

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

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Allahabad this the 7th day of June 1996.

Original application No. 1236 of 1988.

Hon'ble Mr. R.K. Saxena, JM  
Hon'ble Mr. D.S. Baweja, AM

Ram Kunwar Tripathi, S/o Jagdeo  
Tripathi, Extra Departmental Dak  
Agent, P.O. Kanhauli, Distt. Deoria,  
Vill. Khorma, Post Kanhauli, Deoria.

..... Applicant.

C/A Sri R.G. Padia

Versus

1. Union of India, through M/o  
Communication, Post and Telegraph  
Department, New Delhi.
2. Sub-Divisional Inspector of Post  
Offices (West) Sub-Division, Deoria,  
U.P.
3. Inspector of Post Offices, Deoria,  
Sub Division, Deoria.
4. Senior Superintendent of Post Offices,  
Deoria.
5. Sri Krishna Pal Singh, S/o Sri Giridhari  
Singh, Extra Departmental Delivery Agent,  
Kanhauli, Post and Village Kanhauli,  
Distt. Deoria.

..... Respondents.

C/R Sri N.B. Singh

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under Section 19 of  
the Administrative Tribunal Act 1985, praying for quashing the  
appointment of Sh. Krishan Pal Singh respondent No. 5 vide order  
Contd...2....



10/2/87

dated 10.3.87 as Extra Departmental Dak Agent in place of the applicant and continue the applicant in job and make payment of the pay and allowances and extend the benefit of seniority after 10.3.87.

2. The applicant while working as Extra Departmental Delivery Agent (EDDA), Kannhuli was given termination order dated 18.11.85. Challenging the termination order, he filed O.A. No. 9/1985 in this Tribunal. This application was decided on 10.10.86. The termination order was quashed with the direction to the respondents to fill up the post of EDDA on a regular measure following the relevant rules and consider the case of the applicant along with others for regularisation. The applicant has also filed a Contempt Application No. 6 of 1987 alleging non implementation of the directions contained in the judgement. The applicant states that from the counter affidavit filed by the opposite parties, he came to know that the post has been already filled up on 10.3.87 by appointing one Shri Krishna Pal Singh. This O.A. has been filed in addition to the contempt application challenging the appointment of Sh. Krishna Pal Singh vide order dated 10.3.87. The applicant has averred that after the judgement in O.A. 9/1985 he has not been allowed to join the job and no salary has been paid.

3. The applicant has challenged the appointment of Sh. Krishna Pal Singh on the following grounds:-

- (a) As per the judgement in O.A. 9/85, the services of the applicant were to be regularised. Instead of the same, the respondents have initiated the process of selection. Therefore the action taken by the respondents is illegal.
- (b) No advertisement has been given in the newspapers for the regular selection and that is why no other person except Sh. Krishna Pal Singh has applied for the same. The whole thing has been stage managed to hoodwink the judgement.
- (c) The applicant is Intermediate passed while Sh. Krishna Pal Singh is only matriculate. No credit given for the higher education.

Contd.....3.....



(11)

4/3

(d) The pleas that applicant's case was not considered by the respondents as his brother was employed in the same post office and also not being resident of the village Kanhauli are <sup>not</sup> tenable as these facts have been already considered in the judgement dated 10.10.86 in O.A. No. 9/85. The applicant is resident of village Khorma which is a principal circle of Kadhauli and he is well acquainted with the area.

(e) Applicant has 10 years of experience which has not been taken into account.

In view of these submissions, the appointment of Sh. Krishan Pal Singh, respondent No.5 is irregular and illegal and in complete and wilful disregard of the judgement dated 20.10.86.

