

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 28th day of January 2005.

Hon'ble Mr Justice S.R. Singh, Vice-Chairman
Hon'ble Mr. D.R. Tiwari, Member A

Original Application no. 1201 of 2004

Prem Singh Yadav, S/o Chhedi Lal Yadav,
Dhamseda, Post Charwa, Distt. Kaushambi (UP).

... Applicant

By Adv : Sri O.P.Gupta

V E R S U S

1. Union of India through Secretary,
Ministry of Communication, Govt. of India,
NEW DELHI.
2. The Post Master General, Allahabad Region,
Allahabad.
3. The Senior Supdt. of Post Offices,
City Division, Allahabad.

... Respondents

By Adv : Sri S. Singh

A L O N G W I T H

Original Application no. 1254 of 2004.

Rakesh Singh,
S/o Sri B.S. Yadav,
R/o Village Gogahi,
Majare Pansaur Post Office Lekipur,
Distt. Kaushambi.

... Applicant

By Adv : Sri A. Singh

V E R S U S

1. Union of India through its Secretary,
Ministry of Communication, Deptt. of Post,
Sansad Marg, New Delhi.
2. The Post Master General, Post Offices, Allahabad Div.,
Allahabad.

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3. The Senior Supdt. of Post Offices,
Allahabad Division, Allahabad.

4. Prem Singh, S/o Sri C.L. Yadav,
R/o Vill Dhamseda,
Post Charva, Tahsil Chail,
Distt. Kaushambi.

... Respondents

By Adv : Sri S. Singh

O R D E R

By D.R. Tiwari, AM.

Having grounded on the identical facts and involving the common question of law, these two OAs are disposed of by the common order. OA no. 1201 of 2004 will be the leading case.

2. By this OA filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the order of cancellation of appointment of the applicant dated 01.09.2004 (Ann A6) alongwith the notification dated 28.09.2004 (Ann A7). He has further prayed for issuance of direction to the respondents for his reinstatement on the post of G.D.S.B.P.M. with all consequential benefits including the salary and seniority.

3. Whereas, in OA 1254 of 2004, the applicant has prayed for issuance of direction to the respondents to consider his appointment on the post of G.D.S. BP.M. on the basis of offer dated 26.3.2002 as he was highest marks gainer in High School examination.

4. Shorn of superfluities, the relevant material for adjudicating the controversy is that a notification for appointment on the post of GDSBPM, Balkaranpur (Charwa) Kaushambi was issued vide SSPO's Allahabad Memo dated

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26.3.2002. Thirteen applications were received, out of which only two applicants namely one Rakesh Singh and the applicant (Prem Singh Yadav) were found suitable for the post in question. The candidature of there two candidates was got verified by the appointing authority. Sri Rakesh Singh was excluded from the selection because he could not provide suitable accommodation for the post office. Applicant succeed in getting the appointment on the post as he fulfilled all required qualification and conditions for the same. Before offering the appointment to the applicant, following formalities were completed :-

- a. Verification of Education qualifications by the Principal
- b. Income and landed property was verified from District Magistrate through Tahsildar
- c. Concerned Police Station verified the character
- d. Medical Examination was done and certified from C.M.O. of the district.
- e. Accomodation for post Office was inspected twice and was approved by the appointing authority
- f. Village Pradhan and other people of the village were consulted and
- g. An amount of Rs. Ten thousand as security was deposited by the applicant

After completing the above mentioned formalities, the applicant was issued the appointment letter dated 19.08.2003 (Ann A1).

5. Rakesh Singh who did not succeed in getting the appointment, made complaint against the applicant on the ground that he had more marks in the High School Examination and was entitled for appointment. He filed OA no. 202/04 which was disposed of by order dated 4.3.2004 with a direction to P.M.G. Allahabad to decide his representation

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by a reasoned order (Ann A3). Meanwhile, the complaint from Rakesh Singh resulted in issue of show cause notice dated 23.12.2003 to the applicant. The applicant submitted the reply to the show cause notice and filed OA no. 20/04 which was disposed of on 15.7.2004 with a direction to the P.M.G., Allahabad (Ann A4) which is extracted below:-

".....We are of the view that would meet the ends of justice if this O.A. is disposed of with the direction to the Post Master General, Allahabad that while disposing of the representation of the applicant in O.A. no. 202/04, he shall also afford opportunity of hearing to the applicant herein and shall have due regard to the representation that may be filed by the applicant. Since the applicant is working on the post in question, the respondents shall not interfere with his functioning except in accordance with the order that may be ultimately passed by the Post Master General after considering the view points of the applicant herein and Rakesh Singh who was the applicant in OA no. 202/04....."

