

RESERVED.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NUMBER 1237 OF 2004

ALLAHABAD, THIS THE 11/15 DAY OF November 2005

**HON'BLE MR. A.K. Bhatnagar, MEMBER-J
Hon'ble Mr. D.R. Tiwari, Member-A**

VIJAY PRATAP YADAV
Son of Shri Rama Ram
S/o Nai Kot, (Sakal Diha Bazar), District Chandauli.

.....Applicant.

(By Advocate: Shri J.M. Sinha/Sri B.N. Singh)

Versus.

1. Union of India through it's Secretary, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices, East Division, Varanasi.
4. Sub-Divisional Inspector of Post Offices, Chandauli, District Chandauli,

.....Respondents.

(By Advocate : Sri Saumitra Singh)

ORDER

By Hon'ble Mr. D.R. Tiwari, Member-A

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing and setting aside the impugned notification dated 23.07.2004. He has further prayed for issuance of direction to the respondent NO.3 for considering his claim for regular appointment on the post of E.D.B.P.M Nai Kot, being a working E.D. Agent by giving him preference as provided under the Rule.

2. Before we proceed to decide this case on merit, it would be better if we consider the Civil Misc. Impleadment Application No.3076/05. Through this Misc.

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as working E.D. Agent as provided under E.D.D.A (Conduct and Service) Rules 1964. He also relied on the instructions issued by Director General of Posts vide D.G. Post letter No.43-27/85-pen (EDC & trg) dated 12th September 1988 (Annexure A-7). This Circular provides when an E.D Post falls vacant in the same office or in any office in the same place and if one of the existing E.D.As prefers to work against that post, he may be allowed to be appointed against that post without coming through the Employment Exchange provided he is suitable for the post and fulfils all the required conditions. When he did not receive any reply, he sent another representation dated 11.2.2004 which also did not yield any result. Instead of considering the genuine and legitimate claim of the applicant, the respondent No.3 issued a General Notification dated 23.7.2004 advertising the said post of E.D.B.P.M Nai Kot for calling the applications of the candidates from open market. The applicant again submitted representation dated 16.8.2004 for redressal of his grievance (Annexure A-5). He followed it by another detailed representations dated 18.8.2004 and 22.9.2004 (Annexure No.6).

5. The applicant, aggrieved by the inaction on the part of respondents, has challenged the impugned notification on various grounds mentioned in para 5 of the O.A. His main ground of challenge is based on the instructions issued by D.G. Posts in the Circular dated 12.09.1988 and yet another circular dated 7.11.78 (Annexures No.A-7 and A-8). It has been pleaded that the notification has been issued in violation of the instructions contained in the aforestated Circulars. It has been submitted that the notification issued for the said post is illegal, arbitrary and also is against the D.G. Instructions/Rules. Non-consideration of his claim for giving him regular appointment on the said post suffers from legal infirmity and arbitrariness as the applicant fulfilled all the eligibility conditions for appointment on the said post of E.D.B.P.M and has also enough working knowledge for the same. The applicant

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has placed reliance on the case of Surya Mani Tripathi Vs. Union of India in O.A. No. 1284 of 2002 decided by this Tribunal on 6th March 2003. It has been submitted that the facts of the instant O.A. are similar to the facts in the case of Surya Mani Tripathi (supra) and this case is squarely covered by the order delivered in the case of O.A. No.1284/02. Hence, the O.A. deserves to be allowed on merit.

