

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 1138/2005

ALLAHABAD this the 30th day of Nov. 2011

Present:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER -A

Upendra Kumar Singh, aged about 35 years s/o Shri Vijay Bahadur Singh, resident of Village and Post Ingurri District Etawah, Presently working as Extra Departmental Branch Post Master (Removed), Ingurri District Etawah.

.....Applicant

V E R S U S

1. Union of India through Secretary, Ministry of Communication, Deptt. Of Post and Telegraph New Delhi.
2. Superintendent of Post Offices, Etawah Division, Etawah..

.....Respondents

Present for the Applicant: Shri V. Budhwar
Present for the Respondents: Shri Himanshu Singh.

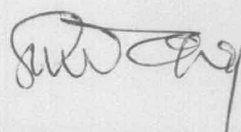
ORDER

(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)

The instant O.A. has been instituted for the following relief:

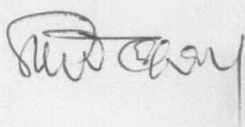
"i) To set aside the order dated 8.9.2005 passed by the respondent No. 2 (Annexure No. 1 to Comp 1).

ii) to issue order or direction commanding the respondents to not to interfere in the working of the applicant on the post of Extra Departmental Branch Post Master Ingurri District Etawah and to reinstate the applicant into service with all



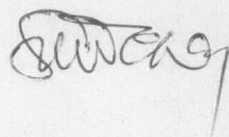
consequential benefits and to pay him salary on month to month basis regularly."

2. Pleadings of the parties may be summarized as follows. It has been alleged by the applicant that he was appointed on the post of GDS B.P.M. on 2nd March, 2000 at Ingurri, District Etawah, being the most suitable among the applicants. His appointment was challenged by one Smt. Vijai Kumari in O.A. No. 274/2000 before the Tribunal and it has mainly been alleged in the O.A. that the applicant had not disclosed his correct date of birth which is 6th October, 1967 rather he disclosed his date of birth as 25th January, 1970. He appeared in the High School examination in the year 1985 in the M.P. Board Examination, Bhopal. In that O.A., the applicant was arrayed as respondent No.4. The O.A. was disposed of on 25th November, 2004 by the Tribunal directing the respondents to enquire into the matter and to pass appropriate order. A charge sheet was issued against the applicant ^D on 28th April, 2005 to the above effect and reliance was placed ^D on the charge sheet on certain documents but the copies of the document were not supplied to the applicant and enquiry was conducted and reply was submitted by the applicant to enquiry officer and the E.O. submitted the report on 19th August, 2004 to the disciplinary authority and show cause notice was issued but necessary documents were not submitted by the respondents and vide order dated 8th September, 2005 the applicant was removed from the post of EDBPM. That the impugned order is patently illegal and contrary to the provisions of law. Father's name of the applicant



is Upendra Kumar Singh and not Upendra Kumar Singh Tomar, as has been mentioned in the marks sheet filed by Smt. Vijay Kumari. The applicant never studied in that school. That the entire enquiry is illegal and liable to be quashed and illegal order was passed by the disciplinary authority, of removal and the same also deserves to be quashed.

3. The respondents contested the case and filed Counter reply and denied all the allegations made in the O.A. It has further been alleged that the post of GDS EDBPM, Ingurri fell vacant on account of retirement w.e.f. 19th January, 2000. The process of recruitment was initiated to that post and notifications were issued. 12 applications in all were received directly as well as through Employment Exchange. Verification of marks sheet, police verification and other records was examined and verified and the case of the applicant was found most suitable and he was selected and given appointment as GDS BPM. After appointment of Shri Upendra Kumar Singh, one Smt. Vijay Kumari filed O.A No. 274/2000 alleging that Upendra Kumar Singh has changed his date of birth and she produced photocopy of marks sheet issued by M.P. Board, Bhopal. The O.A. was decided by the Tribunal vide order dated 25.11.2004 directing the respondents to write a letter to the Board of Secondary Education, M.P., Bhopal in order to verify the correctness of mark sheet. Liberty was also given to the respondents to initiate appropriate action against the applicant irrespective of the appointment. Afterwards the marks sheet was got



verified from M.P. Board, Bhopal and it was found correct showing the date of birth of the applicant as 6th October, 1967 entirely different from the marks sheet from U.P. Board in which the date of birth has been shown as 25th January, 1970. Proceedings were initiated under ruled 10 of GDS (Conduct and Employment) Rules, 2001 and in the enquiry, charges were proved against the applicant and hence removal order was passed on 8th September, 2005. Whatever has been alleged in the O.A. is against the fact and whatever has been initiated against the applicant was in pursuance of the order passed by the Tribunal.

