

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

No. OA 133 of 2004

Present: Hon'ble Mr. A.S. Karamadi, Judicial Member
Hon'ble Mr. P.K. Chatterji, Administrative Member

Murtaza,
S/O Ash Mohammad,
R/O Village & Post –
Hetampur, District – Chandauli.

... APPLICANT.

VERSUS

1. Union of India, through
The Secretary,
Ministry of Communication,
Dept. of Post,
South Block,
New Delhi.
2. Post Master General,
Allahabad.
3. U.P. Mandaliya Inspector,
Post Office Chandauli,
U.P. Mandal,
Chandauli, Varanasi.
4. Superintendent of Post Office,
Fast Prakhanda,
Varanasi.
5. Deena, S/O Ramraj Prasad,
R/O Vill.- Chhapra,
Gaon Panchayat & Nyay Panchayat,
Utari, Block – Chahania,
District – Chandauli.

... RESPONDENTS.

For the applicant : Mr. V. Singh, counsel

For the respondents : Mr. R.R.K. Mishra, counsel, Sni Saumitra Singh

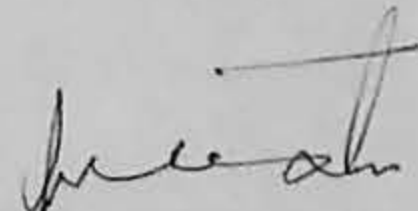
Heard on : 28.11.07

Order on : 30th Jan 2008.

O R D E R

Mr. P.K. Chatterji, A.M.

Through this OA the applicant has approached this Tribunal to examine the validity of the order passed by the respondents on 15.10.03. This order was passed in



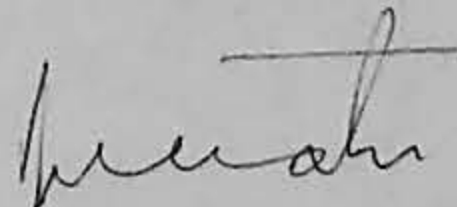
pursuance of the direction of the Tribunal in OA 503/01 dated 8.1.03. The relevant portion of the direction of the Tribunal is extracted below :

"The counsel for the applicant has placed before us the original application dated 7.11.98 copy of which was filed in the OA. It appears that the application was sent by regd. post. In view of this material in our opinion the ends of justice will be served if we direct the Post Master General, Allahabad to consider the representation of the applicant and pass a reasoned order after hearing respondent No.4.

The OA is accordingly disposed of finally with the direction to Post Master General, Allahabad to consider the representation of the applicant and pass a reasoned and detailed order as to how the candidature of the applicant was not considered for selection and pass a suitable order in accordance with law. We further direct that he shall give opportunity to respondent No.4 to hear before passing the order. The applicant shall file copy of the representation along with a copy of this order. There will be no order as to costs."

2. The facts of the case briefly stated is that the applicant was one of the applicants against the notification for filling up the post of ED Runner, Hetampore. The date of submitting the application, as stated by the applicant is 7/16/11/98. It is stated by the applicant that the applications were sent by registered post. But on 30.12.98 the respondent No.3 allegedly appointed respondent No.5 to the post of ED Runner. This, according to the applicant, was an irregular order as the respondent No.5 was not a resident of any of the villages within the delivery zone of the Post Office at Hetampore. Therefore as per rule his appointment was irregular and liable to be cancelled. He thereafter filed the above mentioned OA 503/01 before the Tribunal and the Tribunal after hearing both parties decided the matter giving specific direction to the Post Master General as cited above.

3. The applicant is aggrieved that the order passed by the Post Master General dated 15.10.03 is not in compliance with the direction of the Tribunal which wanted that his case should be considered by the Post Master General. The Tribunal while giving this decision had relied on the material submitted by the applicant as proof of dispatch of his application by registered post. The respondents therefore could not merely say that it would not be possible to consider his representation because all records relating to registered letter was weeded out. The essence of the decision of the Tribunal was that in view of the dispute regarding the dispatch of his application the respondents should look into the matter afresh after giving the applicant a chance for personal hearing and issue a

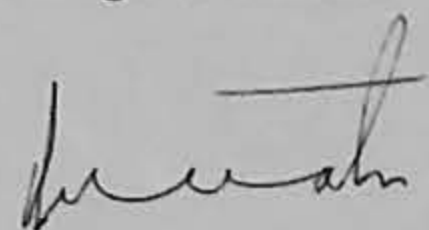


speaking order stating clearly therein how and why the applicant's case was not considered. However, the impugned decision dated 15.10.03 is silent on this aspect. Therefore it is liable to be struck down.

