



E.D.B.P.M. Nowmunda post office. <sup>to be quoted,</sup> He has also sought a direction to the respondents not to interfere with the working of the applicant as E.D.B.P.M. on the same post.

2. From the averments made in the O. A., it appears that the applicant was one of the candidates sponsored by the Employment Exchange for a vacant post of E.D.B.P.M. Nowmunda post office. The applicant was selected for the post and was appointed on 11.8.92. However, subsequently by appointment letter dated 23.3.1993, respondent no.3 has been appointed in his place. Hence this application.

3. Official respondent has stated in their counter affidavit that the applicant had no income and property exclusively in her name and that brother of her husband is also employed as E.D.B.P.M. Nowmunda post office and therefore, as per rules governing the appointment of E.D.B.P.M., applicant was not eligible for appointment as E.D.B.P.M.. It is stated that on receipt of a complaint, the Director of Postal services called the appointment file and having noticed irregularity, the applicant was given show cause notice ~~that~~ as to why his services shall not be dispensed with. The respondents have stated that the applicant did not give reply to the show cause notice. Therefore, her services were terminated. The respondent no.3 who was the next best among the three candidates was appointed on her place.

4. Counter affidavit has also been filed by the respondent no.3 in which similar averments have been made.

5. The applicant has filed rejoinder affidavit in which it has been stated that the

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income certificate which was filed by her before her appointment ~~subsequently~~ indicated that she had independent source of income. It has been further stated that a copy of sale deed in respect of transfer of 1.46 acres of land to her name was also submitted alongwith the application. However actual mutation of land was subseqent to her appointment.

6. It is clear from the averments <sup>that</sup> ~~of~~ the applicant was otherwise the best candidate having ~~also~~ obtained higher marks in qualifying examination. However, there is no doubt that the other requirements as specified in the rules pertaining to appointment to the post of E.D.B.P.M. are also to be fulfilled. One ~~of~~ such requirement is that the applicant must have independent source of income. It would appear that the respondents had a doubt that the applicant did not have such income almost a year ~~before~~ <sup>after</sup> she was appointed. Normally such matters should be verified even prior to the appointment on the post of E.D.B.P.M. and presumably such verification ~~should~~ <sup>was</sup> ~~be~~ carried out through S.D. ~~I~~ (Posts). Therefore, there <sup>is</sup> a presumption that the Appointing Authority had satisfied itself before issuing appointment letter to the applicant ~~is~~ that she fulfilled the necessary qualification.

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7. There are several decisions of different benches of the Tribunal that once the Appointing Authority has made the appointment, higher authority does not have power to review such appointment. ~~xxxxxx~~ However, such position will not be applicable where appointment itself is void abnatio. In the present case it cannot be said that the appointment of the applicant was void abnatio and , therefore, we are of the view

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that there was no scope of review of the appointment by the Director of Postal Services.

8. The applicant no doubt was given show cause notice prior to ~~his~~ termination of his services. The respondents have stated that she did not give reply to the show cause. The applicant has, however, brought out in the rejoinder affidavit that she had mentioned certain personal problems, which she was facing at that time and requested more time for submitting her reply. It appears that this opportunity was not given to her and her services were terminated. We have seen from the letter which has been annexed that the applicant mentioned about the illness of her children as one of the reasons on account of which she could not submit reply to the show cause notice. In all fairness, respondents should have allowed her time to give proper reply to the show cause notice.

9. Even otherwise, from the documents annexed to the rejoinder affidavit <sup>i.e</sup> ~~was~~ the income certificate read with sale deed in favour of the applicant, We are satisfied that even at the time of appointment of the applicant, there was no reason to come to the conclusion that the applicant did not have independent source of income.

10. So far as the question of <sup>relative</sup> ~~employment~~ of <sup>of near</sup> in the same post office is concerned, relevant instructions in this regard state as follows

"Instances have come to light where very near relations have been appointed to work as E.D. B.P.M, EDDA or ED Mail Carrier in the same office. As this is fraught with the risk of frauds, etc., this should be avoided."

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It will be seen from the above that the aforesaid order is not mandatory in nature. In a recent decision of Hon'ble Supreme court has taken a similar view in the case of Balram Prasad V /s Union of India A.I.R. 1997 SC 637.

11. In view of the foregoing, we are of the view that the termination of the applicant is arbitrary and not in accordance with the law. Subsequent appointment of the respondent no 3 to the post of E.D.B.P.M. is hereby quashed. Let the applicant be appointed on this post and in any case not later than 4 weeks from the date of communication of this order. Respondents, however, shall be at liberty to provide alternate employment to the respondent no.3 in accordance with the extant rules of the department.

12. Parties shall bear their own costs.

*J. K. Sharma*

Member (J)

*W. C. ...*

Member (A)

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