

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 27th day of Sep 2005.

Original Application No. 107 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Bijendra Kumar Singh, S/o Sri P.N. Singh,
R/o Village and Post Gohada, Bishunpura,
Distt: Ghazipur.

.....Applicant

By Adv: Sri R.C. Srivastava
Sri R.K. Singh

V E R S U S

1. Union of India through Secretary,
Ministry of Communication,
NEW DELHI.
2. Director/Post Master General,
Allahabad Division,
ALLAHABAD.
3. Superintendent of Post Offices,
Ghazipur Division,
GHAZIPUR.

.....Respondents.

By Adv: Sri S. Singh

O R D E R

By K.B.S. Rajan, Member (J)

The applicant has preferred this OA challenging cancellation of his appointment as contained in order dated 21.1.2004 (impugned order) on the ground that he did not have the requisite qualification of income from property as required under the rules.

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The post which he was holding earlier is Dak Pal at Post Office Gohada, Bishnupura.

2. Briefly stated the applicant, a native of the aforesaid place passed the High School Examination in 1991 and in response to an advertisement for the post of Dak Pal in the aforesaid place in 2001, on his application, he was appointed vide order dated 18.12.2001 in which he continued. On 3.6.2003 the applicant was served with a show cause notice stating that as per DG (Posts) order dated 26.5.1995 income from shops cannot be taken into account while considering the income from property and as such his appointment is liable to be cancelled. The applicant had replied to the same. However, the respondents have cancelled his appointment on the above ground read with another one that the applicant was 4th in the merit list in respect of marks obtained by him. In addition yet another ground was that the property certificate was submitted by him subsequent to the last date for submission of the application.

3. On the applicant's moving this OA, by order dated 11.2.2004 an interim order was passed staying the operating of the impugned order dated 21.1.2004.

4. The respondents have contested the OA. According to them the following conditions regarding property should be fulfilled:-

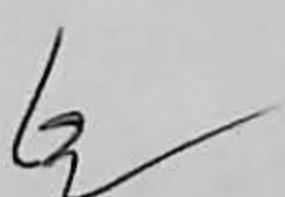
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- a. The individual should have immovable property.
- b. Such property should be in his name.
- c. Income from the immovable alone would be considered.
- d. A certificate from the village authorities should be filed latest before the last date for receipt of the application.

5. The applicant has filed his Rejoinder. Reiterating his stand and contention.

6. In addition to normal counter and rejoinder certain Supplementary affidavits have also been filed by the respective parties.

7. Arguments were heard and the documents perused. The counsel for the applicant argued that the respondents are in patent error in their cancellation of the appointment order. The ground for cancellation is totally flimsy and cannot stand judicial scrutiny when it is telescope upon full Bench Judgment decided on 2.12.2002 by the Bangalore Bench of the Tribunal in OA 1792 of 2000 (H. Laxmana & Ors Vs. Supdt. Of Post Office Bellary & Ors, reported in 2003 (1) ATJ 277). Per contra the counsel for the respondents invited our attention to paragraph 10 of the Supplementary Counter Affidavit and justified the stand of the respondents. The said paragraph reads as under:-



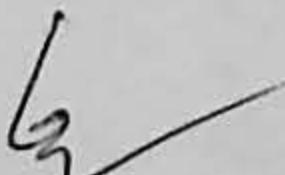
"10. That the Director Postal Services Allahabad can cancelled the appointment of the applicant on the following grounds:

- a.
- b.
- c.
- d. That the applicant was at Serial No. 4 in the merit of High School marks in comparison to other candidates. The applicant could not produced any new facts on 31.1.2003 during the course of personal hearing. The provision made in the Director General Post New Delhi order No. 10-10/4/93-ED & Trg dated 7.1.1994 clearly indicates that the candidate are not illegible for appointment on the post of Branch Postmaster on the basis of income or landed property in the same of their guardian/parent."

8. In so far as applicant's merit position is concern the same can be summarily rejected on the simple reason that the same was not raised in the show cause notice. As regards the property affair, it is not well settled that he same is only a preferential qualification as decided by the Full Bench relied upon by the counsel for the applicant. The relevant portions of the said judgment are extracted below:-

The Reference:

"Whether possessing of the adequate means of livelihood in terms of Circular dated 6.12.1993 of the Department is an absolute condition as held by one of the Bench of this Tribunal vide judgment and order dated 18.1.2002 in O.A. No.1458 of 2000 or whether it is only a preferential qualification requiring to be considered when all other things are equal between the two candidates as held by the other Bench of this Tribunal vide judgment and order dated 12.12.2001 in O.A. Nos. 626, 632 & 633 of 2000 and also judgment dated 20.11.1997 of the Central Administrative Tribunal, Ernakulam Bench passed in O.A.



No.174 of 1997 and another case reported in 1993 (3) SLJ (CAT) 167."

