

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
ALLAHABAD

DATED: THE 4th DAY OF JUNE 1997

CORAM : HON'BLE MR. T.L.VERMA, J.M.
HON'BLE MR. D.S.BAWEJA, A.M.

ORIGINAL APPLICATION NO.634 OF 1993

Angad Singh Yeadav
S/o Sri Jaggi Singh Yadav
R/o village and Post Office Bauri (Nonahara),
District - Ghazipur.

.... Applicant

C/A Shri Mahendra Pratap Singh.

Versus

1. Union of India through,
Post Master General, Allahabad.

2. Superintendent of Post Offices
(Dak Adhikshak), Ghazipur.

C/R Shri A.Sthaleker, Adv. Respondents

ORIGINAL APPLICATION NO.1787 of 1992

Smt. Pratima Singh W/o Mahendra Singh
R/o village Bauri, P/O Bauri (Nonhara)
District Ghazipur.
C/A Anand Kumar, Adv.

.... Applicant

Vs.

1. Union of India through
Post Master General Lucknow.

2. Superintendent of Post Office, Ghazipur
Distt. Ghazipur.

C/R Shri Amit Sthaleker Respondents

ORDER

BY HON'BLE MR. T.L.VERMA, J.M.-

Both the aforesaid Original Applications involve ~~a~~ identical question of law and fact, hence have been heard together and are being disposed of by this common order.

C.A. No. 634/1993 -

2. This application under section 19 of the Central Administrative Tribunals Act has been filed for quashing advertisement dated 11.12.1992 and for issuing a direction to the respondents to appoint the applicant as Extra Departmental Branch Postmaster Bauri(Nonahara) district Ghazipur.

3. The facts of the case in brief are that ~~the~~ ^a vacancy on the post of E.D.B.P.M., Branch Post Office Bauri (Nonahara) district Ghazipur arose consequent upon the retirement of Shri Markandey Singh. The respondents requested the District Employment Exchange Officer, Ghazipur to sponsor names of suitable persons for appointment on the said post. The Employment Officer sponsored ~~the~~ three names for appointment on the said post. Before the names of the candidate sponsored by the Employment Exchange could be processed the post master general, Allahabad directed that wide publicity be given to the vacancy, and appointment may be made thereafter from amongst candidates who apply in response thereto. The applicant and seven others applied for appointment on the said post in response to the notice dated 9.8.1990. The respondents on consideration of the material before them appointed Smt. Pratima Singh on the post of E.D.B.P.M. The appointment of Smt. Pratima Singh, however, was subsequently cancelled on the ground that she had obtained

Th

- 861

the employment by filing forged marks. After her appointment was cancelled the respondents again requested District Employment Exchange Officer, Ghazipur to sponsor the names of suitable persons on the vacancy of E.D.B.P.M. caused as a result of cancellation of the appointment of Smt. Pratima Singh by letter dated 11.12.1992. This application has been filed for quashing the aforesaid notice. The contention of the applicant is that the applicant was the best candidate among the persons who applied in response to the notice dated 9.8.1991 and as the appointment of Smt. Pratima Singh was void ab-initio he should have been given the appointment.

4. The respondents have contested the claim of the applicant by filing C.A. In the C.A. filed on behalf of the respondents it has been stated that the appointment in question is being made on the vacancy caused consequent upon the cancellation of the appointment of Smt. Pratima Singh. Therefore, the same is afresh appointment. Therefore, the applicant cannot be appointed on the basis of the earlier selection. Further case of the respondents is that the Employment Exchange has not sponsored the name of the applicant and as such he cannot be considered for appointment on the said post.

5. We have heard the learned counsel of both the parties and perused the record. Although the applicant has conveniently omitted to mention that his name was not sponsored by the Employment Exchange and that he had applied for appointment on the post in question pursuant to the wide publicity of the vacancy given by the notification dated 9.8.1991 but

has not denied the averments made in para 8 of the C.A. that the Post Master General, Allahabad in course of inspection of the office of the Superintendent of Post Offices had ordered to give wide publicity to the vacancy of the E.D.B.P.M. Bauri (Nonahara) and make appointment in usual course.

