

open court

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 8th day of September, 2005.

QUORUM : HON. MR. A.K. BHATNAGAR, J.M.

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

O.A. NO. 1108 OF 2004

Sudama Singh Yadav, aged about 28 years, son of Shri Keshav Prasad Yadav, R/O Village and Post Babhamiyav Raipur, District Chandauli.

.....Applicant.

Counsel for the applicant : Shri V. Singh.

Versus

1. Union of India, through the Secretary, Ministry of Communication, New Delhi.
2. The Senior Superintendent of Post Offices, Eastern Division, Varanasi.
3. The Director, Postal Services, Allahabad.
4. Post Master General, Post Office, Allahabad.

.....Respondents.

Counsel for respondents : Sri S. Singh.

O R D E R (Oral)

BY HON. MR. D.R. TIWARI, A.M.

By this O.A. filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for issuance of direction to the respondents for alternative appointment on anyone out of the four posts of EDBPM on the vacancy at Arkaura, Katesar, Mahuar Kala and Nai Kot in the district Chandauli in view of the decision dated 1.4.2004 and in view of provisions of Para 2 of the circular dated 30.12.1999.

2. Shorn of details, the relevant factual matrix for deciding the controversy is that the applicant has approached this Tribunal second time. On earlier occasion, he filed O.A. No. 139/03 against the termination of his appointment as EDBPM, Badhamiyav Raipur, District Chandauli. In that O.A.,

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he has challenged the order of termination by the respondents on the ground that he was selected through a procedure prescribed for appointment as EDBPM. Since he challenged the order and approached the Tribunal in the above stated O.A., the Tribunal granted him stay and he continued to work as EDBPM till the disposal of the aforementioned O.A. Finally, the O.A. was dismissed in view of the provisions mentioned in Para 2 of letter dated 30.12.1999, issued by the Department of Post which stated as under :-

"Efforts should be made to give alternative employment to the ED Agents who are appointed provisionally and subsequently discharged from the service due to administrative reasons, if at the time of discharge they had put in not less than three years continuous approved service, in such cases their name should be included in the waiting list of ED Agents discharged from service in DGP&T letter dated 23.2.1979".

3. In compliance of the said order, Senior Superintendent, East Region, Varanasi issued order on 31.5.2004 to handover the charge to Shri Awadhesh Singh. It has been pleaded that in the first week of June, 2004 he handed over the charge.

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The applicant has submitted that he has worked for more than five years and he is fully eligible to be appointed as EDBPM. His main grievance is that the respondents have not put him in the waiting list and is not providing him an alternative appointment. He has also submitted that the post of EDBPM at Arkaura, Katesar, Mahuar Kala and Nai Kot have fallen vacant and the respondents have issued advertisement dated 23.7.2004 inviting the applications for the same post (Annexure No.4). The moment the applicant came to know of the above vacancies, he immediately moved application on 12.8.2004 before the Senior Superintendent, Post Office, East Region, Varanasi for his appointment

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in compliance of the order dated 1.4.2004, passed by this Tribunal. However, no action was taken. He has further pleaded vide Para 6 of the O.A. that Post Master General, Allahabad vide his letter dated 15.4.2004 asked from the Senior Superintendent of Post Offices as to what steps has been taken in respect of compliance of the order of Hon'ble Tribunal for giving alternative job to the applicant. As nothing was done, the applicant filed this O.A. and made the prayer for alternative appointment as ordered by this Tribunal and also in view of the provisions of Para 2 of circular letter dated 30.12.99.

