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(Reserved)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

(S)

Registration No. 44 of 1986

Kamla Prasad Singh . . vs. . Superintendent of Post
Offices, Ballia and another.

Hon'ble Ajay Johri, Admn. Member.

Hon'ble G.S.Sharma, Judicial Member.

(Delivered by Hon. G.S.Sharma, Jdl.Member.)

This application under Section 19 of the Administrative Tribunals Act (Act 13 of 1985) has been filed by the applicant for setting aside the appointment dated 4.1.1986 of the opposite party no.2 by the opposite party no.1 as Extra Department Branch Post Master, Kusauri, District Ballia, and for his own appointment on this post.

2. Relevant facts of this case in brief are that the post of Extra Department Branch Post-Master, Kusauri fell vacant on 30.6.1985 on the retirement of its former incumbent Sri Badri Singh. The said post was advertised by the opposite party no.1 and the applications were also invited from the Employment Exchange, Ballia. The applicant had submitted his application-~~form~~^{for} along with opposite party no.2 and four other candidates. Out of the six candidates the opposite party no.2 was selected and orders of his appointment were issued by the opposite party no.1 on 4.1.1986. This appointment is challenged by the applicant on the ground that on the date the opposite party no.2 had submitted his application for this post he was already in military service and he could not

apply nor could he be selected for this post before his retirement or discharge from previous service. It is also alleged that to accommodate the opposite party no.2 the opposite party no.1 had wrongly extended the date of receiving the applications and the applicant is in all respects a better candidate and the appointment of the opposite party no.2 is not on merits.

3. The application has been contested on behalf of both the opposite parties and their case is that initially the Employment Officer, Ballia vide his letter dated 22.7.1985, had sent the names of only three candidates for the post aforesaid. On receiving a complaint from Gram Pradhan, Kusauri Kala to the effect that no name of any candidate of village Kusauri Kala appeared in the list, the Employment Officer was further asked, vide letter dated 21.8.1985, to send the names of the candidates of the said village, and the Employment Officer thereafter sent a list of six candidates including the applicant and opposite party no.2, vide letter dated 6.9.1985. The aforesaid six candidates were thereafter required by the opposite party no.1 to send their proper applications in the prescribed proforma with proof of their qualification, age, income, character etc. On the receipt of the same, the applications were scrutinised and the opposite party no.2 was considered fit for appointment and a letter of appointment was accordingly issued to him by the opposite party no.1 on 4.1.1986 and the opposite party no.2 took over charge of this post on 28.1.1986. It is incorrect to say that the date of receipt of applications was extended with ulterior motive by the

opposite party no.1 to accommodate the opposite party no.2. In fact, the opposite party no.2 proceeded on leave preparatory to retirement with effect from 1.8.1985 and legally he stood discharged from his military post from that date and he was not in service at the time of his applying for this post. In any case, under the instructions of the Government,^{an} army personnel could apply for any civilian post one year before his retirement/discharge, and the application of the opposite party no.2 was duly recommended by Zila Sainik Kalyan Evam Punarvas Adhikari Ballia. It has also been pleaded by the opposite party no.2 that he secured 59.6% marks in Highschool Examination while the applicant had obtained only 42% marks and he was a better candidate for this appointment in comparison to the applicant.

4. It is not in dispute in this case that the opposite party no.2 was in military service. He proceeded on leave preparatory to retirement from 1.8.1985 and was formally discharged or retired from his previous service with effect from 28.11.1985. He had sent his application for the post in question on 7.8.1985, vide Annexure-IV to his reply. He had submitted his second application in the prescribed proforma with necessary particulars on 15.8.1985, vide Annexure-V to his reply. His appointment was made on 4.1.1986 and he took over charge of his new post on 18.1.1986. The opposite party no.2 has filed two circular orders, copies Annexures I and II to his reply, to show that under EME ROI 19/83, serving JCOs and other ranks were allowed to apply for civil appointments within one year before ^{their} ~~from~~ discharge/retirement. Under Thal Sena Adesh 65/82, JCOs and other ranks were allowed to get their names registered in employment exchanges for

civil posts 12 months before their release from army service. The opposite party no.2, therefore, committed no irregularity much less illegality by applying for the post in question during the period of his leave preparatory to retirement.

5. It further appears from the record that in his application dated 7.8.1985 (Annexure-IV to the reply) the opposite party^{no.2} had clearly mentioned that he was on leave pending retirement till 28.11.1985 and he was eligible for new service. Even in his ~~app~~ formal application dated ^{15.8}28.8.1985 (Annexure-V to the reply) this fact was not concealed by the opposite party no.2 and as such he cannot be accused of suppressing any material fact while applying for his appointment as Extra Department Branch Post-Master. The applicant has not been able to show any law or rule to us to cancel the appointment of opposite party no.2 merely on the ground that by the time of his moving the application he had not actually retired from military service. In fact his appointment was made much after his actual date of retirement and the opposite party no.2 ~~was~~ joined the new office more than three weeks after his appointment. This delay completely rules out any conspiracy between the opposite parties and, in our opinion, the selection of the opposite party no.2 has been made on merits according to law. There is not an iota of evidence before us to show that there was any unfairness with the applicant or in any case he was a better candidate than the opposite party no.2. There is, therefore, no force in his application and it merits dismissal.

6. The application is accordingly dismissed. The parties shall, however, bear their own costs.

April 14, 1986.
R.Pr./

Admin. Member.

Jdl. Member