

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 13<sup>th</sup> day of April 2010

**Original Application No. 471 of 2005**  
(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Dr. K.B.S. Rajan, Member (J)**  
**Hon'ble Mr. S. N. Shukla, Member (A)**

Vivek Kumar Mishra, aged about 20 years, Son of Ram Narain Mishra, Resident of Village and Post Khewali Khairagarh, Tehsil Koraon, District Allahabad.

..... Applicant

By Adv. : Shri Rakesh Verma  
Shri N.K. Singh

V E R S U S

1. Union of India, through Secretary, Ministry of Communication (Department of Post, South Block, New Delhi.
2. The Director Postal Services, Office of the Post Master General, Allahabad Region, Allahabad 211 001.
3. The Superintendent of Post Offices, Allahabad Division, Allahabad 211 001.
4. Shri Jai Vikram Tripathi, Son of Sri Jai Shankar Tripathi, Working as Gramin Dak Sewak Branch Post Master, Bedauli (Bharatganj) Sub Office, Tehsil Meja District, Allahabad.

..... Respondents



By Adv. :                Ms. Shikha Dixit (R-1to3)  
                              Shri Ajay Rajendra (R-4)

**O R D E R**

**(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)**

A Branch post office was opened in March 2002 at Bedauli under the Jurisdiction of Bharatganj Sub Post Office, Allahabad and on permission being granted for appointment of a post master, requisite notification was issued in October, 2003 calling for applications for the said post. As many as 30 candidates aspired for the post and one Shri Samsuddin who did not file any application in response to the above notification, had filed OA No. 324/2004 claiming appointment under Physically Handicapped Quota on the strength of DG (Post) order dated 22-04-1994 and his OA was disposed of vide order dated 31-03-2004 with a direction to the respondents to decide his representation. In the said order, a rider, not to make any appointment on the post till the representation of the said Samsuddin was also passed. This restraint order applied specifically to the SSPO (presumably he being the actual appointing authority), who was one of the respondents in the said O.A. The order also mandated the respondents therein to look into irregularities, if any, in the issue of notification. The incumbent to the said post of SSPO at that relevant point of time superannuated on 30-06-2004 and till that



date the representation of the said Samsuddin was not decided but by an order dated 30-06-2004, the said SSPO had, after considering all the applications, issued appointment order to the applicant Shri V.K. Mishra herein and the applicant took charge on 02-07-2004. The respondents have found that the said appointment made is irregular by virtue of the following –

(a) That the said order is in violation of the restraint order of the Tribunal as aforesaid.

(b) That instructions existed to the effect that none of the officers retiring within six months could effect either any transfer or posting or make any appointments to the post of GDS, save with the prior approval of the higher authorities.

2. In view of the above, a show cause notice was issued to the applicant on 20-07-2004 to submit his representation. The applicant filed his representation and also filed OA No. 793 of 2004 before the Tribunal. This O.A was disposed of with the expression of the opinion that the applicant could always raise the issues and pleas as raised in the OA before the administrative authorities and time was calendared for representation to be made by the applicant and for disposal of the same by the respondents. When the respondents rejected the representation, vide impugned order herein, the applicant has  
6 filed this O.A.



3. Respondents had contested the O.A. They had, after tracing the history of the case as mentioned above, stated that when the letter of rejection was delivered to the applicant, after receipt of the same the applicant fled away with Government cash of Rs 5,775 and government records and filing of an FIR was thus necessitated. Meanwhile another GDS Mail Deliverer, Bharatganj was arranged to function as GDSBPM, Bedauli.

4. The applicant filed his rejoinder stating that the so called FIR was in fact of the character of a complaint and the applicant after filling OA prayed for interim relief but due to strike by lawyers at the relevant point of time, the same could not be heard on time and when no interim prayer was granted, the applicant handed over the charge on 03-01-2006 and also deposited the amount of Rs 5,757/- retained by him.