4. The respondents in the counter affidavit have stated that as per the judgement dated 10.10.86 in O.A. No. 9/95, direction was to fill up the post of Extra Departmental Delivery Agent on regular measure after following the relevant rules and consider the case of the applicant along with others for regularisation. Accordingly for filling up the post, an advertisement for the post dated 6.2.87 was issued in the manner prescribed by the Department. Copy of the same also sent to the Sub-Post Master, Kanhauli. Main Overseer, Gauri Bazar, Village Pradhan, Kanhauli, and Head Master, Primary School, Kanhauli, Deoria. In response only one application of Sh. Krishan Pal Singh was received. The applicant did not apply against the same. However, with the available data on the record given in 1982, the applicant was <sup>also</sup> considered along with Sh. Krishan Pal Singh. Comparative position was prepared and placed at OA - 6. As per the norms and conditions prescribed, the applicant was not found suitable on the following grounds :-

(1)



(12)

A/4

(a) The applicant has less marks in the matriculation examination which is the basis for relative merit than the respondent No.5.

(b) He was not the resident of the village Kanhauli where the post office is situated or stage where the mails originate or terminate i.e. not permanent resident of the delivery jurisdiction.

(c) The brother of the applicant was already working as Extra Departmental Post Master in the same post office.

There is no rule according to which the experience has to be given weightage in the selection. Sh. Krishna Pal Singh, Respondent No. 5 met with all the eligibility conditions and was given appointment and he joined on 10.3.87.

The applicant was not given any appointment order under the provisions of Extra Departmental Agents (conduct and service) Rules and, therefore, the question of giving termination order did not arise.

Payment for the period from the date of termination till the date of appointment of regular incumbent after conducting selection has been already paid to the applicant.

The respondents have also opposed the application being time barred under section 21 of the Administrative Tribunal Act 1985.

In view of the facts submitted in the counter, the respondents have contended that the applicant is not entitled for the reliefs claimed for.

5. Heard the learned counsel for the parties. Counter and rejoinder affidavits have been filed. No counter affidavit has been filed by the respondent No.5 and no counsel has also appeared on his behalf. We have carefully gone through the material placed on the record.

6. We will first go into the issue of application being barred by limitation raised by the respondents. The appointment of the respondent<sup>No 5</sup> has been done vide letter dated 10.3.87.

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(13) (AS)

This has been challenged through this application filed on 28.10.88 beyond one year from the date the cause of action arose. The applicant has contended that he came to know of the appointment of respondent No. 5 on 17.11.87 through his Advocate when the counter was filed by the opposite party in the Contempt Petition No.6/1987 filed by the applicant in O.A. No. 9/1985. In view of this, the application is within the limitation and not barred by time. Respondents on the other hand have countered that the applicant was aware of the appointment of Sh. Krishna Pal Singh citing the delivery of the registered letters and money order by the respondent No.5 to the applicant on different dates 9.6.87, 22.12.87 and 1.2.88. The applicant has, however, denied the receipt of any registered letters or money order but at the same time has <sup>also</sup> averred that even if it is presumed that some <sup>letters</sup> ~~time~~ were delivered by the Respondent No.5, how the applicant is expected to know that the same employee has been posted vice him.

We are inclined to agree with this contention of the applicant and unable to buy the argument of the respondents. However, from the material placed on record, we find that the applicant has received the payment in July 87 clearly mentioning the arrears of the period from 24.11.85 to 10.3.87 in the voucher. Having received the payment upto 10.3.87, the applicant cannot take the plea of ignorance about the filling up the post by appointing the respondent No.5. Even taking this as the reference date for the limitation provisions, the application is filed beyond one year. However, considering the facts and circumstances of the case, we ~~can~~ condone the delay of a few months in filing the application.

7. The applicant in Para 7 of the application has averred that this application has been filed in addition to the Contempt Application filed in O.A.No. 9/1985 challenging



(14) (16)

the alleged appointment of Krishna Pal Singh, respondent No. 5 in place of the applicant. The applicant has at the same time made the plea that as per the judgement dated 10.10.86, direction was to regularise the applicant but instead of the same, new appointment has been made. During the hearing, the learned counsel for the applicant could not say about the disposal of the contempt application. Since contempt application is separately filed, we are not going into the issue of nonimplementation of the directions contained in the judgement dated 10.10.86. In view of these facts, we will confine to the challenge of the appointment of respondent No. 5 and the prayer for quashing the same. The respondents have averred that as per the direction in the judgment dated 10.10.86, the case of the applicant was to be considered alongwith the other when filling the post in regular basis following the extant rules. Accordingly the selection was conducted and applicant was also considered with others. We agree with this submission.

