

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

ALLAHABAD

O.A. No./F. No. 128/1995

DATE OF DECISION 14.8.96

Smti Nisha Singh -- APPLICANT (S)

Sri K. C. Sinha -- ADVOCATE FOR THE
APPLICANT (S)

VERSUS

Union of India & others -- RESPONDENT(S)

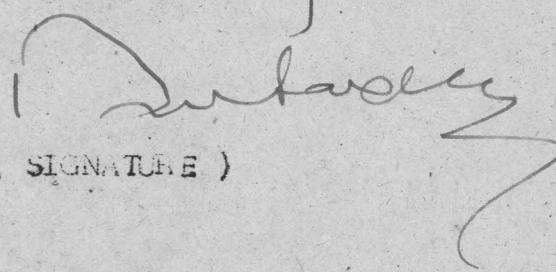
ADVOCATE FOR THE
RESPONDENT(S)

QUESTION

The Hon'ble Dr. R. K. Saxena -- Vice Chairman
Member (J.)

The Hon'ble Mr. S. Dayal -- Member (A.)

1. whether Reporters of local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to all other Bench?


(SIGNATURE)

M. Mehrotra/-

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Original Application No. 128 of 1995

Allahabad this the 14th day of Aug 1996

Hon'ble Dr. R.K.Saxena, J.M.
Hon'ble Mr. S.Dayal, A.M.

Smt. Nisha Singh W/o Sri Surya Naresh Singh
R/o Village & Post: Santoshpur, Dist.Basti.

C/A: Sri K.C.Sinha

.....Applicant

Versus

1. Union of India through
Post Master General, Gorakhpur Region,
Gorakhpur.
2. Superintendent of Post Offices,
Basti Division Basti.

.....Respondents.

JUDGEMENT

(Dr. R.K.Saxena, J.M.)

The applicant has approached the Tribunal
challenging the order dated 25-1-96 annexure A-2 of
termination of her services.

The facts of the case in brief are that one
Branch Post Office was opened at Santoshpur Distt:Basti
and for engaging the staff, a requisition was sent to
Employment Exchange to fill up the vacancies on 25-5-92.
In pursuance of the aforesaid requisition, the Employment
Exchange sponsored five persons namely Surya Naresh Singh,
Ram Prasad Singh, Manoj Kumar Yadav, Indresh Kumar Ajad
and Smt. Nisha Singh - applicant. The respondent No.2



to furnish

asked the sponsored persons ^A the certificates of their eligibility. Accordingly, the applicant had complied with. It appears that on receipt of information from all the candidates who were sponsored by the Employment Exchange, the respondents prepared a comparative merit list of those five candidates as follows:-

1. Sri Surya Naresh Singh
2. Smt. Nisha Singh
3. Sri Indresh Kumar Ajad
4. Sri Manoj Kumar Yadav
5. Sri Ram Prasad Singh.

Since Sri Surya Naresh Singh was at serial No.1, he was offered ^{the} appointment on 11-6-92, and accordingly he joined on 22-6-92. It is contended that Sri Surya Naresh Singh could not continue on the post and he submitted his resignation on 19-8-92. The same was accepted on 30-9-92 by respondent no.2. When the vacancy of Extra Departmental Branch Post Master fell, the applicant was the next candidate according to the merit list which was prepared. As such the charge was handed over by Sri Surya Naresh Singh to the applicant because she was appointed by the Superintendent of Post Offices vide order dated 29-9-92 annexure A-6.

It is said that after about one year, the post of Extra Departmental Delivery Agent/Mail Carrier was created in the said post office. Consequently, the respondent no.1 sent a requisition to the Employment Exchange, Basti on 28-8-93. Since the Employment Exchange failed to sponsor the name in time, then an open advertisement was given and applications were invited by 15-10-93. In pursuance of the said advertisement, eight candidates had applied. Of them the candidates namely Anil Kumar, Shesh Nath & Bal Govind Singh were not

considered because their applications were received after the expiry of the last date. The name of Sri Indresh Kumar Ajad who was at serial no.1 was also not offered on the ground that he was a disabled person and duties of Extra Departmental Delivery Agent could not be accomplished by him. The Gram Pradhan had also made a complaint against Indresh Kumar Ajad. As a result of it, choice fell on Suresh Naresh Singh who was second in the list. This Surya Naresh Singh also happened to be ^{husband} of the applicant. The Assistant Superintendent, Bansi appears to have written a letter to the Divisional Superintendent whether the appointment of Surya Naresh Singh who was the husband of the applicant, who was working as Branch Post Master, could be made on the post of Extra Departmental Delivery Agent. The Divisional Superintendent consented and therefore Sri Surya Naresh Singh was appointed on 5-3-94 as Extra Departmental Delivery Agent. It appears that the complaint was made as against the appointment of husband and wife in the same post office as Extra Departmental Delivery Agent and Extra Department Post Master respectively. It is said that respondent No.1 directed the respondent no.2 to cancel the appointment of the applicant and as such an order dated 25-1-95 was issued and the services of the applicant were terminated. It is, therefore, contended on behalf of applicant that the termination of the service of the applicant was illegal. Hence, this O.A. with relief which was already indicated.