5. In their supplementary counter II, respondents have brought out the fact that after rejecting the representation of the applicant as also after deciding the representation of Samsuddin as per Court's orders, the respondents, under the direction of the P.M.G. Allahabad, finalized the selection for the post of Post Master, Bedauli by considering all the applications received and appointed one Shri Jai Vikram Tripathi vide order dated 11-04-2005. This individual is admittedly the second meritorious amongst the eligible candidates.



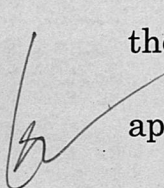
6. Thus, on knowing the appointment on regular basis of the said Shri Jai Vikram Tripathi, the applicant had impleaded him also as one of the respondents, and the said respondent, on receipt of notice, filed his counter.

7. In his counter, the private respondent has stated that he was second in the select list and had been rightly appointed as he was the person holding property in the same place Bedauli and having regular income and he had also raised his contentions over the conduct of the applicant in misappropriating the government money.

8. The applicant had filed his rejoinder to this counter, meeting all the contentions of the said private respondent.

9. At the time of hearing, permission was also granted for filing written submission and the applicant as well as private respondents have accordingly furnished the same. The same have been considered.

10. Arguments were heard and documents including written arguments perused. **It is to be pointed out at the very outset that there has been no denial with relevant statistics to the effect that the applicant was not meritorious.** In para 4. (xiv) of the O.A. the applicant had contended, "In any view of the matter, it is submitted that admittedly the petitioner's appointment has not been questioned by the respondent No. 2





herein on the ground of lack of educational qualification or any other requisite conditions prescribed under the relevant Rules and further that it is not disputed that there was there was any infirmity, bungling and illegality in the selection process and further it is also not disputed that the petitioner stood top in the merit list in an open selection made through advertising the vacancy for all concerned." To this contention, the reply of the official respondents is "The contents of para 4(xiv) of the original application are not correct and hence denied. In reply thereto it is submitted that the appointment of the applicant has been questioned by the competent authority on the ground of irregularity committed by the appointing authority and not observing the relevant rules and rules and procedures before issuing the appointment order" (Emphasis supplied)

11. The private respondent in reply to para 4(xiv) mainly focussed his contention over the alleged FIR and very feebly he had stated that the applicant has no educational qualification to join duty as Gramin Dak Sewak, Branch Post Master, Bedauli. But his contention has not been supported by any documents. Thus, his contention that the applicant has no educational qualifications has to be rejected.

12. It is necessary to look into the fact as to what would have prompted the Tribunal to place a restraint order upon the appointing authority when the case of Samsuddin was decided.



While passing the restraint order, the Tribunal had only intended that any of the vested rights of Shri Samsuddin should not be crippled or frustrated by making the appointment to the post which he aspired which would only make things *fait accompli*. Otherwise, there was no need to pass such a restraint order, linking it with the decision of the representation of the said Samsuddin. The outgoing SSPO ought to have obeyed this order and he did not. The mistake committed by the said SSPO recoiled upon the applicant. Ultimately, the said Samsuddin was declared not to be eligible for the said post.

13. Similarly, it is to be seen as to what would have prompted the authorities to clamp a restriction upon posting and transfer or appointment to the post of GDS by officers who are to superannuate within six months. In so far as restriction imposed upon those officers superannuating within six months, the same is a safety measure to ensure that no arbitrary action is taken by such outgoing officers. This is evident from the DO letter dated 12-06-1996 issued by the Dy. Director General (Vigilance) to the PMGs wherein he has stated as under:-

Kindly refer to his office letter No. 4-19/92-Vig dated July 1992 regarding check on the issue of transfer/posting orders by Divisional Superintendents retiring within a period of 6 months In the said letter it was laid down that the divisional Superintendents retiring within 6 months period must obtain prior written approval of their DPS/PMG before issuing any transfer/posting orders and appointments of ED agents, which was otherwise within their normal administrative jurisdiction. The said



*instructions were necessitated as many Divisional Superintendents on the verge of retirement had issued a number of irregular transfer/posting orders/ appointment orders.*

14. Here again, the restraint is not to the extent of withdrawing the powers vested in such officers but only they have to seek the approval of the higher authority. This restraint is not a statutory restraint but an administrative restriction, the breach of which would not make the action of such officers illegal, though they would be branded as irregular.

