

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.115 of 2004.

Allahabad, this the 5<sup>th</sup> day of August, 2005.

Hon'ble Mr. D.R. Tiwari, Member-A  
Hon'ble Mr. K.B.S. Rajan, Member-J

Chandrama Rai,  
Son of Sri Bhagwati Rai,  
Resident of Village and Post Bankata,  
District : Deoria.

...Applicant.

(By Advocate : Shri R. Verma)

Versus

1. Union of India,  
Through Secretary,  
Ministry of Telecommunication,  
Department of Posts, New Delhi.
2. Deputy Divisional Inspector (Post Offices),  
Easter Sub Division, District Deoria.
3. Sub Post Master, HSG II, Bankata,  
District - Deoria.
4. Umesh Chandra Tiwari  
Son of Late Sri Lakhan Kishore Tiwari,  
R/o Villagte-Aoaga, P.O. Salempur,  
District - Deoria.

...Respondents.

(By Advocate : Shri V.V. Mishra)

O R D E R

By Hon'ble Mr. K.B.S. Rajan, J.M.

The facts in this case in nutshell, as contained in para 4 of order dated 22-09-2003 in the earlier OA No.1263 of 1997 are as under:-

"The facts were that the applicant Sri Chandrama Rai had passed High School Examination in 1978 with Roll No.317096. He had shown his date of birth 03.01.1963 and marks secured by him were 245 out of 500. He had passed in second division. However, in 1991, he again passed High School with Roll No. 922332. In subsequent examination, date of

birth mentioned by him was 01.04.1973. Complaint was received about the aforesaid fact. In Employment Exchange, the applicant had relied on marks sheet of 1991 and his date of birth was mentioned by the Employment Exchange as 01.04.1973. On this ground appointment of Sri Chandrama Rai was terminated, aggrieved by which he has filed O.A. No.1263/1997."

2. Respondent No. 4 herein had also filed OA 64/97 which was linked with the above OA and dealt with a common order referred to above.

3. By the aforesaid order, OA 1263/97 was dismissed and OA 64/97 was disposed of with the direction to the respondents to hold the selection again from among those candidates whose names were forwarded by the Employment Exchange including Sri Chandrama Rai (i.e. the applicant herein) whose second mark sheet of 1991 shall be ignored.

4. In pursuance of the aforesaid order, Respondent No. 2 asked for certain documents and on 25-11-2003 Respondent Nos. 2 and 3 called the petitioner and asked him to give a statement to the effect that in regard to personal source of income and the same was provided to them. Personal source of income was to the tune of Rs. 1,000/-. The applicant had also produced a sale deed in respect of immovable property.

5. Despite fulfilling all the formalities, respondents have cancelled the appointment of the applicant (vide impugned order dated 12-01-2004) and

appointed respondent No. 4, even without necessary order of appointment. Hence this OA with the following relief(s):

- (i) order or direction of a suitable nature quashing the impugned order dated 12.1.2004 cancelling the appointment of the petitioner and handing over charge to the respondent No.4 dated 13.1.2004.
- (ii) order or direction of suitable nature directing the respondents to consider and appoint the petitioner as E.D.A. and treat him in continuous service and to pay his salary as and when it falls due.

6. The respondents have contested the OA. According to them, true source of personal income is precondition of appointment but according to evidence on record the applicant has no source of income.

7. Though private respondent was put to notice, none appeared on his behalf. Arguments heard and the documents perused. The order of the Tribunal is clear that the certificate of 1991 shall not be taken into account. And as per the 1976 mark sheet, the applicant had secured 245 out of 500 and it is not the case of the respondents that the marks obtained by respondent No. 4 was higher than that obtained by the applicant. The main reason for cancellation of the appointment of the applicant was that he did not show the property income which is a pre-requisite.

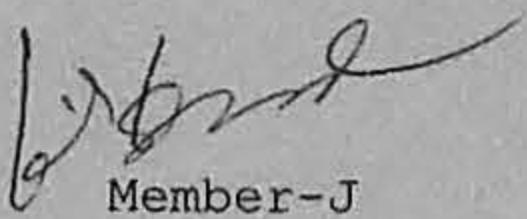
*b*

8. We disagree with the contention of respondents.

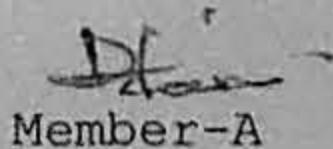
It is settled position that in matters of appointment to any post under the GDS, academic merit counts and any other requirement is pushed back in priority and in so far as property is concerned, suffice if the applicant could fulfill the condition, even prior to the joining of the post.

9. In view of the above the OA succeeds. Order dated 12-01-2004 is hereby quashed and set aside. Respondents are directed to restore the position of the applicant as EDA and treat the intermediate period as continuous, though the applicant is not entitled to pay for the intermediate period. All other consequential benefits flowing would however are to be afforded to the applicant.

10. The above order shall be complied with, within a period of two months from the date of communication of this order. No costs.



Member-J



Member-A

RKM/