4. In their reply the respondents refuted the allegation. Firstly they have defended their action in selecting respondent No.5 to the post of ED Runner, Hetampore by saying that he was a resident within the cluster of villages served by Post Office at Hetampore. They have further stated that according to the present position the ED employee is not required to reside within the post village and if he takes up residence within the specified area before taking up appointment, that will suffice.

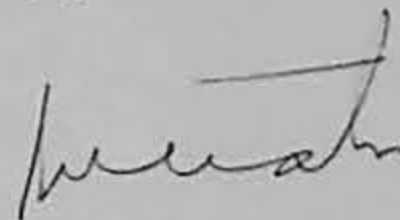
5. The applicant has made allegation that the appointment of the respondent No.5 was irregular. The certificate of his residence in post Behara was proved to be false, and he was actually a resident of village Chhapra. This has been denied by the respondents. In support of this contention the applicant stated that respondent No.5 had himself made an application for his transfer to another village as it was inconvenient for him to serve as ED Runner, Hetampore from his residence which was quite distant from the post village. We have seen the reply to this allegation. The respondents have clearly stated that the respondent No.5 was transferred to another post office for a temporary period of a few months. They have however, not come out clearly on the point whether the respondent No.5 actually made a representation like that on the ground of his inconvenience due to the distance between his residence and his place of working. There is some gap in the reply submitted by the respondents and it is not such as would dispel fully the doubt raised by the applicant in this respect. The doubt would still persist as to the genuineness of the claim of the respondents that nothing was found wanting in the candidature of the respondent No.5 and they have not flouted any rule regarding the residence in the matter of appointment of ED employee.

6. However, the point made by the ld.counsel for the respondents was what the respondents could do at this point. The selection for the post was made in the year 1998. Ever since then the respondent No.5 had been working as ED Runner, Hetampore except for a short spell of some months when he was transferred to another village to work as



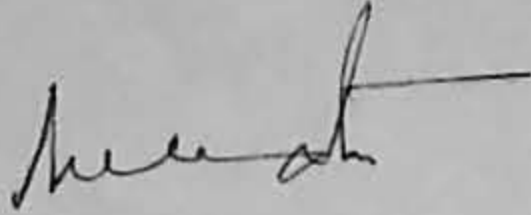
EDMC at his request. Moreover, the applicant has not challenged the selection of respondent No.5 in this OA and he has not prayed for cancellation of his appointment. Without canceling the appointment of respondent No.5 it is not possible to provide an appointment to the applicant in the same post. The ld.counsel for the respondents has further stated that it was in appreciation of this ground reality that the Tribunal had issued the above mentioned direction to the respondents to dispose of his representation after giving a personal hearing stating the reasons as to how and why the application of the applicant was not considered. The respondents have complied with the direction fully. The reason for the respondents' inability at this stage to do anything as to the candidature of the applicant for the post at Hetampore has been clearly stated. There is no scope for any adjustment to be made in this respect to accommodate the applicant. For this reason, the respondents have stated, the OA deserves to be dismissed.

7. Having heard the arguments and going through the pleadings we have applied our mind to the matter. The question which needs to be answered for disposal of this matter is whether it would be possible for the respondents to do anything to accommodate the candidate at this stage presuming that he had sent the application by registered post. The applicant has very emphatically stated that after he had sent the application against the notification he had a right to be considered. It was that right which has been violated by the respondents by not considering his case along with the other applicants. Therefore he expects the Tribunal to restore the justice which has been denied to him. The question before us therefore is the scope of giving a fresh consideration to the representation of the applicant made against the notification for selection. Would it be possible to do so in the back drop of the fact that the vacancy has already been filled up? Although the applicant has raised several questions regarding the validity and legality of appointment of respondent No.5, we think it is not within the scope of this OA to look into this question at this distant time. The fact also remains that in this OA the applicant has not prayed for cancellation of the appointment of respondent No.5. We are not passing any comment as to the legality or otherwise of the selection of the respondent No.5. The post, however, has remained filled up during the last 9 years and it will not do any good to either the



administration or the respondent No.5 to unsettle this arrangement at this distant time. We are therefore of the view that it would not have been possible for the respondents to open up the matter afresh with a view to accommodate the applicant.

8. For this reason we do not find any merit in this OA which is accordingly dismissed. No order as to costs.



MEMBER (A)

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MEMBER (J)