5. The respondents, on the other hand, have resisted the O.A. and filed a detailed Counter Affidavit denying the contentions made by the applicant. They have stated the general story regarding the decision of O.A. No.139/03 and the action taken thereabout. They have specifically denied the receipt of the letter dated 15.4.2004 from the Post Master General, Allahabad. Vide Para 8 of the C.A., it has been submitted that the letter in question does not seem to have been received in the office. About the order of this Tribunal to providing him alternative appointment, they have submitted vide Para 11 that the applicant was entitled to appointment on a vacant post of EDBPM but by refusing handing over the charge of EDBPM as also by misbehaving with mail overseer as well as SDI(P), he proved himself to be unsuitable to any post of Government. He refused to handover the charge of EDBPM to the deputed mail overseer and threatened him badly which caused the respondents to lodged a complaint against him in P.S. Dhanapur vide FIR No.34/03 dated 22.5.2004 under Sections 406/506 IPC. It is, therefore, the case against him pending police inquiry and consideration on his application for the post seems not justified. In view of this, the respondents have submitted that his O.A. is devoid of merit and be dismissed.

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6. During the course of the arguments, counsel for the parties have taken the fact and the legal pleas from the O.A. of the applicant and C.A. of the respondents respectively. No new plea except the pleadings made in the O.A. and the C.A. were advanced.

7. We have heard very carefully the rival submissions of the counsel for the parties and perused the pleadings.

8. From what has been stated above, few issues remain unsolved which require a detailed consideration. The first issue, which has to be addressed to is the contention of the respondents regarding the refusal of the applicant to handover the charge and filing of the FIR with the police. This fact itself has been controverted by the applicant vide Para 19 of the R.A. wherein it has been submitted that the Superintendent of Post Offices passed the order on 31.5.2004 and he immediately handed over the charge on 3.6.2004. It has also been alleged that in order to deny appointment, the respondents have prepared a false case of misbehaviour whereas even the police in the investigation has found that the allegations made in the FIR against the applicant was incorrect. This assertion of the applicant in the rejoinder has not been denied by the respondents during the course of the argument or even in the Supplementary C.A. filed by them. Vide para 18 of the SCA, respondents have simply stated that contents of Para 11 of the C.A. is reiterated. This does not amount to specific denial by the respondents. The settled legal position is that the denial has to be specific and it has to be refuted by certain documentary evidence. The contention of the applicant that the police, after investigation have found that the allegations made in the FIR against the applicant was found incorrect. In view of this to state that the contents of para 11 of the C.A. is reiterated and not denying this fact shows that the respondents

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appeared to have acted in a manner which indicates bias against the applicant. Another thing, which we have to take into account is that the order of this Tribunal for providing him the alternative appointment appear to have been denied to him on the very frivolous ground of his misbehaviour. We are of the considered view that this act on the part of the respondents is against the basic minimum requirement of natural justice. The principal of natural justice has taken deep roots even when administrative action is being taken. We do not find from the records that he was even put to notice about the action to be taken by the respondents. He was not afforded any opportunity as to why he was not being appointed. Before parting we would like to mention that the clear direction of this Tribunal passed in O.A. No.139/03 appears to have been given a very contemptuous treatment by the respondents. We wish that the respondents should behave in a very responsible way while dealing with the direction of this Tribunal. In view of this the O.A. is bound to succeed on merit. We again feel inclined to direct the respondents to take action in accordance with the provisions of Para 2 of the circular dated 30.12.1999. We also would like the respondents to decide the case of the applicant in accordance with the direction of this Tribunal in the aforeslated O.A. (No.139/03) and the provisions contained in the circular dated 30.12.99. We also fortified in our view by the judgment of Hyderabad Bench in the case of Mohd. Hanif Vs. SDI Postal, Kurnool - 2004(1) ATJ 18 and the decision of the Apex Court in the case of Khargesh Kumar Vs. I.G. of Registration - 199¹(1) SCC (L&S) 182 wherein it has been held that for alternative appointment, break in service of three months in case of three years provisional appointment should be condoned. In this case we find that the applicant has put in more than five years of service without any break. His case stands on a better footing as provided in the circular dated 30.12.99.

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9. In view of the directions contained in the preceding para, the O.A. is disposed of.

No order as to costs.

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A.M.

J.M.

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