4. The applicant, in response to the C.A. of the respondents, filed R.A. and reiterated the facts which have been alleged in the O.A. Moreover, one Supplementary Counter Affidavit has also been filed on behalf of the respondents.

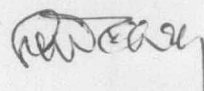
5. We have heard Shri V. Budhwar learned counsel for the applicant and Shri Himanshu Singh, learned counsel for the respondents and perused the entire facts of the case. From the perusal of record it is evident that O.A. No. 274/04 was filed by Smt. Vijai Kumari before the Tribunal and in that O.A. Shri Upendra Kumar Singh, applicant was also arrayed as respondent No.4. The O.A. was decided on 25th November, 2004. Respondent No. 4 also contested the case and filed the Counter reply in that O.A. It was ordered by the Tribunal in that O.A. that respondents shall take action against respondent No.4 for canceling his appointment after following due process of law and in that event offer of appointment as EDBPM

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Post office Ingurri Etawah for the applicant provided that he fulfills all the requisite conditions required for the post of EDBPM. In case marks sheet referred to above is found to be fake on verification from M.P. Bhopal, applicant would be liable to pay cost of Rs. 2000/- to respondent No.4, but in case the marks sheet is found to be correct, the applicant would be entitled to get costs of Rs. 2000/- from respondent No. 4 and M.P. Board Bhopal shall cooperate in the matter in order to ascertain the correctness of the marks sheet. And in pursuance of the direction of the Tribunal, the respondents conducted the enquiry and on verification of the marks sheet issued by the M.P. Board, it was found correct and genuine and it was found that in the marks sheet the applicant has mentioned his date of birth as 6th October, 1967 but the applicant failed in the examination in which he appeared at M.P. Board Bhopal and thereafter applicant appeared in High School Examination in the year 1988 in U.P. Board by showing his date of birth as 25th January, 1970 and in that examination he passed the High School. In the High School, U.P. Board the date of birth of the applicant is 25th January, 1970, hence on the face of it, it appears that the applicant mentioned subsequently his incorrect date of birth. We are not supposed to decide that which date of birth of the applicant is correct, either 6th October, 1967 or 25th January, 1970, but the fact is that the applicant has mentioned two inconsistent dates of birth in two different Boards of examination of M.P. and U.P. Board. It has been argued by the learned counsel for the respondents that when this fact was found

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correct as alleged in the earlier O.A. of Smt. Vijai Kumar in O.A. 274/2000, a charge sheet was served on the applicant to submit reply and on receipt of reply the enquiry officer was appointed and proper enquiry was conducted. The enquiry report and relevant documents have been filed. It has been alleged by the respondents that as there was allegation of misconduct against the applicant, and on enquiry the facts were found correct, hence the applicant was removed from the post of EDBPM on proved charges and nothing illegal has been committed by the respondents and whatever has been done was on the direction of the Tribunal. As we have stated above, that the Tribunal decided the O.A. of Smt. Vijai Kumari by directing the respondents to verify the correctness of the date of birth mentioned by the applicant in the M.P. Board of High School and during the enquiry, the date of birth as shown in the High School marks sheet of the M.P. Board was found correct. It has been argued by the learned counsel for the applicant that copies of the documents have not been supplied to the applicant during the course of enquiry and the enquiry was not conducted properly. Reliance was placed on 7 documents by the respondents. It was essential on the part of the respondents to supply copies of these documents to the applicant, but copies of these documents were not supplied and hence there is violation of rules. The main charge against the applicant was whether he appeared in the High School examination of the M.P. Board, Bhopal and whether he reflected his date of birth in the High School as 6th October, 1967, because it is an undisputed fact that



