

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1264 of 1988

Allahabad this the \_\_\_\_\_ day of \_\_\_\_\_ 1995

Hon'ble Dr. R.K. Saxena, Member ( J )  
Hon'ble Mr. S. Dayal, Member ( A )

Vijai Kumar Gupta, S/o Ramji Lal, Extra Departmental  
Branch Post Master, Nagla Padam, Aligarh.

APPLICANT

By Advocate Shri Bharat Bhushan Pal

Versus

1. Director Postal Services, Kanpur.
2. Senior Superintendent(Post Offices) Aligarh Division, Aligarh.
3. Union of India through the Secretary, Ministry of Post & Tel., New Delhi.

RESPONDENTS.

By Advocate Shri N.B. Singh

O R D E R

By Hon'ble Dr. R.K. Saxena, Member ( J )

To challenge the order of termination  
Annexure-3 dated 18.12.1987 is this O.A. filed  
by Shri Vijai Kumar Gupta.

2. The undisputed facts as are revealed from the pleadings of the rival parties are that one Shri Jugul Kishore Gupta was working as E.D.B.P.M.

(Extra Departmental Branch Post Master) Nagla Padam. On reaching the age of superannuation, he retired from service on 15.4.1986. A regular vacancy was caused. In order to make regular appointment, a requisition inviting the applications of sponsored candidates was sent to the Employment Officer, Aligarh. Since there was no response from the Employment Officer, concerned Gram Pradhan was approached to intimate the eligible candidates, move applications for appointment by 27.12.1986. As a result of this information, only four candidates namely S/ Shri Deva Karan, Ram Prakash Singh, Vijai Kumar Gupta and Arun Kumar Varshney applied for the post. After the scrutiny of the applications, the applicant was given provisional appointment on 03.2.1987. So far as the date of appointment is concerned, the applicant avers that he had taken charge on 18.11.86.

3. On the appointment of the applicant having been made, Shri Deva Karan made complaint to the Director Postal Services, Kanpur against the appointment of the applicant. On examination of the matter and record the Director Postal Services who by then designated Additional Post Master General, concluded that the appointment of two applicant was irregular. Consequently, the services of the applicant were terminated under Rule 6EDA (Conduct & Service) Rules, 1964 vide Annexure-3 by the Senior Superintendent (Post Officers) Aligarh Division.

4. The impugned order is challenged on the grounds of illegality and arbitrariness. The relief sought is that the impugned order be quashed and the respondents be directed to reinstate the applicant.

5. The respondents on the other hand, contend that the appointment of the applicant was irregular in as much as that the fact of Shri Deva Karan belonging to Schedule Caste Category, was not considered. It is further contended that once the appointment is held irregular, the services of such an appointee could be validly terminated under rule 6 without giving any opportunity to the employee. It is, therefore, urged that the O.A. be rejected.

6. We have heard the learned counsel for the parties and perused the record.

7. The main controversy centres around the point is whether the appointment of the applicant was irregular, and if so, it could be terminated under rule 6 without giving any opportunity or the notice thereto. As is set out in facts, the contention of the respondents is that Shri Deva Karan being a Schedule Caste candidate and no preference having been given to his candidature, the appointment of the applicant became irregular. In view of this assertion of the respondents, it becomes

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necessary to go through the rules of recruitment. The method of recruitment is dealt with in Section III of Swamy's Compilation of Service Rules for Extra Departmental Staff in postal department.

8. Section III dealing with Method of Recruitment, contains six instructions. First deals with age, second with educational qualifications, third with income and ownership of property, fourth with residence, fifth with security, and sixth with preferential categories. It would be proper to reproduce the sixth instruction which is relevant in this matter. It reads as under:-

"6. Preferential Categories:

The last order issued in this connection under letter No.43-191/79-Pen, dated 22.6.79, fixing the four preferential categories according to the earlier orders issued vide D.G., P&T letter no.43-14/72.Pen, dated 023.1972, No.43-246/77 Pen, dated 08.3.1978 to Scheduled Castes and Scheduled Tribes candidates, and No.43-231/78-Pen, dated 17.2.1979 (regarding Ex-Army Postal Services Personnel) No.43-312/78-Pen, dated 20.1.79 (regarding Backward Classes and weaker sections of society) and to the educated unemployed persons, it is clarified that the above preference should be subject to first and foremost condition that the candidate selected should have an adequate means of livelihood, which though already prescribed, seems to have been ignored for some time past especially in view of these preferential categories being introduced in the above orders.

The criterion to judge"adequate means of livelihood" should be that in case he

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loses his main source of income, he should be adjudged as incurring a disqualification to continue as EDSPM/EDBPM. In other words, there must be insistence on the adequate source of income of EDSPM/EDBPM must be just supplementary to his income. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such business premises such as shops, etc. must be preferred regardless of the various categories of preferences mentioned above.

The preference earlier given to Backward classes and weaker sections of society stipulated under D.G. P&T Letter No.43-312/73-Pen dated 20.1.1979, should be dispensed with as no such categories have been defined on an All India basis.

For the ED Posts other than those of EDBPM/EDSPMs preferences to Schedule Caste/ Tribe, candidates may still be given in order to ensure the minimum fixed percentage as laid down in letter No.43-117/30 Pen dated 08.10.1980.

(D.G. P&T, letter no.43-84/80 Pen dated the 30th January, 1981 and corrigendum dated the 29th March, 1981)\*

9. The reading of this instruction, makes the position clear. No other rule, circular or instruction which may have annulled or modified this situation, has been shown to us. Consequently, what emerges from instruction 6 is that the preference to Schedule Caste/ Tribe candidate shall be given to the ED Posts other than those of

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E.D.BPM/E.D.SPMs. Admittedly, the post which was held by the applicant and the appointment of which was cancelled, was of E.D.B.P.M. Thus termination of his services was in violation of instruction 6.

10. It is further transpired from the perusal of instruction 6 that a candidate who can offer office space, must be preferred. The chart annexure C.A.-3 which has been brought on record by the respondents, establishes the fact that the applicant did possess a house whereas Shri Deva Karan did not possess the house but had some agricultural land in his possession. The possession of agricultural land will not satisfy the requirement whereas possession of a house does satisfy the same. Qualification wise also, the applicant stands on better footing because both of them had passed Intermediate examination but, the percentage in High School examination of Shri Deva Karan was 40.4% and of the applicant was 56.6%. It is not the case of the respondents that the post was reserved for Schedule Caste/ Tribe candidate. What has been urged is that the appointment was irregular because preference was not given to Shri Deva Karan who belonged to Schedule Caste category. We have already considered the instruction dealing with preferences and by no standard, the preference goes in favour of Shri Deva Karan.

11. It has also been contended by the respondents

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that the impugned order of termination of services of the applicant is passed under rule 6 of BDA Conduct and Service Rules which gives an unfettered right to the appointing authority. We are not convinced with this argument on two grounds. First is that the appointment being irregular was the idea of other than the appointing authority; and thus, there was no application of mind of the appointing authority. Second is that the order is not innocuous. When the veil is lifted, it is found that termination of services is based on illegal ground of irregularity. Thus, the exercise of powers under rule 6 cannot be allowed arbitrarily.

12. On the discussion made above, We come to the conclusion that the impugned order of termination of services of the applicant is illegal and thereby quashed. The applicant shall be reinstated with all consequential benefits.

13. The O.A. is disposed of accordingly. No order as to costs.

Member ( A )

Member ( J )

/M.M./