

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 21st day of January 2002.

original Application no. 1831 of 1994.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman  
Hon'ble Maj Gen K.K. Srivastava, Administrative Member.

TAPAS YADAVA, S/o Sri B.N. Yadav,  
R/o Vill and P.O. Chilwa (Gola Bazar)  
Distt. Gorakhpur.

... Applicant

By Adv : Sri A. Tripathi  
Sri J.M. Sinha

V E R S U S

1. Union of India through the Secretary,  
Department of Posts, Ministry of Communication,  
Dak Bhawan,  
NEW DELHI.
2. Sr. Supdt. Post Offices, Gorakhpur Division,  
GORAKHPUR.
3. Sub-Divisional Inspector of Post Offices,  
Urwa Bazar, Sub Division Urwa Bazar  
Gorakhpur.
4. Shri Thakur Prasad Chand, S/o Sri Rajpati Chand,  
R/o vill and P.O. Chilwa via Gola Bazar,  
Gorakhpur.

... Respondents

By Adv : Sri S Chaturvedi

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O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member-A.

In this OA, under section 19 of the A.T. Act, 1985, the applicant has challenged order of Sr. Supdt. of Post Office (in short SSPO) (respondent no. 2) dated 31.07.1992 appointing respondent no. 4, Sri Thakur Prasad Chand, as Extra Departmental Branch Post Master (in short EDBPM), Chilwa, Distt. Gorakhpur. The applicant has prayed that the appointment of respondent no. 4 be quashed and the official respondents be directed to appoint the applicant as EDBPM, Chilwa, Gorakhpur.

2. The facts giving rise to this OA as per applicant are that the Extra Departmental Branch Post Office was opened on 30.4.1992 at Chilwa. Consequently, respondent no. 2 addressed Employment Exchange on 30.4.1992 to forward names of eligible candidates for appointment as EDBPM. The Employment Exchange, sponsored three names including that of the applicant and ~~respondent no. 4~~<sup>Respondent no. 4</sup>. Respondent no. 4, though securing lowest marks in High School Examination, was appointed as EDBPM. Aggrieved by this the applicant complained to the Director Postal Services, Gorakhpur, who examined the case and cancelled the appointment of respondent no. 4. Consequently, order was passed by the respondent no. 1, cancelling the appointment of respondent no. 4 vide order dated 18.11.1992 and in pursuance of the said order respondent no. 3, Sub Divisional Inspector (in short SDI) (P), Gorakhpur, issued order on 19.11.1992 by which respondent no. 4, Sri Thakur Prasad Chand was relieved. Respondent no. 2 again modified his order and issued the impugned order dated 24.11.1992, reappointing respondent no. 4, Sri Thakur

Prasad Chand as EDBPM, Chilwa, Gorakhpur, who took over the charge of EDBPM, Chilwa, on 25.11.1992 under the impugned order dated 24.11.1992.

3. Heard Shri A. Tripathi, learned counsel for the applicant and Sri P Srivastava brief holder of Sri S. Chaturvedi, learned counsel for the respondents and perused records.

4. Sri A Tripathi, learned counsel for the applicant invited our attention to para 4.8 to 4.10 of O.A. and submitted that the entire action of respondent no. 2 is malafide and illegal and it smacks <sup>of</sup> favouritism. Once <sup>had</sup> appointment was cancelled by DPS, Gorakhpur, SSPO (respdt 2) / no authority to reappoint respondent no. 4. In the counter affidavit no reasons has been stated i.e. under what authority and under what circumstances the action was taken by respondent no. 2 <sup>to</sup> reappoint respondent no. 4. He further submitted that on merits also, respondent no. 4 did not deserve to be appointed as EDBPM and that is why the grievance of the applicant was <sup>redressed</sup> ~~xxxxxx~~ by the DPS, Gorakhpur by cancelling appointment of respondent no. 4.

5. Sri P Srivastava, brief holder of Sri S Chaturvedi, learned counsel for the respondents, contested the claim of the applicant and submitted that the enquiry was made through Public Relation Officer (P) Gorakhpur and was found that a Banjar and Uncultivated

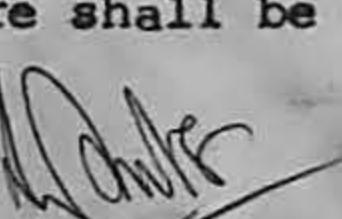
land was held by the applicant, therefore, the income <sup>income</sup> shown in the certificate was not correct. <sup>Because of this</sup> /the applicant was not found suitable for appointment. Sri P Srivastava, further submitted that the merit in High School examination <sup>the</sup> is not <sup>main</sup> criteria for selection to the post of EDBPM. The income and the landed property is to be taken into consideration for appointment as EDBPM. Respondent no. 4 was found more suitable and, therefore, was rightly selected for the post. Sri P Srivastava, finally submitted that the QA is barred by period of limitation because the impugned order is dated 25.11.1992 and the application has been filed on 6.12.1994.

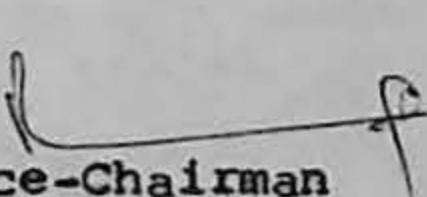
6. We have considered the submissions of learned counsel for the parties and perused records. On the question of limitation we have considered the argument of learned counsel for the respondents. The applicant filed delay condonation application no. 3068/94. The notice was issued on delay condonation application on 22.9.1995 and the respondents did not reply, meaning thereby that the facts stated in the affidavit in support of delay condonation application are uncontroverted. Therefore, on the facts we are inclined to condone the delay, which is hereby condoned. There is force in the submission of learned counsel for the applicant that <sup>in</sup> <sup>of</sup> respondent no. 4 <sup>was</sup> the appointment <sup>was</sup> cancelled by a superior authority i.e. D.P.S., Gorakhpur <sup>and</sup> <sup>in</sup> respondent no. 2 <sup>had</sup> no authority to issue the impugned order. In the instant case, we have no doubt in our mind that the action of respondent no. 2 is arbitrary and not supported by any rule and, therefore, illegal. We have also seen the comparative merits of

all the three candidates whose names were sponsored by the Employment Exchange. Even if it is accepted that the applicant did not have an independent source of income as he possessed uncultivable land nothing has been mentioned in the counter affidavit regarding candidate no. 2 Sri Ganga Prasad Chand who had also secured more marks than respondent no. 4. We would like to observe that the action of respondent no. 1 is arbitrary, without authority and illegal and is liable to be quashed. Therefore, the selection of respondent no. 4 for the post of EDEPM, Chilwa was unfair and suffers from error of law and needs to be quashed.

7. In view of the facts and circumstances, the OA is allowed. The order of SSPOs, Gorakhpur (respdt no. 2) dated 24.11.1992 and the impugned order of SDI (respdt no. 3) dated 25.11.1992 are quashed. The OA is disposed of with the direction to DPS, Gorakhpur to consider this matter and select the most suitable candidate for appointment from amongst the three candidates whose name were sponsored by the Employment Exchange. The entire exercise will be completed within a period of two months from the date of communication of this order.

8. There shall be no order as to costs.

  
Member-A

  
Vice-Chairman

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