

OPEN COURT
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 12th day of September, 1997
Original Application No. 234 of 1993
District : Rampur

GRAM:-

Hon'ble Mr. Justice B.C. Saksean, V.C.
Hon'ble Mr. S. Das Gupta, A.M.

Arvind Singh Son of Sri Bhanu Pratap Singh
Resident of Village & Post Office Madhukar,
District Rampur.

(Sri O.P. Gupta, & Sri R.K. Nigam, Advocates)
..... Applicant

versus

1. Union of India
through the Ministry of Post and Telegraph,
Government of India, New Delhi.
2. Senior Superintendent of Post Offices,
Moradbad Mandal, Moradabad.

(Shri SC Tripathi, Advocate)

..... Respondents

ORDER (Oral)

By Hon'ble Mr. S. Das Gupta, A.M.

This application was filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the order dated 14-10-1992 by which the services of the applicant as Extra Departmental Branch Post Master (EDBPM for short) were terminated. The applicant was selected on the post of EDBPM, Madhukar, District Rampur on being sponsored alongwith other candidates for the aforesaid post. He continued on the post for about six months and thereafter his services were terminated by the impugned order.

2. The main ground of challenge in this application is that the applicant's services have been terminated without giving him opportunity. Another ground taken is that an authority higher than the appointing authority cancelled his appointment though such authority had no such power in its review jurisdiction.

3. The respondents have contested the case by filing a counter affidavit in which it has been submitted that the appointment of the applicant was irregular, inasmuch as, he obtained only 45% marks in the High School Examination whereas another candidate Satyapal, had obtained 50% marks in the aforesaid examination. On receipt of an application from Satyapal the appointment was reviewed by the Director, Postal Services, and after detecting irregularity, he directed that the appointment will be cancelled. In compliance with the aforesaid decision the impugned order was passed.

4. The applicant has filed a rejoinder affidavit in which he has reiterated the contents of the OA.

5. It is now settled law that if any appointment has been made de hors rules, such appointment does not confer any right on the appointee to continue on the post. Such an appointment could be cancelled even by an authority higher in rank than the appointing authority and such a cancellation of appointment or termination of service would not require any prior notice or opportunity.

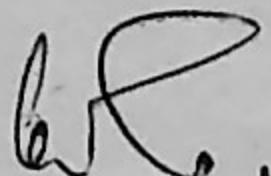
6. The contention of the respondents is that the applicant obtained only 45% marks in the High School Examination, whereas Satyapal has obtained 50% marks. By an order dated 10-5-1991, the DG Post had laid down that minimum qualification for the post of EDBPM would be Matriculation or equivalent. This order finds a place in Section III of the EDA (Service & Conduct) Rules. A Full Bench of the Tribunal has already decided in the case of S. Ranganayakulu Vs. Sub Divisional Inspector (Postal), (1995) 30 AIC 473 (FB) that in the absence of

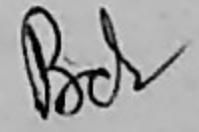
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statutory rules, executive instructions issued by the competent authority will have the force of statutory law. In view of the above, the executive instructions contained in Section III of the aforesaid Rules would have the force of statutory law.

7. The applicant in his rejoinder affidavit has not controverted the contention of the respondents that he obtained lesser marks than Satyapal who was also a candidate for the post. Therefore, there has been a contravention of the provisions contained in the EDA(Conduct and Service) Rules in this regard and, therefore, the appointment of the applicant was patently irregular. In such a situation, the applicant need not have been given any opportunity. However, we find from the averments in the counter affidavit that a notice was given to the applicant and he has also submitted a reply to the same. This has not been controverted by the applicant in his rejoinder affidavit.

8. In view of the foregoing, there is no merit in this application. The same is dismissed accordingly. The parties shall bear their own costs.


Member (A)


Vice Chairman

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