"3. Income and ownership of property:

The person who takes over the agency (EDSPM/EDBPM) must be one who has an adequate means of livelihood. The person selected for the post of EDSPM/EDBPM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will service as a small postal office with provision for installation of even a PCO (Business premises such as shops, etc., may be preferred),"

In addition to that, instructions had been issued on 6.12.1993 with respect to income and property qualifications and we are reproducing the relevant portion of the same for the sake of convenience :-

"Past experience has shown that the instructions issued by this office from time to time governing recruitment of various categories of ED agents are being interpreted differently and there is a lack of uniformity among different units within the same circle on the one hand and among the various postal circles on the other. As a result of marked difference in the interpretation and application of the existing instructions, a spate of complaints have been received through public representatives, service unions and the affected candidates themselves. Some of the basic conditions such as permanent residence in the village in which the post office is located have also, of late, come under close scrutiny by the different Benches of the Central Administrative Tribunal and the same has not stood judicial scrutiny as being violative of the provisions contained in Article 16(2) of the Constitution of India

It is not necessary to quantify "adequate means of livelihood." However, it may be laid down that in the case of appointment of ED Sub-Postmasters/Branch Postmasters, preference may be given to those candidates whose "adequate means of livelihood" is derived from landed property or immovable assets if they are otherwise eligible for the appointment. Heads of Circles may be asked to issue suitable instructions to the appointing authorities on these lines so that they could follow these while making appointments to the posts of EDSPM and EDBPM. In respect of other EDAs, the present "adequate means of livelihood" will hold good."

It is on the strength of these instructions that the respondents' learned

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counsel had highlighted the above said arguments.

9. The learned counsel for the respondents had relied upon a decision of the Punjab and Haryana High Court in Civil Writ Petition No.15356-C/1997 decided on 23.3.1998 in the case of Union of India & anr. V. Prem Chand and ors. The question for consideration before the said Court was as to whether the qualifications prescribed for recruitment of Extra-Departmental Agents are mandatory or it is only directory in nature. The illustrious Judge recorded the findings holding :-

"A careful reading of the qualifications and the contents of the letter issued by the Government of India shows that the property qualifications prescribed for recruitment of EDSPM is an essential and mandatory qualification. The tenor the language used in the rules does not indicate that the rule making authority had intended this qualification to be directory or only a preferential qualification. The letter dated 6.12.1993 issued by the Government of India also does not give any such indication. Therefore, it must be held that the Tribunal has erred in holding that the provision regarding "adequate means of livelihood" is not an essential pre-requisite but is only a preferential qualification. Any other interpretation of the letter issued by the Government of India would be contrary⁶ to the rules regulating recruitment to the service."

This decision of the Punjab and Haryana High Court had been referred to and looked with approval by the Karnataka, Bangalore V. H.N. Dayananda in Civil Writ Petition No.45730 of 1999 decided on 31.8.2000. It was held :-

7. So far as the constitutionality of the Rules are concerned, the same was upheld by the Apex Court in the above case by clearly holding that :-

"The Rules lay down a complete code governing the service and conduct of Extra Departmental Agents including proceedings for taking disciplinary action against them for misconduct."

18 "..... Having adequate means has nothing to do with the merit. The answer in fact would be provided by the well-known decision in the case of Indira Sawhney and Ors, V. Union of India and Ors., 1992 Supp (3) SCC 217. In paragraph 845, the Supreme Court concluded :-

"845. This clause provides for a 10% reservation (in appointments/posts) in favour of economically backward sections among the open competition (non-reserved) category. Though the criteria is not yet evolved by the Government of India, it is obvious that the

basis is either the income of a person and/or the extent of property held by him. The impugned Memorandum does not say whether this classification is made under clause (4) of clause (1) of Article 16. Evidently, this classification among a category outside clause (4) of Article 16 is not and cannot be related to clause (4) of Article 16. If at all, it is relatable to clause (1). Even so, we find it difficult to sustain. Reservation of 10% of the vacancies among open competition candidates on the basis of income/property-holding means exclusion of those above the demarcating line from those 10% seats. The question is whether this is constitutionally permissible ? We think not. It may not be permissible to debar a citizen from being considered for appointment to an office under the State solely on the basis of his income or property-holding. Since the employment under the State is really conceived to serve the people (that it may also be a source of livelihood is secondary) no such bar can be created. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Article 16. On this ground alone, the said clause in the Office Memorandum dated May 25, 1991 fails and is accordingly declared as such." (Emphasis added)

In other words, it is not permissible to debar a citizen from being considered to a civil post and it would violate Articles 14 and 16 of the Constitution.

19. The result would be that we have no hesitation in concluding that the condition so imposed pertaining to adequate means of livelihood in the circular of 6.12.1993 must be held to be invalid. We hold accordingly. As a necessary consequence, the answer would be as under :-

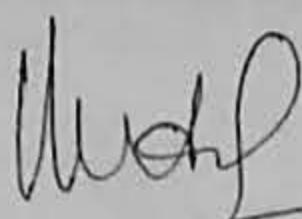
"Possessing of adequate means of livelihood in terms of Circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the above said post.'

9. In view of Full Bench judgment the ground for cancellation of appointment of the applicant cannot stand judicial scrutiny. As such we have no hesitation to quash and set aside the impugned order dated 21.1.2004. The OA, therefore, succeeds. The

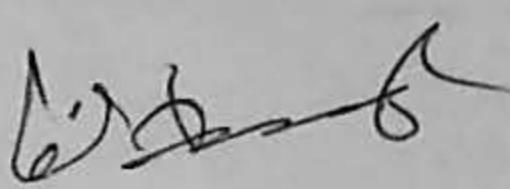
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applicant is entitled to continue in the post of Dak
Pal as hitherto.

10. Under the above circumstances there shall be no
order as to costs.



Member (A)



Member (J)

/pc/