

(13)

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 15th day of Dec, 2006.

ORIGINAL APPLICATION NO. 830 OF 2005

**HON'BLE DR. K. B.S. RAJAN, MEMBER- J.
HON'BLE MR. A.K. SINGH, MEMBER- A.**

Jai Prakash Singh, S/o Sri Sunder Singh,
R/o Mohalla- K-56/ 102-A, Avsan Ganj,
Distt. Varanasi.Applicant.

VERSUS

1. Union of India , through Secretary (Posts),
M/o Communication, Dak Bhawan, Sansad Marg,
New Delhi .
2. Post Master General, Allahabad Region, Allahabad.
3. Senior Superintendent of Post Office,
West Sub Division, Varanasi.
4. Assistant Superintendent of Post Offices,
West Sub-Division, Varanasi.

.....Respondents

Counsel for the Applicant: Sri A. Tripathi
Counsel for the Respondents: Sri Saumitra Singh

ORDER

BY HON'BLE DR. K.B.S. RAJAN, JM.

One Sri S.B. Maurya filed O.A No. 976/97 challenging the selection of the applicant to the post of E.D Stamp Vendor. The O.A was dismissed by order dated 22.01.1997 (Annexure A- 5). Against the ^{same} ~~said~~ Writ Petition No. 30165/97 was filed and it was allowed vide order dated 23.01.2004 (Annexure A- 6). By the time, the above decision was made, the applicant had put in 8-1/2 years service as E.D. Stamp Vendor.

2. Through this O.A, the applicant claims that respondents should consider the case of the applicant for alternative post as he has put in 3 years of service, for which provisions exists. In support, he has referred to order dated 18.05.1997 (Annexure A- 11), which states as under : -

"2. Efforts should be made to give alternative employment to ED Agents, who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' service. In such cases their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G P&T, Letter No. 43-4/77-Pen, dated 23.02.1979."

3. The ^{Counsel} ~~applicant~~, during the arguments, has also relied upon order dated 05.11.2004 (Annexure A- 4), which states that alternative employment can be given, if the court so permits.

4. Respondents contested the O.A. According to them, as submitted during the arguments, the decision of Hon'ble Delhi High Court in 8665/2004 prohibits regularization of irregular appointment. He has also relied upon an order dated 31.08.2004. They have in their Counter and Suppl. Counter referred to the decision in the case of Maurya (Supra) and prayed for dismissal of the O.A.

5. Counsel for the applicant argued that while the applicant ^{brags} ~~lays~~ down the decision of Hon'ble High Court in the case of Maurya, his claim is not for regularization of irregular appointment, which is the subject matter in the decision of Hon'ble Delhi High Court and as

such the Hon'ble Delhi High Court's judgment is not applicable. At the same time, his contention is that his selection by the department has been cancelled not on the ground of any deficiency with reference to qualification etc., but on the basis of comparative merit, that too only when the Hon'ble High Court held that marks in optional subjects should also be taken in to account. Now, the applicant has put in 8-1/2 years service, his appointment earlier not by way of any fraud played by him, his discharge should be deemed to be on administrative grounds ~~and alternative grounds~~² and alternate employment should be considered. He has further contended that the department, which earlier issued order dated 31.08.2004 barring irregular appointment being regularized, had subsequently by order dated 22.11.2004 (Annexure 4 to the CA) provided that alternate employment can be given if the court so permits. In addition, the applicant has relied upon the following decisions: -

- a. Ravi S. Banakar Vs. UOI & Ors (ATJ) 2002(3) 104,
- b. Debendra Chandra Muduli Vs. UOI & Ors. (ATJ) 2002(3) 105
- c. N. Sunkanna Vs. UOI & Ors. (ATJ) 2003(2) 113
- d. R.K. Sharma Vs. UOI & Ors (O.A No. 759/97 of CAT Alld),
- e. Anjani Kumar Vs. UOI & Ors ,O.A No. 1211/98 of CAT Alld,
- f. Srikant Vishwakarma Vs. UOI & Ors. O.A 1111/98 of CAT Alld,
- g. Smt. Kumkum Devi Vs. UOI & Ors O.A 506/93 of CAT Alld,
- h. Shyam Behari Vs. UOI & Ors. In O.A No. 472/97 of CAT Alld.

6. Counsel for the respondents submitted that the case of the applicant does not fall within the category of discharge on administrative grounds and as such alternate employment cannot be granted.

7. Arguments heard and documents perused. Admittedly the initial appointment of the applicant was by duly following the rules. Had Sri Maurya not been an applicant. The applicant's appointment would have been without any flaw. It was purely on the decision by the Hon'ble High Court that marks on optional subjects should also be considered, that the department conducted review and the applicant had to be discharged. There is no complaint against the applicant in the performance of official duties. He has the requisite qualifications and is not ^{any} 36 years, over aged for ^{any} the appointment and too early to sit in home. The administration is not reluctant to consider such ^{cases} ~~crisis~~ for alternate employment but all that it needs is an order from the Tribunal/court. Provision exists vide Rule 24 of CAT(P) Rules 1987, which reads as under: -

"24. Orders and directions in certain cases- The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

8. As the appeal of the applicant about 9 years ago was on a due process and the respondents too had believed that the procedure adopted was legal and regular the discharge of the applicant entitles him to alternate employment.

9. The applicant has prayed for the following relief(s): -

- "i. to issue an order, rule or direction quashing and setting aside the impugned order dated 23.06.2005 passed by the respondent No. 2 by which the respondent No. 2 rejected the claim of the applicant for giving the alternative

employment to the applicant in any vacant post of EDAs now GDS cadre in the Division or sub0Division.

- ii. *To issue an order rule or direction in the nature of mandamus directing the respondent No. 2 to give alternative employment to the applicant on any vacant post of EDAs/GDS cadre in the division or Sub Division being a working ED Agent as he has completed nine years continuous service on the said post.*
- iii. *To issue any other order, rule or direction which this Tribunal may deem fit and proper in the circumstances of the case.*
- iv. *To award the cost of the Original Application in favour of the applicant."*

10. In view of the above discussions the O.A is allowed. Respondents are directed to consider the case of the applicant for alternative appointment in accordance with the rules on the subject.

11. No costs.

Ar Singh
MEMBER-A.

[Signature]
MEMBER-J.

/ANAND/