later on the applicant appeared in the High School examination of U.P. Board and in that marks sheet of U.P. Board the applicant has shown his date of birth as 25th January, 1970. The learned counsel for the respondents argued that the documents relied upon by the respondents during the enquiry were not such as the applicant was not aware of the documents. He was well aware of these documents. Copies of these documents have already been supplied to the applicant during the course of the proceedings of the O.A. 274/2000, hence this argument of the learned counsel for the applicant is not justified that copies of the relied upon documents by the respondents, have not been supplied to the applicant and hence he was deprived of material fact. Firstly, there appears nothing on record to believe that the copy of the documents relied upon by the respondents have not been supplied to the applicant during the course of enquiry and moreover, as the learned counsel for the respondents argued that the documents were not such regarding which the applicant was unaware. These documents were very well in the knowledge of the applicant. It has been argued by the learned counsel for the applicant that the enquiry officer conducted the enquiry against law without following procedure and rules and the disciplinary authority placing reliance on the enquiry report dated 19th August, 2005 issued show cause notice to the applicant on 27th August, 2005. That the applicant submitted a detailed reply to the show cause notice and he denied all the charges leveled against him and it has also been alleged that the adequate opportunity was not provided to him. But it has not been

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shown to us that what opportunity was not provided to him to defend him. Everything was in the knowledge of the applicant and the enquiry was conducted as per direction of the Tribunal and in our opinion it was justified. It has also been argued by the learned counsel for the applicant that according to the High School marks sheet of M.P. Board, applicant's name is Upendra Kumar Singh Tomar s/o Vijay Bahadur Singh Tomar, whereas the correct name of applicant is Upendra Kumar Singh and his father's name is Vijay Bahadur Singh, hence it can be said that this High School certificate was relating to some other person. It may be possible that some other person was of the name of Upendra Kumar Singh Tomar whose name is Upendra Kumar Singh but he has got separate entity. The enquiry officer, on the basis of material available to him arrived at the conclusion that it was Umesh Kumar Singh who appeared in the subsequent High School examination of U.P. Board and he was not a different person. It cannot be presumed that Upendra Kumar Singh and Upendra Kumar Singh Tomar are different persons. Moreover, specific finding was recorded by the E.O. and relied upon by the disciplinary authority that Upendra Kumar Singh Tomar and Upendra Kumar Singh are the same person and Upendra Kumar Singh is the applicant. Thus the findings have been recorded by the E.O. on the documents available on the record and we are not supposed to sit on the decision of the enquiry officer and disciplinary authority and hence no reliance can be placed on the arguments of the learned counsel for the applicant that Upendra Kumar Singh

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Tomar son of Vijay Bahadur Singh Tomar is different person than ^{other} the applicant. 2

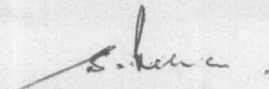
6. It has been argued by the learned counsel for the respondents that there were serious allegations of misconduct against the applicant and direction was also issued by the Tribunal for conducting the enquiry about the genuineness of the High School marks sheet, M.P. Board and hence the procedure as provided in rule 10 of the GDS (Conduct and Employment) Rules, has been followed and it cannot be said that the respondents have not given proper opportunity to defend the applicant. Both the High School certificates of M.P. Board as well as U.P. Board are on record and from perusal of these documents, it is evident that different dates of birth have been mentioned in these two certificates. No reasonable explanation has been given on behalf of the applicant as to why and how the different dates of birth have been mentioned in these two certificates. As the allegation of misconduct was proved, hence the order of removal was passed and there appears to be no illegality in the order.

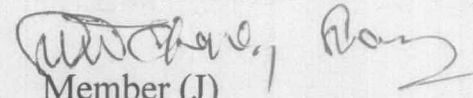
7. For the reasons mentioned above, we are of the opinion that proper enquiry was conducted by the respondents as per direction of the Tribunal. Allegations against the applicant was that he appeared earlier in the M.P. High School examination and in which he has shown his date of birth as 6th October, 1967 and thereafter the applicant appeared in the U.P. Board High School Examination and in that examination the applicant has shown his date of birth as 25th

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January, 1970. The applicant was found guilty of misconduct in the enquiry and the enquiry was conducted as per rule 10 of the GDS (Conduct and Employment) Rules. There appears to be no illegality or impropriety in the enquiry and the order of removal passed by the respondents.

8. In our opinion O.A. lacks merit and is liable to be dismissed. The O.A. is dismissed. No order as to costs. Stay, if any, granted earlier stands vacated.


Member (A)


Member (J)

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