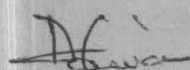
6. The respondents, on the other hand, have resisted the O.A. and filed a detailed counter affidavit. It has been admitted that on the retirement of Awadhesh Narain Singh from the post of G.D.S.B.P.M Nai Kot, Vijay Pratap Yadav, Mail Deliverer, (applicant in this case) Nai Kot, Chanduali was ordered to perform the duty of G.D.S.B.P.M in addition to his own duty of G.D.S.S.M.D. vide S.D.I (P) Chanduali memo No.A/Nai Kot dated 18.6.2003 and since then the applicant is working as G.D.S.B.P.M/G.D.S.S.M.D. It has been argued that due to ban of G.D.S appointment process of recruitment could not be initiated and requisition for the names of candidates was sent to Regional Employment Exchange, Varanasi vide office memo dated 23.07.2004 for filling these posts by O.C. candidates by fixing last date of receipt of the application as 23.08.2004. Regional Employment Exchange sponsored the name of five candidates on 3.8.2004 and all the five candidates were addressed on 26.8.2004 to send their applications in prescribed proforma upto 9.9.2004 along with all required certificates and documents. The application of only one candidate was received after the expiry of last date and other candidates did not submit their applications. As such, direct advertisement was made and names of 22 candidates were received. While the selection process was in progress, the applicant filed the instant O.A. and was granted interim relief by this Court and respondents had to wait till the decision of this Tribunal for proceeding in the selection process. It has also been argued that the D.G. Instruction contained in the letter dated 12.09.98, has been superseded by D.G. Post letter No.17/103/2002-GDS dated 27.6.2003 (Annexure CA-1). It

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has also been argued that as per the said ruling "**A Sewak shall not be eligible for transfer in any case from one Post/Unit to another Post/Unit except in public interest**". As such, the plea of the applicant for the transfer to the post of E.D.B.P.M. Nai Kot is totally misconceived and is liable to be set aside. The respondents for this contention has placed reliance on the Circular dated September 1, 2004 (CA-2). In view of these pleas, it has been argued that the O.A. deserves to be dismissed as being devoid of merit.

7. During the course of the argument, Sri A. Tripathi, holding brief of Sri J.N. Sinha, counsel for the applicant has argued that the contention of the respondents, in view of instructions contained in CA-1 and CA-2 appear to be misconceived as the letter dated 27.6.2003 (CA-1) refers to the Surplus Gramin Dak Sewaks. He has heavily relied on the case of Surya Mani Tripathi (supra). He has also submitted that the order passed in the case of Surya Mani Tripathi (supra) has been complied with vide memo No.B-3/Shahpur)/ CH-1/2000-01 dated At Allahabad the 20.10.2003 issued from the office of Senior Superintendent of Post Offices, Allahabad Division, Allahabad (Annexure A-8). He has also placed reliance in the case of Senior Superintendent of Post Offices, Kottayam and others Vs. Raji Mol and another decided by the Kerala High Court on 21.10.2003 reported in Vol-3 of A.T.J. at Page 127. On this basis, he has argued that the O.A. be allowed.

8. Sri Saumitra Singh, Senior Standing Counsel, Union of India has contested the claim of the applicant's counsel and has submitted that the selection process in pursuance of the notification for filling up the post of E.D.B.P.M Nai Kot is complete and the appointment has been withheld in view of interim order of this Tribunal. The selection process is valid and the respondents be allowed to take action in accordance with the Rules for making appointment to the selected candidate. He has emphatically argued and



has also filed a supplementary counter affidavit to contend that the D.G. Instructions relied on by the counsel for the applicant stands superseded by the letter issued by the respondents which is at CA-1. To a question from the Bench about not mentioning specifically the D.G. Circular dated 12.09.1989, he submitted that it might not have been possible to mention all the Circulars on the subject. He has also submitted that the new Rules known as the Service Rules for the Postal G.D.S. does not contain the instructions relied on by the applicant's counsel. He has submitted that the Instructions relied on by the applicant's counsel is no longer applicable to the case of the applicant. As such, the O.A. is devoid of merit and deserves to be dismissed.

9. We have heard very carefully the rival submissions made by the counsel for the parties and have perused the pleadings in the main O.A. alongwith the supplementary counter affidavit and supplementary rejoinder affidavit.