8. The main issue to be determined is whether there is any violation of the rules in the appointment of the respondent No. 5. The applicant has contended that no advertisement was given in the papers for the selection under reference and the notice dated 6.2.87 has been prepared subsequently for the purpose of presenting with the counter affidavit. The respondents have made available the file containing the selection proceedings. On going through the same, we find that the notification dated 6.2.87 is available on record. The copy is endorsed to village Pradhan, Head Master of Primary School, Sub Post Master, Kanhauli and Mail Overseer, Gauri Bazar. There is also record of sending the same to the various parties as mentioned in the endorsement in the same manner as had been done for the earlier advertisements on 3.2.86, 18.1.86 and 1.12.85. On perusal of the records we are unable to accept the contention of the applicant that the notification dated 6.2.87 has been prepared subsequently for the purpose of filing



(15) (B7)

the same with the counter affidavit.

9. From the records, we also find that only one application of respondent No. 5 had been received by registered post. The case of the applicant had been considered along with Sh. Krishna Pal Singh and the comparative chart was prepared taking the data of the applicant as submitted earlier, Copy of which is placed on record with the counter reply. Based on the comparative data, Sh. Krishna Pal Singh has been selected as the applicant did not comply with the eligibility conditions as detailed in Para 4 above.

The first non-compliance of the conditions is with regard to not being resident of the village Kahhauri where the post office is situated. Neither he is the resident of the village from where the mail originates or terminates. This is the condition laid down for appointment in the notification. The applicant has controverted this in the rejoinder that he is resident of village Khorma which is the Principal Circle of Kahhauri and as such the applicant is well acquainted with the entire circle. From this submission of the applicant, it is obvious that he did not meet with the condition of residence laid down.

Next consideration is with regard to relative merit. From the comparative merit, it is seen that the respondent No. 5 has higher marks in the Matriculation examination. The applicant has not quoted any rules laying down that higher qualification than Matriculation has to be given weightage. Therefore, we are inclined to accept the contention of the respondents. The third condition is with regard to near relative already working in the same post office. The respondents have submitted that as per the laid down rules two near relatives cannot be appointed in the same office. In reply to this submission in Para 3 (g) of the counter, the applicant in reply in Para 9 of the rejoinder has simply stated as "denied." It is, however, not submitted as to how the denial has been made on the face of the specific name of the brother being indicated in the counter.

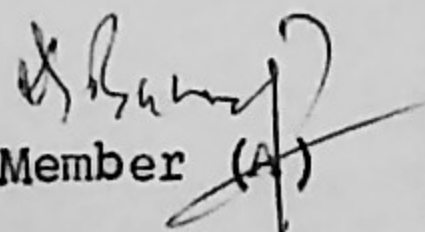


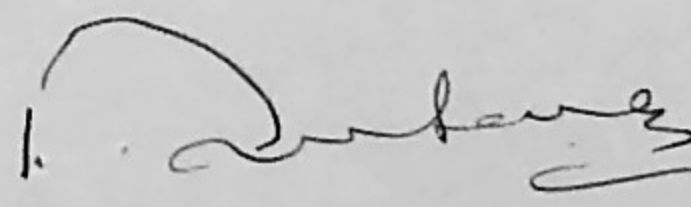
(18) (B)

10. The applicant has laid great stress on the plea that he had 10 years of experience which has not been taken into account. The selection has been done by inviting applications for regular appointment and the applicant case was to be considered along with the others, who may be new entrants with no experience. No stipulation for experience has been made in the notification. Preference to experience is to be given if the rules provide for the same. The respondents have <sup>also</sup> submitted that there is no provision to this effect in the recruitment rules. The applicant has not placed on record any rules based in which this pleading has been advanced. In view of such a position, we are not able to find any merit in this submission.

11. From the above deliberations, we do not find any violations of the rules which makes the appointment of the respondent No. 5 as irregular or void.

12. In the light of the above facts, the application fails and the same is dismissed with no order as to costs.

  
Member (A)

  
Member (J)

RJ