

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE ~~9~~ DAY OF MAY, 2006

Original Application No. 497 OF 2004

CORAM:

**Hon. Mr. Justice Khem Karan, V.C.
Hon. Mr. A.K. Singh, Member (A)**

Vimlesh Kumar, S/o Shri Sambodhan
Prasad, R/o H.No.47/1 Sakal Diha Road
Mugal Chak P.O. Mughalsarai
District Chandauli (Varanasi)
(By Adv: Shri A.K. Srivastava)

Applicant

Versus

1. Union of India through Secretary Ministry
of Communication, Govt. of India,
New Delhi
2. Inspector Railway Mail Service 'A' IInd
Sub-Division, Varanasi, D-65/158, Lahartara,
Varanasi.
Senior Superintendent of Rail Mail
Service 'A' Division Varanasi.
(By A dv: Shri Saumitra Singh)

Respondents.

ORDER

By Hon. Mr. Justice Khem Karan, V.C.

The prayers are for quashing the order dated 25.5.1998 (A-1 to compilation 1) by which the respondent no.2 cancelled the appointment dated 24.11.1997 on the post of Extra Departmental Mail Man and for commanding the respondent to issue joining letter in favour of the applicant.

2. There is no dispute that the applicant, Pankaj Kumar and few others were issued appointment letter on 24.11.1997, for the said post of Extra Departmental main Man. Before the applicant could join, the impugned order was passed, whereby the appointment of applicant and one Pankaj Kumar were cancelled. Admittedly, Pankaj Kumar and another challenged this order dated 25.5.1998 before this Tribunal at Allahabad, by filing OA No. 854 of 1999, which this Tribunal

[Signature]

allowed vide order dated 20.3.2001 (A-6). The relevant portion of the order dated 20.3.2001 is as under:-

“ We have considered the submissions of the counsel for the parties and in our opinion the applicants are entitled for relief as the impugned order of cancellation has been passed without affording any opportunity of hearing the order is illegal and void and cannot be sustained the legal position is well settled that any order entitling serious civil consequences can be passed only after due opportunity to the persons concerned. In the present case that has not been done. The applicants were entitled for relief.

The OA is accordingly allowed. The impugned order dated 25.5.1998 (Annexure A-3 and A-6) is quashed. However, it shall be opened to the respondents to pass a fresh order after giving an opportunity to the applicant in accordance with law. There shall be no order as to costs.”

It appears from the pleading of the parties that this order dated 20.3.2001 was not challenged by the respondents of that O.A. and was implemented (see para 3 (d) of original reply) by permitting those two to join. They are working. It also transpires from original reply of the respondents (see 3 (a) to (f)) that few other affected persons also filed respective O.As and the same were allowed by different orders. Orders passed by this tribunal in OAs No. 11/98 and 540/98 were challenged before Hon'ble High court, by way of filing writ petition No.8732 of 2002 and 8398 of 2002 (para 3(e)) but the court dismissed both those writs vide order dated 2.12.2004, copy of which is S.A1 to supplementary affidavit dated 22.9.2005. The present applicant approached the authorities for giving benefit of order dated 20.3.2001, passed in O.A. of Pankaj and another and when they declined to do so, he filed writ petition No.32058 of 2001, which Hon'ble High court dismissed with liberty to approach Central Administrative Tribunal

for redressal of his grievances, vide order dated 18.3.2004 (A-9).

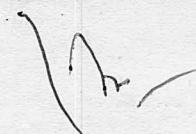
Immediately thereafter this O.A. was filed.

3. Before we come to merits, let us first deal with the argument by Shri Saumitra Singh, the learned Standing Counsel for Union of India, that the O.A. is time barred.. Firstly, no such plea has been taken in original reply or in supplementary reply. Secondly, when O.A. has been filed within a month or so, of the orders dated 18.3.2004 of High court in W.P. No.32058 of 2001, giving liberty to the applicant to approach this tribunal, no such plea can be raised or accepted. We find it difficult to accept the argument that OA is barred by law of limitation.

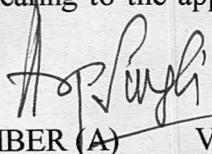
4. After the judgment and order dated 20.3.2001 of the Tribunal in OA No.854 of 1999 has become final and after the same has been implemented by allowing the applicants therein to join and work, little is left to Shri Saumitra Singh to defend the cancellation order dated 25.5.1998. There is no plea that any show cause notice or reasonable opportunity of hearing was given. It is almost impossible to distinguish the case of Pankaj Kumar from the case of applicant, as by the same composite order, the appointments in favour of applicant and Pankaj Kumar were cancelled. So, on merits the cancellation of the appointment of applicant is bad in law for want of notice or for want of reasonable opportunity of hearing.

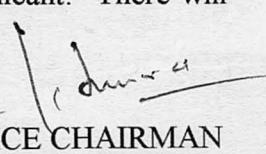
5. We find no good reason to enter into the controversy, as to whether there were or not, good grounds for cancellation of appointment or whether or not next higher authority was justified to examine the process of selection and to issue, necessary direction for cancellation as no useful purpose will be served by entering into those questions.

6. Thus this OA is allowed and impugned order dated 25.5.1998 by which the appointment dated 24.11.1997 of



the applicant was cancelled, is quashed, with a direction to the respondent to give the same treatments to the applicant, which they gave to Pankaj Kumar. It is made clear that this order does not preclude the authorities concerned from passing fresh orders, after giving reasonable opportunity of hearing to the applicant. There will be no order as to costs.


MEMBER (A)


VICE CHAIRMAN

Dated: May 9th, 2006

Uv/