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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 15th day of January 1997.

Original application No. 99 of 1993.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Awdesh Kumar, S/o Sri Rameshwar Dayal,
a/a 21 years, R/o Vill & Post Sikandrapur,
Dist. Farrukhabad.

..... Applicant.

C/A Sri R.C. Sinha

Versus

1. Union of India through Secretary,
Department of Posts, New Delhi.
2. Chief post Master General, Lucknow.
3. Superintendent of Post Office,
Farrukhabad.
4. Sub Divisional Inspector (Post),
Chhibramu (Fatehgarh Dn), Farrukhabad.
5. Hans Raj, S/o Sri Naresh Chandra,
R/o Vill & Post Sikandar Pur, Dist.
Farrukhabad.

..... Respondents.

C/R Sri N.B. Singh
Km. S. Srivastava

O R D E R

Hon'ble Mr. D.S. Baweja, AM

Through this application prayer has been made to quash the termination order dated 27.10.92 and also to issue direction to the respondents to take the applicant back in service and give all consequential benefits.

2. On the occurrence of a vacancy of Extra Departmental Delivery Agent on promotion of the incumbent of the post to Group D, Superintendent of Post Offices, Farrukhabad invited applications from Employment Exchange to fill up

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the vacancy. Three applications were received from the Employment Exchange which included the applicant. After due process of selection, the applicant was selected and appointment letter dated 18.6.91 was issued to the applicant. The applicant took over charge of the post on 24.6.91. However vide order dated 27.10.92, the services of the applicant were terminated by Respondent No. 2, Superintendent of Post Offices, Farrukhabad. After receiving the termination order, the applicant tried to find out reasons for termination of his services and came to understand that there was some complaint against the selection of the applicant and the Post Master General had directed the Respondent No. 3, Superintendent, Post Offices, Farrukhabad to terminate the services of the applicant. Being aggrieved, the present application has been filed on 19.1.93.

3. The applicant has assailed the termination order on the ground that the applicant was appointed after regular selection and the cancellation of the same without giving any opportunity is an arbitrary action by the respondents. The termination of the services has been done under Rule 6 which is not applicable in the applicant's case as his services have not been terminated on the ground of unsatisfactory work or on any administrative ground. Therefore, the action of the respondents in terminating the services is in violation of the provisions of Article 14 and 16 of the Constitution of India.

4. The respondents have filed the counter reply opposing the application. It is admitted that the applicant was appointed as Extra Delivery Agent. However it is submitted that on a complaint received, the matter with regard to selection of the applicant was reviewed at a higher level.

It was noticed that Sri Hans Raj, respondent No. 5 had been over looked in the selection even though he is at the top in the merit, on the ground that his father worked as C.P. Chowkidar in the same office. The respondents submit on the subject that rules had been wrongly interpreted by the appointing authority. There was no bar for appointment of the son in case his father was a Chowkidar as the timings of the Chowkidar did not clash with that of the office. Since the appointment of the applicant was irregular, the instructions are issued by Respondent No. 2 to Respondent No. 3 to cancel the appointment at his level and also give appointment to the respondent No. 5.

5. The counter reply has also been filed by Sri Hans Raj who was appointed during the pendency of the application and was impleaded as a party. The same pleadings as advanced by the respondents in the counter reply have been reiterated. He has cited the following judgements in the support of his contentions that show cause notice for terminating the services in case of the applicant was not necessary:-

- i) Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devender Kumar Jain 1995 Supreme Court Cases (L&S) 364
- ii) Dr. Umrao Singh Chowdry Vs, State of M.P. & another 1994 Supreme Court Cases (L&S) 948
- iii) Shankar Daya Upadhyay and another Vs. U.O.I. (1995) 30 ATC 18

6. The applicant has filed rejoinder reply to the counter reply of the official respondent but no rejoinder has been filed to the counter reply of the respondent No. 5. Grounds taken in the application have been reiterated.

7. We have heard Sri R.C. Sinha counsel for applicant

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Km. S. Srivastava, counsel for the respondent No. 5 and Sri S.K. Anwar, Proxy counsel to Sri N.B. Singh, counsel for the respondent No. 1 to 4. We have also carefully gone through the material placed on the record.

8. From the contentions raised by either of the parties, the issues which need to be resolved are:-

- (a) Whether the appointment of the applicant was irregular?
- (b) If the appointment was irregular, whether the services of the applicant could be terminated without giving the show cause notice under Rule 6?

9. Taking the first issue, it is noted from the material placed on record that out of the three candidates sponsored by the Employment Exchange, Sri Hans Raj has obtained the highest marks. However he was not selected by the appointing authority on the plea that his father was working as a Chowkidar in the same office. The respondents have contended that there was no bar in the appointment of the respondent No. 5 even though his father was working as a Chowkidar in the same office. The relevant policy instructions concerning appointment of the near relative have been referred to in the letter dated 20.10.92 at CA-2. As per the instructions contained in the letter dated 17.10.66 near relative should not be engaged as EDBPM, EDDA and EDMC in the same office. It is contended by the respondents that since Sikandarpur is a departmental office and duties of the Chowkidar commence at close of the office and terminate before opening of the office as such the provisions of letter dated 17.10.66 were not attracted. The appointing authority had not applied the instructions properly and wrongly overlooked the respondent No. 5. Accordingly the appointment of the applicant was irregular. The applicant on the other hand has contested

this interpretation of the respondent, for the provisions of letter dated 17.10.66. The applicant contends that these instructions do not specify any condition such as that in case the duty hours do not clash, then the near relative could be appointed in the same office.

10. We have carefully perused the instructions contained in letter dated 17.10.66. The policy instructions clearly spell out that appointment of the near relative as EDBPM, EDDA & EDMC in the same office should be avoided to prevent frauds. No exceptions are expressly implicit in these instructions wherein the situation obtaining in the present case appointment may be permitted. The higher authority on review of the appointment on a complaint made has interpreted that these policy instructions are not attracted in the case of respondent No. 5, since his father is working as Chowkidar and office timings are different. We are not impressed by this interpretation of the instructions. We are of the view that the laid down instructions do not envisage any exception and giving descretion to the competent authority to apply these instructions depending upon the nature/duty hours of the near relative already posted in the office. The explanation that there is no risk of fraud involved since the father of the respondent No. 5 was working at night time as Chowkidar ^{also} does not appear to be plausible. In fact, the risk of fraud may be even greater with the father posted as Chowkidar as access to office for manipulation of records could become much easier. We are not going into the merit and validity of the policy instructions laid down vide letter dated 17.10.66. ^{However} having laid down such instructions, the concerned authority cannot interpret the same suiting particular case of appointment. We hold that the appointing authority had correctly followed the instructions in ignoring the applicant No. 5 for appointment. The view held by the

higher authority for declaring the appointment of the applicant as irregular, therefore, cannot be held sustainable. In this view of the matter, we conclude that there was no irregularity in appointment of the applicant and impugned order appointing the respondent No. 5 in his place deserves to be quashed.

11. Having held above that the appointment of the applicant ^{we are not} was not irregular, going into other grounds of termination of services without show cause taken by the applicant and the judgements cited by the respondent No. 5 in support of his contention that services of applicant could be terminated without show cause notice.

12. As a result of above, the application is allowed and the impugned order dated 27.10.92 is quashed. The applicant will be taken back in service immediately. We however direct that applicant shall not be allowed any back wages, keeping in view the nature of appointment of Extra Departmental Agents. No order as to costs.

[Signature]
Member - A

[Signature]
Member - J

Arvind.