6. Accordingly, the applicant filed a detailed representation dated 24.8.2004 (Ann A5) which was rejected by an order dated 1.9.2004 (Ann A6). Being aggrieved, the applicant has filed the instant OA and the impugned order of cancellation of his appointment has been assailed on various grounds mentioned in para 5 of the OA. The applicant has contended that the P.M.G. has not applied his mind and did not advert to points raised in the representation. Mention of grounds in support of the accommodation for running post office by the applicant has been treated as irrelevant. It has been mentioned in the letter that applicant did not fulfil condition regarding accommodation on the last date of submission of application which is contrary to documentary

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evidence mentioned in paras 5 to 15 of the representation dated 24.8.2004. It has been further pleaded that issue of providing accommodation is considered after selection of suitable candidate. It has been further submitted that the rejection of representation is arbitrary and illegal and applicant will suffer a lot for no fault of his own.

7. The respondents, on the other hand, have opposed the O.A. by filing a detailed counter affidavit. They have refuted the contention of the applicant and has submitted that the proposed house for running the post office does not belong to Alp Narain Tiwari is clear from the report of Tansildar Chail/Kausambi. Hence it has been argued that the applicant did not fulfil the condition of the house. Accordingly, a show cause notice was sent. It has been further argued that the appointment of the applicant and the candidature of Prem Singh were improper in as much as they had concealed the facts about accommodation of post office Building. Both of them have provided false information and their representations were rejected. In such circumstances, PMG Allahabad ordered to start a fresh selection process and the applicant was relieved from the charge of GDSBPM, Balkaran on 3.9.2004. As such the OA deserves to be dismissed.

8. During the course of arguments, the learned counsel for the applicant Sri O.P. Gupta submitted that the issue of obtaining more marks by Rakesh Singh was no longer valid as he failed to provide suitable accommodation for running the Post Office and he was refused the appointment. He further argued that the accommodation provided by the applicant was inspected by the Competent Authority twice and

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and was accepted. Consequently he was offered appointment by letter dated 19.08.2003 and allowed to function as B.P.M. without any interference till he was served with a show cause notice dated 23.12.2003, after almost about four months on the basis of complaints. It is illegal and arbitrary. He forcefully argued that the issue of providing accommodation at the time of submission of application was not necessary. It was precisely because of this that two candidates were found suitable. It is settled law that some reasonable time is given to the selected candidate for providing the accommodation and in this case applicant succeeded in fulfilling the requirement of accommodation to the satisfaction of the authority. He has further submitted that during the rainy season, the accommodation was not found suitable and shifted the Post Office in the house of Upadhyay under intimation to authority and the Post Office is functioning in that house. The respondent's counsel made faint efforts to counter the argument of the applicant's counsel and pleaded that the report of Tahsildar was to the effect that the house did not belong to Alp Narain Tiwari and the condition of providing Post Office building was also not satisfied in the case of the applicant and it was for this reason that he was issued show cause notice and after considering his representation, the applicant's appointment was cancelled and it was decided to fill up the post afresh and notification for the purpose was issued.

9. We have heard very carefully the rival submissions of the parties and given anxious consideration. We have perused the pleadings very carefully.

10. The core question which survives for

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adjudication is the validity of impugned order dated 01.09.2004 and justification of notification dated 28.09.2004 for fresh selection and appointment. It may be noticed from para 4 of the order that the applicant was appointed after completing all the formalities for the purpose. All conditions and requirement were fulfilled. He was not only appointed but was allowed to function unhindered for about four months. This itself proves that there was no irregularity in his appointment. The review by the higher authority was done on the basis of complaint for the issue of higher marks was not necessary as the gainer of the higher marks could not fulfil the other essential condition of providing the Post Office building. The contention of the respondents cannot be sustained at this stage. The ground of providing accommodation at the time of submission of the application, as contained in the impugned order, cannot be accepted as this is done after selection. It is for this reason that two candidates were found suitable for the post. The applicant was given time and was able to provide the Post Office building to the satisfaction of the respondents and was appointed. The dispute about the ownership of the House of Alp Narain Tiwari appears to have been settled by the affidavits filed by his brother in law which are available in Annexure No-5 of the O.A. Even if it is held that the dispute is there and report of Tahsildar incorrect, the applicant had already procured another house because the disputed house was not suitable during the rainy season. The alternative accommodation where the Post Office is functioning has been provided under intimation to

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competent authority which are clear from the Annexure RA-3 and RA-4 of the rejoinder affidavit. In view of these reasons, the O.A. is liable to succeed.

11. In view of the facts and circumstances, mentioned above and discussions made, the O.A. succeeds and is allowed. The impugned orders (Annexure A-6 and Annexure-7) are quashed and set aside. The respondents are directed to reinstate the applicant immediately with consequential benefits. The O.A. No.1254/04 is devoid of merit and is accordingly dismissed with no order as to costs.

D. K. S.
Member-A

R. K.
Vice-Chairman.

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