporary, the learned counsel for the respondents placed reliance on rule 8 of Swami's service rules for Postal Gramin Dak Sevak it has been provided in rule 8 as under:-

"8. Termination of Employment

(1) The employment of a sevak who has not already rendered more than three years' continuous employment from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the Sevak to the Appointing



Authority or by the Appointing Authority to the Sevak;

(2) The period of such notice shall be one month:

Provided that the employment of any such Sevak may be terminated forthwith and on such termination, the Sevak shall be entitled to claim a sum equivalent to the amount of Basic Time Related Continuity Allowance plus Dearness Allowance as admissible for the period of the notice at the same rates at which he was drawing them immediately before the termination of his employment, or, as the case may be, for the period by which such notice falls short of one month.

Note.- Where the intended effect of such termination has to be immediate, it should be mentioned that one month's Time Related Continuity Allowance plus Dearness Allowance as admissible is being remitted to the Sevak in lieu of one month through money order."

8. Hence, from perusal of rule 8 and considering the facts and circumstances of the case in which the order of termination was passed there was no necessity to issue show cause notice and one month's emoluments were paid and which have been provided in rule 8. Learned counsel for the applicant placed reliance on a judgment of Hon'ble Supreme Court reported in 2007 (2) ESC 358 (SC)

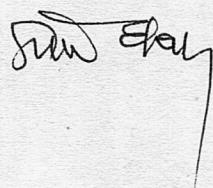
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Smt. Kiran Singh Vs. Union of India and Ors., but having into account the peculiar circumstances of the case no benefit can be given to the applicant on the basis of this judgment of the Hon'ble Supreme Court. The candidature of the applicant was not rejected merely on the ground that the respondent No.4 secured higher marks in comparison, but other conditions were also considered and the respondent No.4 was found in higher pedestal in comparison to the applicant. Reliance has also been placed by the learned counsel for the applicant on a judgment of (1997) 36 Administrative Tribunals Cases 539 (FB) Tilak Dhari Yadav Vs. Union of India and Ors. It has been held by the C.A.T., Allahabad Bench in this order that rule 6 does not confer power on appointing authority or supervisor to appointing authority to terminate the service of EDA without giving him an opportunity to show cause, but even then this judgment is also of no help to the applicant because whatever has been done by the respondents was in accordance of the direction of the Tribunal given in O.A. No. 554 of 2001 filed by the respondent No.4.

9. For the reasons mentioned above we are of the opinion that prior to passing the order of

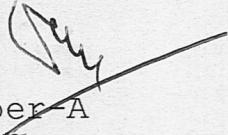
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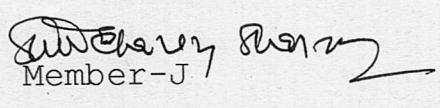
termination of the applicant in pursuance of the direction of the Tribunal in O.A. No. 554 of 2001 proper inquiry was conducted, and the respondent No.2 was directed to decide the representation of the applicant (respondent No.4) by speaking order within a stipulated time by reasoned and speaking order. The proper inquiry was conducted by respondent No.2 and full opportunity was given to the applicant of the O.A. and respondent No.4 Vijay Kr. Jaiswal and on the basis of the result of the inquiry respondent No.2 arrived at the conclusion that the case of the respondent No.4 is on better footing in comparison to the applicant and accordingly the candidature of the applicant was cancelled and in accordance with law the order of termination was passed, in our opinion as the appointment of the applicant was made ignoring the claim of the respondent No.4 who was in better footing in comparison to the applicant and in this background the order of termination was passed and in our opinion the order of termination is justified in the circumstances of the case and the order of termination cannot be read in isolation and it will be read along-with report of the respondent No.2 dated 19<sup>th</sup> September, 2001, in our

A handwritten signature in black ink, appearing to read "Sunil Shukla". The signature is written in a cursive style with a vertical line extending downwards from the end of the name.

opinion O.A. lacks merits and liable to be dismissed.

10. O.A. is dismissed. No order as to costs.

  
Member A

  
Member J

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