

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Original Application No. 1314 of 1995

this the 26th day of August 2002

Hon'ble Mr. S. Dayal, Member (A)

Hon'ble Mr. A.K. Bhatnagar, Member (J)

Vishnu Bhagwan, S/o Sri Parshottam Datt

Sharma, R/o Mohalla Nai Abadi, Rajeshwar Mandir,
Rajpur, Agra.

.....Applicant

By Advocate : Sri Bechu Ram & Sri M.K. Upadhyay.

Versus

1. Union of India through Secretary
Ministry of Post and Telegraph,
Parliament Street, New Delhi.
2. Post Master General, Agra Region, Agra.
3. Senior Superintendent of Post Officer,
Agra Division, Agra.
4. Assistant Superintendent of Post Officers,
Central Sub Division, Agra.

.....Respondents

By Advocate : Sri S.C. Tripathi

O R D E R (Oral)

By Hon'ble Mr. S. Dayal, Member (A)

This application under Section 19 of the A.T. Act, 1985 has been filed for setting aside the termination order dated 1.5.1995.

2. The case of the applicant is that he was duly appointed after inviting applications from the eligible candidates by the appointing authority and offer of appointment dated 28.5.1993 shows that the appointment

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was to be done on a regular basis after considering all the eligible candidates. It appears that subsequently on review an authority higher than the appointing authority came to the conclusion that the applicant had furnished wrong information regarding his residential status and that the applicant was not a permanent resident of village Barauli Ahir, under the directions of the superior authority, the appointing authority cancelled the appointment of the applicant by the impugned order under rule 6. This has given rise to this application before us.

3. We have heard the arguments of S/Sri M.K. Upadhyay and B. Ram for the applicant and Sri S.K. Pandey for Shri S.C. Tripathi, counsel for the respondents.

4. The applicant has in this application before us contested the allegation that he was not a permanent resident of the village in which the Branch Post Office was located i.e. Barauli Ahir. He has stated that a residence certificate was given to him by the Additional District Magistrate showing that he was a resident of Nai Abadi, Rajeshwar Mandir, Rajpur, which was within the beat area of EDDA. The respondents, on the other hand, have mentioned that the applicant was a resident of village Nagla Patam, which was outside the jurisdiction of EDDA Baruli Ahir. However, the respondents have relied-upon Annexure nos. C-5 & C-6. Annexure C-5 given by the Sub-Inspector of Police station shows that the applicant was residing in Nai Abadi, Baruli Ahir, Thana Lalganj and was also a resident of Rajpur in Sadar Bazar within the jurisdiction of Iradatnagar Police Station. Therefore, it is not controverting the claim of the applicant that he resided in Baruli Ahir jurisdiction. The respondents have also relied-upon an application

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which, however showed that the applicant studied in Dr. Karan Singh Inter College, Agra within the jurisdiction of Police Station Iradatnagar. However, this information is of location at the time when the applicant was studying in the college and cannot be taken to be a proof that the applicant's residence at the time he applied for the post of EDDA.

5. The learned counsel for the applicant has cited the case of Ramesh Kumar Pandey in which it was held that since the cancellation of appointment was after an enquiry, therefore, the order of cancellation was not simplicitor as contemplated under rule 6 of EDA (Conduct & Service)Rules 1964. The learned counsel for the applicant has also relied-upon the judgment of D.B. of this Tribunal in the case of Deepak Kumar Srivastava Vs. Union of India & Others in which a reliance has been placed upon the judgment of Amar Singh Vs. Union of India & Others (1995 (1) ATJ 64) in which it has been held that an authority administratively higher than the appointing authority has no power of review in the matter of appointment by an appointing authority. The Full Bench of this Tribunal in the case of Ambujakshi Vs. Union of India in O.A. No. 57 of 1991 of Bangalore Bench had laid down this proposition of law. The view of Full Bench has further been strengthened by the Hon'ble Supreme Court in the case of Aniudh Sinhji Karansinhji Jadeja Vs. State of Gujrat (1995 SCC 303) in which it has been held that if the discretion is exercised or in compliance with instructions of some other person or authority, it amounts to failure to exercise the discretion altogether.

6. We, therefore, find that the impugned order of cancellation of appointment of the applicant cannot be sustained. The order is, therefore, set-aside. The applicant shall be put back as EDDA, Baruli, Ahir within a period

of three months from the date of receipt of copy of this order, with all consequential benefits.

7. The O.A. stands allowed as above without any order as to costs.

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MEMBER (J)

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MEMBER (A)

GIRISH/-