

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 20th DAY OF Nov 2011)

Hon'ble Dr.K.B.S.Rajn, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 1103 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Prem Kishore, aged about 30 years,
Son of Sri Ram Din alias Benche
R/o village & Post Jakhauli (Ait)
Tehsil Kunj, District Jalaun at Orai.

.....Applicant

Present for Applicant: Shri S.K. Srivastava, Advocate

Versus

1. Union of India through the Secretary,
Ministry of Communication,
New Delhi.
2. Senior Superintendent of Post Offices,
Jhansi Division, Jhansi.
3. Assistant Supdt. Of Post Offices,
Jalaun at Orai.
4. Sri Rakesh Kumar, Son of Lachchi Ram
Resident of village & Post Jakhauli (Ait)
Tehsil Kunj, district Jalaun at Orai.

.....Respondents

Present for Respondents: Anil Dwivedi, Advocate

ORDER

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member(J))

This is a sequel to the decision dated 20-05-2004 in an earlier OA No. 1257 of 1999, in which the applicant herein has been the private respondent (who has been set ex parte due to his non response to the notice issued) and the private respondent in the present OA has been the applicant therein. The facts leading to the institution of this OA could well be borrowed from the previous OA and the same are as under:-

2. The vacancy for the post of E.D.B.P.M, Jakhauli was notified on 29.4.1999 and a selection was made. After the selection, the official respondents appointed the private respondent no.3 Shri Prem Kishore. The applicant has challenged the appointment of Respondent No. 3 on the ground that he is the most meritorious and has got the highest marks in the examination. The plea of the respondents that the applicant failed to prove that he is having landed property. In the list of enclosures also, no document was filed, hence finding the applicant not eligible, the respondent no.3 was given appointment.

3. The Tribunal took into consideration the rule position and ultimately allowed the OA in the above case and the operative portion is as under:-

"In view of the discussions made above, the letter of appointment issued to respondent no.3 is to be quashed. Learned counsel for applicant pointed out that as per the merit chart filed by the respondents, the applicant has secured 64.16% marks in High School whereas the next person who secured 62% is one

Mathura Prasad. Respondent No.3 has secured only 58.33% marks. Thus, the applicant has secured highest percentage of marks and stood first in the list.

The respondents are, therefore, directed to issue offer of appointment to the applicant on the aforesaid post of EDBPM and if the applicant fulfills the conditions laid down, he shall be given appointment. If the applicant fails to fulfill the conditions within the specified time, the offer shall be given to the other person in order of merit. The compliance of the order be made within a period of three months from the date a copy of this order is served."

4. The official respondents have taken action in pursuance of the above order and on being satisfied that the private respondent in the present OA having fulfilled the requisite condition of holding of property and conducting the post office in the village concerned, had issued the order of termination of the applicant, vide the impugned order dated 01-09-2004. The applicant has raised certain allegations against respondent No. 4 stating that he has some soft corner towards the private respondent and hence, the termination order is illegal and unjust. The applicant has sought for the following relief(s);

- (i) an order, direction or writ in the nature of mandamus commanding respondents not to terminate the services of applicant to the post of E.D.B.P.M Jakhauli (to which he has been selected by respondent no.2 & 3). Following the ex-parte orders dated 20.5.2004 passed by this Hon'ble Tribunal in OA No.1257/99 Rakesh Kumar Vs. Union of India and others.
- (ii) An order, direction or writ in the nature of mandamus Commanding respondents not to disturb the services and functioning of the applicant to the post of E.D.B.P.M.
- (iii) An order, direction or writ in the nature of mandamus

Commanding respondents not to issue any appointment letter to Rakesh Kumar, respondent no.4 to the post of E.D.B.P.M as he does not fulfil the required terms and Conditions no.1/6 contained in notice dated 28.5.1999(Annexure 2.2.)

- (iv) An order, direction or writ in the nature of mandamus commanding respondents to pay month to month salary to the applicant as and when it falls due.
- (v) Any other order, direction or writ of any such other nature Which this Hon'ble Tribunal deems fit and proper in the interest of justice.
- (vi) To allow the cost throughout.

5. Respondents have contested the O.A. They have stated that the applicant's services could not be continued in view of the fact that in the selection for the post of EDBPM, the criteria is highest marks and other conditions are not conditions precedent to selection but conditions posterior to selection and accordingly, the appointment of the private respondent in pursuance of the order of the Tribunal dated 20-05-2004 had to fructify which could be possible only by dislodging the applicant from the post.

6. The applicant has filed the rejoinder in which he has contended that the earlier order in OA No. 1257 of 1999 had been obtained by the private respondent by concealing material facts. He has reiterated his contentions as raised in the OA.

7. After exchange of pleadings, at the time of hearing, parties consented to file written arguments and accordingly the official respondents have filed the written arguments. In the said written arguments, the respondents have narrated the sequence of events of the past case, the reason as to why they had to terminate the service of the applicant and also have cited certain decisions of the Tribunal including the Full Bench of the Tribunal.

8. Pleadings and written argument have been scanned. The applicant who was impleaded as respondent No. 3 in the earlier OA was set ex parte. He had not chosen to challenge the order in the said OA which had certainly gone against him. There is no point in his now contending that the said order was passed as the applicant therein had concealed material facts.

9. One aspect has to be considered at this juncture. The termination of the service of the applicant was not on account of any mistake or fraud played by the applicant in securing his appointment. The respondents genuinely believed that the applicant was to be selected as the private respondent herein had not fulfilled certain conditions. However, the Tribunal held that it was the applicant in the aforesaid OA No. 1257 of 1999 who ought to have been given a chance to fulfill the conditions of owing property etc., and on his doing so, the applicant's services were terminated. In that process, the applicant had put in a substantial period of service as EDBPM.

Courts do take lenient view in granting some relief when the individual was not at fault. In this regard, the decision of the Apex Court in the case of *Raj Bahadur Sharma v. Union of India*, (1998) 9 SCC 458, is apt to be mentioned.

12. *In the circumstances, we hold that the appellant was not at fault in not joining at the transferred place. Therefore, when he was not at fault he cannot be blamed for the consequences entirely. It is also a fact that he did not work factually for the period in question.*

13. *Taking all these factors into consideration, we are of the view that the ends of justice would be met by directing the respondents to pay 50% of the salary and allowances for the period in question to the legal representatives of the deceased appellant within six months. The appeal is accordingly allowed in part with no order as to costs.*

10. Keeping in view the spirit in the above decision, the Tribunal is of the considered opinion that in the instant case also, justice demands that since the appointment of the applicant, though illegal, was not on account of any of the mistakes of the applicant but the entire mistake was attributable only to the respondents (who also cannot be blamed for the mistake as they were under the genuine impression that the applicant alone fulfilled all the conditions), his termination should be treated as one of retrenchment and he be kept in the list of such retrenched GDS so that on the basis of the same he could be accommodated in any other post office against any future vacancies. Ordered accordingly.

11. With the above direction, the OA is disposed of. No cost.


MEMBER (A)
MEMBER (j)

Uv/