6. In view of the fore-going conclusion the next question that arises for consideration is whether with the appointment Smt. Pratima Singh, the panel prepared in pursuance of the notice dated 9.8.1991 lost its force or the same remained alive for making subsequent appointment. The general rule is that once the panel prepared for making appointment on the certain post has been operated it become in-operative and for subsequent appointments fresh selection process has to be initiated. We see no reason to deviate from this principle of General Rule. That being so we are unable to accept the contention of the learned counsel for the applicant that the applicant should have been appointed after the appointment of Smt. Pratima Singh was cancelled on the basis of the earlier selection.

7. The above conclusion, however, does not conclude the matter. In this connection it may be relevant to note that applications for appointment on the vacancy caused by retirement of Shri Markandey Singh were invited from open market after giving wide publicity to the vacancy. The impugned notice, however, indicates the District Employment Officer, Ghazipur has been requested to sponsor the names of suitable persons. This, in our opinion, is in deviation of the direction given by the Post Master General to give wide publicity to the post and invite application from the open market. That apart

the Hon'ble Supreme Court in a recent decision reported in 1996 S.C.Cases (I.N.S) page 1420 has held that restricting appointment on government posts to candidates sponsored by the employment exchange alone was not proper. That being so and having regard the fact that the vacancy was earlier given wide publicity we consider that the vacancy caused by cancellation of the appointment of Smt. Pratima Singh should also have been given wide publicity so that the applicant as well as many others eligible for such appointment could have applied in the same. For the ^{aforsaid} reason the imputed notice cannot be sustained.

O.A.No.1787/1992 -

8. This O.A. has been filed for quashing order dated 2.12.1992 terminating the services of the applicant Smt. Pratima Singh.

9. The facts of the case have already been narrated in detail in the preceding paragraphs, hence need not be repeated all over again. The main ground challenging the impugned order of termination is that the applicant was not given a reasonable opportunity to defend herself. The respondents have contested the claim of the applicant on the ground that she had obtained employment on the basis of forged mark-sheet, hence the same was void ab-initio and for cancellation of such an appointment giving notice was not necessary.

10. We have heard the learned counsel for the respondents. None appeared for the applicant Smt. Pratima Singh in O.A.No.1787/1992 for advancing arguments. R.A. also had not been filed to the counter affidavit filed on behalf of the official respondents as well as the private respondents. The pleadings and annexures on record

have been perused by us and we find that the applicant has failed to establish that the marks-sheet submitted by her along with her application was not forged. As against that the respondents have very specifically stated in paragraph 6 of the C.A. that Smt. Pratima Singh appeared in High School Examination in the year 1975 with Roll No. 413225 and secured 197 marks out of 500, but she had filed mark-sheet pertaining to Roll No. 414976 allotted to one Jai Prakash who had secured 287 marks out of 500. The applicant has not controverted the above specific averment by filing rejoinder affidavit. We, however, therefore, no reason to disbelieve the averments of the respondents that the applicant had secured only 197 marks in High School Examination. As the applicant Smt. Pratima Singh had obtained the appointment on the basis of the forged marks the same was void ab-initio. We are in agreement with the contention of the learned counsel for the respondents that no notice is required to be given for terminating an appointment which is void ab-initio. In view of this O.A.No.1787/92 has no merit.

11. In view of the discussions made above, O.A. No.1787/1992 is dismissed leaving the parties to bear their own cost.

12. The O.A.No.634/1992 is allowed in part and notice dated 11.12.1992 is quashed. The respondents are directed to give wide publicity to the vacancy of the post of E.D.P.P.M. Bauri (Nonahara) District Ghazipur and consider the case of the applicant and also in case he applies in response to the notification inviting application for appointment on the said post. This direction should be complied with within three months from the date of communication of the order. Appointment, if any made on the post

of E.D.B.P.M. Bauri (Nonahara) during the pendency of the case will abide by the final outcome of the selection made pursuant to these directions. There will be no order as to cost.

13. A copy of this judgment be kept on the file of O.A.No.1787/1992.

Sd .. *Sd* ..
MEMBER (A) ~~✓~~ MEMBER (J) ~~✓~~

Gcs