

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(6)

Original Application No. 1497 of 1992

Allahabad this the 6th day of Nov. 1997

Hon'ble Dr. R.K. Saxena, Member { J }
Hon'ble Mr. D.S. Baweja, Member { A }

Jaiveer Singh Gangwar, aged about 26 years,
S/o Shri Sukh Lal, R/o Village and Post Office
Hur-Huri, District Bareilly.

Applicant

By Advocate Sri M.K. Upadhyay

Versus

1. Post Master General, Bareilly.
2. Senior Superintendent of Post Offices, Bareilly.

Respondents

By Advocate Sri S.C. Tripathi.

ORDER

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

This is a case which has been instituted by the applicant - Jaiveer Singh Gangwar to challenge the order dated 18.9.1992 (annexure-7) whereby his appointment as Postal Assistant was cancelled.

2. The facts as are set out in the pleadings of the parties, are that there were some vacancies of Postal Assistants for which an advertisement was published. The requisite qualification of the post was Intermediate. Since the applicant had not only passed the Intermediate examination but was a graduate as well, he applied for the post. It appears that several other persons had also applied and the panel

was prepared on the basis of the marks which were obtained by those candidates in their Intermediate examination. The present applicant was at serial no. 10 with 86.80 marks. The applicant had submitted the mark-sheet of Intermediate in which he was shown to have secured 768 marks out of 1000. The verification of these testimonials submitted by the selected candidates, was made but, subsequently. In the meantime the selected candidates including the applicant were directed to undergo 75 days induction training at Saharanpur w.e.f. 06.7.92. Accordingly the applicant joined the training. On completion of the said training, the applicant alongwith others, as mentioned in annexure-5, were directed to report for duty at Bareilly. The applicant, therefore, joined Bareilly office on 18.9.92. It is there that the applicant and others were directed through annexure A-6 to undergo practical training. Anyway, on 18.9.92 he was served with the impugned order (annexure A-7) whereby his candidature was cancelled because the educational certificates and mark-sheets were found incorrect in the inquiry. Feeling aggrieved by the said order, this O.A. has been filed.

3. The respondents have come with the plea that the applicant had filed a forged marksheet disclosing 768 marks out of 1000. On inquiry, it is stated that the applicant had obtained 242 marks in the first year and 236 marks in the second year. The mark-sheet which was submitted by the applicant disclosed 768 marks out of 1000. It is, therefore, contended that the applicant was not entitled to be

selected on the basis of the said forged mark-sheet and, therefore, his candidature was cancelled. It is further contended that there was no necessity of holding any inquiry and, thus, the impugned order of cancellation did not suffer from any illegality.

4. The supplementary counter-affidavit has also been filed, reiterating the same facts. The applicant has filed rejoinder in which it is contended that the impugned order suffers from illegality because no notice was given to the applicant and no inquiry was held.

5. We have heard Sri M.K. Upadhyay, counsel for the applicant and Sri S.C. Tripathi, counsel for the respondents. We have also perused the record.

6. There is no dispute that an advertisement for the selection to the post of Postal Assistant was made and the applicant had applied in pursuance thereof. It is also clear that the applicant had given mark-sheet of Intermediate ^{examination} which was the basic qualification for the post. The applicant has also brought on record annexure A-1, the copy of the certificate of the Intermediate and mark-sheet of the said examination through annexure A-1. The mark-sheet is in two parts. One relates to part I and is lying blank. The second part relates to IInd year of the examination. Here the marks obtained in different papers of the second year, have been shown. The total of those marks comes to 236. Below these marks is given the total of first year and second year as 768 out of 1000. The contention of the respondents is that after the result of selection

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was declared, the testimonials which were submitted by the candidates including that of the applicant, were sent for the inquiry from different institutions. The testimonials of the applicant were sent to ~~the~~⁸ Bareilly from where it was reported that the applicant had obtained only 478 out of 1000 marks in first year and second year of the examinations. It is further mentioned that in the first year, he had secured 240 marks whereas in the second year, the marks secured by him ~~was~~² 236. This fact could not be controverted by the applicant in his rejoinder. Thus, this fact remains that the applicant had submitted a forged mark-sheet to indicate higher marks in the examination.

7. The question which arises for consideration is whether the candidature can be cancelled without giving an opportunity to the applicant. The contention of the learned counsel for the respondents is that the applicant was not appointed to a particular post. He was only undergoing training and undergoing ~~and undergoing~~² a training did not mean appointment to that post. We are unable to agree with this proposition. It is not that the selection to the post of Postal Assistant was an offer only. It is clear that the applicant alongwith others were directed to undergo 75 days induction training at Saharapur vide letter dated 25.6.92(annexure A-4). Not only this, after the completion of this training, all the candidates were sent to the different places while the applicant was sent to ~~the~~⁸ Bareilly division. It was clearly mentioned in this order dated 10.9.92 (annexure A-5) that the candidates would get an amount of Rs.660/- and D.A. at the rate of 71% during the period of training. Had it been an offer of appointment pure

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and simple, neither the candidates could have been directed to undergo the training nor could any amount be paid to them. It clearly indicates that the candidates including the applicant ²was appointed against the post of Postal Assistant. In such a situation, it was necessary for the respondents to have initiated inquiry for his filing a forged document to obtain the appointment. The learned counsel for the applicant has relied on a decision of their Lordships of Supreme Court in the case 'Shyaman Kumar Jha and Others Vs. State of Bihar and Others 1991 S.C.C.(L & S) 1078'. In the cited case, the similar situation had arisen. In the said case about 175 Assistant Teachers were appointed. They were required to get their certificates and other documents verified from the authorities. Before the verification could be done, it was alleged that they had joined the service. Their appointments were cancelled because the District Superintendent of Education had no authority to make the appointment. In such a situation their Lordships observed that the appellants in the said case should have been given an opportunity of hearing before cancelling their appointments. In our view, the law laid down in the said case is fully applicable to the facts and circumstances of the present case.

8. The learned counsel for the applicant further relied on a decision in the case 'S.S. Sharma and Others Vs. Delhi Administration and another (1993) 23 A.I.C. 616' in which the Delhi Bench of the Tribunal took the view that before cancelling the offer of appointment, notice should have been given. This case is also fully applicable to the facts of the case in hand.

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9. In view of the facts and circumstances as are disclosed and on application of the law as also analysed hereinbefore, we come to the conclusion that the order of cancellation of appointment of the applicant without giving show-cause notice, is not sustainable in law. Since we have also observed that the applicant had filed a forged mark-sheet, we direct the respondents that the inquiry after giving notice to the applicant, should be conducted within 3 months and final order be passed. The O.A. is disposed of accordingly. No order as to costs.

[Signature]
Member (A)

[Signature]
Member (J)

/M.M./