10. The main question which falls for consideration is the validity of the notification issued by the respondents coupled with inaction on the part of the respondents for non-consideration of the claim of the applicant. The headlines in respect of the judgment of Kerala High Court in case of Senior Superintendent of Post Offices, Kottayam and others (supra) is reproduced as under:-

"Gramin Dak Sewaks (Conduct & Employment) Rules, 2001-Rule, 3 Note II (iv)-Appointment-Extra Departmental Agents-A person working as an EDA (Sevak) is entitled to be considered for transfer to equivalent post-But he cannot claim appointment by transfer to a higher post and that too to the exclusion of other eligible persons-However his case can be considered subject to his fulfilling the conditions of eligibility along with other eligible persons who may offer their candidature for appointment".

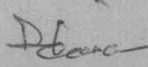
Another case relied on by the counsel for the applicant is Surya Mani Tripathi (supra) and the operative portion of the order is as under:-


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"For the reasons stated above the O.A. is allowed. The notification dated 28.09.2000 is quashed. The entire selection process done by the respondents so far will stand null and void and are set aside. Respondent NO.3 is directed to appoint the applicant on the post of E.D.B.P.M Shahpur as per Rules within a month for the date of communication of this order".

11. The above judgment of Surya Mani Tripathi (supra) is based on the similar facts and circumstances as obtaining in the instant O.A. and this judgment is binding on us. In this judgment, the implication of D.G. Instructions dated 12.09.1988 was also considered. The only new point raised during the course of argument in the instant case is that the above Circular stands superseded by the Circular dated 27.6.2003. On this point, counsel from the both sides had their own interpretation to suit their convenience. We have also read it very carefully and we do not find the mention of the aforesaid Circular being withdrawn and this leads to the presumption to the fact that the Circular is still in existence. This presumption is fortified by the fact that the implementation/compliance by the respondents of the order passed in O.A. NO.1284/02 in respect of Surya Mani Tripathi (supra) was done by letter dated 20.10.2003. The implementation/compliance of the order is subsequent to the date of the letter dated 27.06.2003. We cannot attribute ignorance to the respondents about the latest position on this subject. As such, the O.A. is liable to succeed.

12. In view of the facts and circumstances mentioned above and the discussion made, the O.A. succeeds on merit and is allowed in terms of the order in case of Surya Mani Tripathi in O.A. No.1284/02 decided by this Tribunal on the 6th March 2003. Cost easy.


Member-A


Member-J

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Application, the prayer has been made for amending the O.A. by impleading Ajit Kumar Yadav as respondent NO.5 in the aforesaid original application. The counsel for the aforesaid M.A., Sri B.N Singh was heard. His main plea for impleadment of Sri Ajit Kumar Yadav in this O.A. is on the ground that in pursuance of the notification dated 23.07.2004 issued by the respondents, the selection process for filling up the vacancy for the post of E.D.B.P.M Nai Kot was completed and Sri Ajit Kumar Yadav participated in the process and was selected but the appointment could not be made because of the interim order passed by the Tribunal in favour of the applicant in the aforesaid O.A. We are of the view that the relief claimed by the applicant in the M.A. is for appointment on the basis of selection made by the respondents whereas the relief claimed by the applicant in the aforesaid M.A. is for regularization of the applicant as per the extent Rules. It appears that the reliefs claimed are quite distinct in nature and the applicant in the M.A. does not appear to be necessary party for deciding the instant O.A. Hence, M.A. NO. 3076/05 is rejected with liberty to the applicant to approach the Tribunal for redressal of his grievances by filing a fresh application.

3. Shorn of the details, the relevant factual matrix to decide the controversy is that the applicant was appointed on the post of E.D.D.A/ E.D.M.C on 23.2.80 and was posted at Nai Kot Branch Post Office (Sakaldhiha Bazar) (Annexure A-2). On retirement of E.D.B.P.M of Nai Kot Branch Post Office, the applicant was provisionally appointed as E.D.B.P.M of the said Branch Post Office w.e.f. 28.6.2003 (Annexure A-3) and he took charge on the same day. He was also to perform the duty of the E.D.D.A in addition to the duty of E.D.B.P.M.

4. After joining the said post, he submitted the representation dated 8.7.2003 (Annexure A-4) before the respondents for giving him regular appointment on the post of E.D.B.P.M Nai Kot by giving him preference

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