15. If the authority vested with a Senior Superintendent of Post Office and the merit of the applicant sans the temporary restrictions imposed, are considered, no fault could have been found in the appointment of the applicant as GDS BPM. For, the authority with the Senior superintendent, empowers him to appoint the meritorious person as GDS BPM, With the withdrawal of the restraint, certainly the applicant would have been appointed. Or for that matter if the said SSPO superannuated and his next incumbent comes, the merit list would not undergo any change. It would remain the same and the appointment would have been made by the successor to that SSPO who superannuated on 30-06-2004. In that event, the private respondent would not certainly have been appointed as he was only second in merit. Thus, in the appointment of the applicant, there would have certainly been an irregularity but certainly not an illegality.



16. This takes us to the next question as to whether an irregular appointment could be ratified. The distinct difference between an appointment being illegal and that being irregular has been lucidly brought out by the Apex court in the case of *Satya Prakash vs State of Bihar* (2010) 4 SCC 179 wherein the Apex Court has referred to a few past decisions and held as under:-

*10. Necessity of keeping in mind the distinction between regularisation and conferment of permanence in service jurisprudence has also been highlighted by this Court by referring to the following passage from R.N. Nanjundappa case (1972) 1 SCC 409 which reads as follows:*

*"26. ... If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment." (emphasis supplied)*

*11. Further, the Constitution Bench referred to B.N. Nagarajan case (1979) 4 SCC 507 in para 16 of the judgment and stated as follows:*

*"16. ... We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation." (emphasis supplied)*

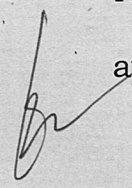
17. In the instant case, the character of the appointment of the applicant vide order dated 30-06-2004 is one of irregular and not illegal. As such, it deserves to be regularized as the impediment which existed at that time is no longer there.



18. A word about the alleged running away with the cash of Rs 5757/- by the applicant is appropriate. The applicant had, after filing his earlier O.A. sanguinely hoped for an interim order but due to strike by the CAT Bar in early 2005, no orders could be passed and by the time the case could be taken up, the order impugned was implemented by way of appointing some one on a stopgap arrangement. The moment this interim order was refused, the applicant had remitted the amount with the authorities. There appears no FIR filed and even if it were it is not stated to have been further pursued. This act of the applicant does not leave any indelible blot on his integrity.

19. Now comes the crystallization of the right of the private respondent, who had been appointed as he stood second only to the applicant. He has by now put in more than 5 years of service as GDS BPM. There does not appear to be any complaint against him about his performance. As such, in the process of the applicant being accommodated on the basis of his merit, the private respondent should not be made to suffer at this juncture.

20. Thus, a via media has to be worked out, which would safeguard the vested rights of the applicant and the private respondent. **The application is allowed to the following extent -** The applicant should be deemed to have been appointed on the same day as the private respondent with the TRCA applicable to Bedauli branch post office and he should be deemed to have been continuing in the said post. Without disturbing the private respondent, the applicant should be appointed against the next available post of GDSBPM with the comparable TRCA treating the

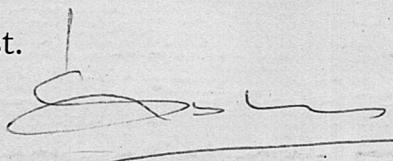




applicant as one who has been retrenched but the monetary benefit of TRCA that would have been available had he continued to serve as GDS BPM would be made available to him. The applicant is not eligible for any back wages but the benefit on his appointment to a new place of posting would be as stated above.

**21.** As the appointment of the applicant would depend upon the availability of vacancy in the unit/division where the applicant can be posted, no time limit could be calendared. The applicant shall keep in touch with the Superintendent of Post Office, Allahabad Division at regular interval and the authorities should keep him posted about the vacancy position.

**22.** No cost.



(S.N.Shukla)  
Member(A)



(Dr.K.B.S.Rajan)  
Member(J)

Uv/