

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 531 of 1993

Raghvendra Kumar Upadhyay ... Applicant.

Versus

Union of India  
and others

... Respondents.

...

Hon. Mr. S. Das Gupta, Member (A)  
Hon. Mr. T.L. Verma, Member (J)

( By Hon. Mr. S. Das Gupta, Member (A) )

In this application filed under Sec. 19 of the Administrative Tribunals Act, 1985 the applicant has prayed that the selection held on 23.2.1993 and appointment of respondent no. 6 on the basis of such selection as 'Extra Departmental Branch Post Master' (EDBPM for short) be declared void and set aside and to issue a direction for the appointment of the applicant on the post of EDBPM.

2. The post of EDBPM Kohra, Sultanpur fell vacant due to the retirement of erstwhile incumbent of that post. The respondent no. 5, who was ~~dead~~, <sup>then</sup> the Superintendent Post Offices sent a requisition to the Employment Exchange to sponsor the names of suitable candidates for the aforesaid vacant post. The employment exchange forwarded the list of 5 candidates including the applicant and the respondent no. 6. The applicant states that although last date was fixed for receipt of application from the candidates, the application of respondent

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No. 6, which was not received within cut-off date was illegal considered. The petitioner alleges that this was done by the respondent no. 5 on some monetary considerations. Thereafter the sub-Divisional Inspector (P), Central Jaunpur was deputed for spot verification of the facts stated in the applications and the applicant claims that he was told that he was at the top of the merit list. Thereafter, the applicant was called for interview by the respondent No. 5 who is alleged to have demanded Rs. 2000/- as consideration for appointing the applicant. The applicant claims to have refused the payment of the money demanded and thereupon the respondent no.5 is alleged to have issued appointment letter in favour of the respondent No. 6. The applicant submitted a representation dated 3.4.1991 making specific allegation regarding acceptance by respondent no.5 of illegal gratification. He has also stated to have mentioned in the representation that he was a better candidate than respondent no. 6 in view of his higher marks obtained in the High School Examination, his higher monthly income, and his house being better built and better located than that of respondent no. 6. The representation was considered by the respondent no. 2 and respondent no. 4 terminated the services of the respondent no. 6. Thereafter, the applicant was directed to submit a fresh application along with educational certificate and other relevant documents and accordingly, the applicant submitted a fresh application along with documents required. The applicant alleges that the

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respondent no. 5 who was annoyed by the applicant's representation again manipulated to appoint respondent no. 6 without following the procedure for recruitment of EDBPM. The applicant again submitted a representation dated 16.6.1991 to the respondent Nos. 2 & 3 and again the appointment of respondent no. 6 was cancelled and the services of the respondent no. 6 were terminated under Rule-6 of Extra Departmental Agents( Conduct & Service) Rules.

3. The above termination of ~~the~~ <sup>his</sup> services was challenged by the respondent no. 6 by filing an original application before this Tribunal on the ground that no opportunity of hearing was given to him before cancellation of the appointment. This application was decided by this Tribunal vide its order dated 12.2.1992 by which the order of cancellation of appointment was set aside and a direction was issued to the respondents to consider and re-examine the case of the applicant in that case( respondent no. 6) in the present O.A. after affording reasonable opportunity to him and thereafter to pass an appropriate order. The applicant alleges that thereafter without any information to the applicant, the respondent no. 3 and 4 interviewed respondent no. 6 on 23.3.1993 and again ordered his appointment

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as EDBPM on ~~monetary~~ considerations. The applicant again submitted representations but these are stated to be pending disposal. This has led the applicant to file this O.A. praying for the reliefs aforesaid.

4. In the counter affidavit filed, the respondents have averred that the application of the respondent no. 6 was actually received in Jaunpur Kutchery Post Office before the cut-off date but it was lying undisposed in that office. On complaint of respondent no. 6, this letter was forwarded to the ~~proper~~ proper addressee by the S.P.M. Janpur Kutchery ~~which~~ which was received in the office of the Superintendent post office on 15.2.1991 as against the cut-off date of 10.2.1991. The earlier cancellation of the appointment of the respondent no. 6 was based on the complaint of the applicant that the application of the respondent no. 6 was received after the cut-off date. But later, when it was found that the late receipt of the application was not attributable to the respondent no. 6, his appointment was restored, after considering the fresh applications of all the 5 candidates on merits. However, on receipt of a fresh complaint from the applicant, the respondent no. 2 reviewed the case and again cancelled

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the appointment of respondent no. 6 which was challenged by him before this Tribunal. ~~60000~~  
The Tribunal set aside the order of termination and directed that the respondent no. 6 should be given proper opportunity of being heard. The respondents filed an appeal against this order before the Supreme Court but the S.L.P. was dismissed. Thereupon, the respondent no. 6 was called to appear in the office of the respondent no. 2 in person by the Director Postal Services Allahabad. The respondent no. 6 appeared as directed and after hearing him, the respondent no. 2 directed the respondent no. 4 to reinstate the respondent no. 6 in service after verifying the genuineness of the income certificate produced by the respondent no. 6. The income certificate was verified by the Sub-Divisional Inspector(P) Central and thereupon, the respondent no. 6 was taken back on duty. The respondents have averred that the respondent no. 6 was the best candidate on merit among all the 5 candidates and therefore, his appointment was fully valid. They have vehemently denied that the appointment of the respondent no. 6 was made for any monetary considerations.

5. We have heard the counsel for both the parties and carefully gone through the records of this case.

6. It would be clear from the exposition of

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the facts both in the application and in the counter affidavit that the impugned reinstatement of respondent no. 6 has taken place in compliance of the order of this Tribunal passed in Original Application filed by the respondent No. 6 challenging the termination of his appointment. It is true that the applicant was not impleaded as respondent in that Original Application but that he himself should have been more vigilant and impleaded himself as respondents. The order dated 18.1.1993 having become final after dismissal of the S.L.P. by the Supreme Court, the respondents were bound to comply with the directions contained in the order. The respondents accordingly gave an opportunity to the respondent no. 6 for being heard and thereafter have taken a decision to reinstate him. Since all these actions have been taken in compliance with the earlier decisions of this Tribunal, we do not see any reason to adjudicate this matter afresh in order to examine as to who between the <sup>two</sup> i.e. the applicant and the respondent no. 6 had a better merit for being appointed to the post of E.D.B.P.M.

7. In the above view of the matter, we

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do not find any merit in the application and  
the same is dismissed without any order as  
to costs.

  
Member (J)

  
Member (A)

Dated: 26 September, 1994.

(n.u.)