The respondents filed counter-affidavit of Ram Deo Tiwari. It is contended that the application was appointed as Extra Departmental Branch Post Master of Santoshpur after Surya Naresh Singh had resigned. It is admitted that the requisition was sent of the post of Extra

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Departmental Delivery Agent/Mail Carrier and Sri Surya Naresh Singh who was the husband of the applicant, was appointed as such; and thus both husband and wife held the posts of Extra Departmental Delivery Agent and Post Master in the same post office. It has been further contended that the Director General, Postal Services, New Delhi had issued a circular on 17-10-66 prohibiting the near relations ~~being~~ posted in one and same ~~of~~ ^{too} post office. Besides, there was complaint against the posting of husband and wife in the same post office. It was for this reason that the appointment of applicant was cancelled because it was a condition that person to be posted as Branch Post Master, must have some source of income of his/her own. It is averred that the applicant had shown her income from shop, the license of which was valid only upto 31-3-92. In this way, the order of cancellation has been attempted to be justified.

The supplementary counter affidavit has also been filed by ¹⁶ ~~the~~ same Sri Ram Deo Tiwari. It was filed to refute ^{the} certain facts which were brought in the rejoinder. It is denied that the appointment of Surya Naresh Singh was made on the instructions from Superintendent of Post offices, Basti. It is also denied that the cancellation of the order of the applicant was illegal.

The applicant filed rejoinder and supplementary rejoinder affidavits reiterating the facts which were mentioned in D.A. itself.

We have heard the learned counsel for the parties and have perused the record.

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In this case, the question for determination is whether the order of cancellation of applicant is valid, and whether the background in which the order of cancellation of appointment was passed, was justified. There is no dispute that the applicant was appointed as Sub-Post Master after the Surya Naresh Singh, husband of the applicant had resigned from the post of Sub-Post Master. The contention of the applicant is that her ^{order of} appointment did not suffer from any infirmity and same was cancelled without affording any opportunity for the simple reason that her husband was appointed as Extra Departmental Delivery Agent/Mail carrier, and two persons of one and same family could not continue in the post office. The order annexure A-11 does not speak of any ground for which the same was passed. It speaks that the appointment is cancelled under Rule-6 of E.D.A. (Conduct and Service) Rules 1964. The respondents in counter-reply disclosed that the appointment of the applicant was cancelled because the source of income shown by her was shop which was valid through licence upto 31-3-92. Since she had no other source of income, she had become disqualified for the post.

The learned counsel for the applicant, on the other hand, drew our attention towards the letter dated 17-10-66 which was issued by the Director General of Post & telegram in which it was mentioned that the employment of near relatives in the same post office, should be avoided because the instances have come to the light where ^{of} near relation had been appointed to work as E.P.B.P.M., E.D.D.A. or E.O. mail carrier in the same office. The reason advanced was that this practice was brought with the risk of fraud etc. and therefore same

should be avoided. The said circular letter has been published at page 65 of Swamy's Compilation of Service Rule for Extra Departmental staff in postal department. The reading of circular letter indicates that such posting should be avoided. It does not mandate that such posting can not be made. No doubt, the respondents have given different reasons for cancellation of appointment in the counter-reply but the ground taken in the counter-reply has not been disclosed anywhere else including the impugned order. It has, therefore, become necessary to lift the veil and to find ~~different~~ ^{the} real reason. As already pointed out, the respondents are giving different ^{ground} colour by saying that the applicant had become ineligible for simple reason that she did not have her own source of income. The real factor which came for consideration before the respondents appears to be the reason that both husband and wife were appointed. When we make scrutiny of the annexure A-9 to 12, we find that a complaint of both husband and wife being appointed in one and same post office, was made and report was sought. As a result of the same, the appointment of applicant was cancelled. It leads to the query as to why the appointment of the husband Surya Naresh Singh who was ^{to the appointment of the applicant,} subsequently appointed as Extra Departmental Delivery Agent, was not cancelled. The applicant ~~was~~ continued in service before when the ground of two persons of the same family having been employed in the same post office was found objectionable. Naturally, the person who had joined subsequently should have gone out. It is surprising that the respondents did not do the same but framed a ground to remove the applicant from service. No doubt Rule-6 provides that an employee who has not rendered more than three years continuous service, his service may be terminated but it does not mean that it should be done arbitrarily or with a gender bias. The respondents

(12)

nowhere disclosed except in the counter-reply that the applicant did not have the source of income. It was ~~ground of~~ ^{of} not ~~a~~ objection at the time ~~of~~ offer ^{of} the appointment. In this way, this plea in counter affidavit does not appear to be correct. On lifting the veil, it is revealed that the real cause was that two persons of the same family were employed. We do not encourage that the appointment of two members of the same family in one and ~~be made~~ same sub-post office and we are also conscious that the circular letter dated 17-10-66 must have been based on certain cases of fraud. Thus, this ground should have been kept in mind by the appointing authority when Surya Naresh Singh was going to be appointed as Extra Departmental Delivery Agent/Mail Carrier. If any mistake was committed and ^{it} ~~same~~ was detected only subsequent to the issuance of appointment letter, the natural course of taking action should have been against Surya Naresh Singh. The cancellation of the appointment of the applicant is in no way justified or legal.

Having gone through the facts and circumstances of the case, we are of the view that the O.A. succeeds. The impugned order annexure A-11 is quashed. The respondents are directed to take applicant back in service. The O.A. is decided accordingly. No order as to costs.

Sharma
MEMBER(A)

Durvasla
MEMBER(J)

/T.S./