

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 28<sup>th</sup> day of Nov 97.

O.A. No. 956/95

with O.A. No. 385/96

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. D.S. BAWEJA, MEMBER(A)

O.A. No. 956/95

Smt. Archana Dwivedi wife of Umesh Chandra Dwivedi resident of village and Post office Dubaha District Allahabad at present working as E.D.B.P.M. Dubaha, Allahabad.

Applicant

By Advocate Shri K.N. Mishra.

versus

1. Union of India through the Secretary Ministry of Communication New Delhi.

2. Director Postal Services Allahabad

3. Senior Superintendent of Post offices, Allahabad.

Respondents.

By Advocate Shri Vikram Gulati.

2. O.A. No. 385/96

Sri Prakash Mishra, son of Sri Brahma Dev Mishra, aged about 22 years resident of village and Post Dubaha vis Jasrak Allahabad District Allahabad.

Applicant.

By Advocate Shri O.P. Gupta.

versus

Respondents 1 to 3 as in the O.A. 956/95 above.

4. Smt. Archna Divedi wife of Sri Umesh Chandra Divedi working as EDBPM Duaha(Jasara) Allahabad.

Respondents.

By Advocate Shri S.C. Tripathi.

O R D E R (RESERVED)

HON. MR. JUSTICE B.C. SAKSENA, V.C.

The applicant in O.A.956/95 Smt. Archana Dwivedi

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has filed O.A. No. 956/95 seeking quashing of order dated 8.9.95 and has also prayed for all consequential benefits accruing on account of quashing of the said order. The order dated 8.9.95 is a notice of termination of service of the applicant under rule 6-A of the P&T E.D. Agent (Conduct and Service )Rules. An interim order was granted on 25.11.95 and it has remained in operation.

2. The brief facts of this O.A. are that on promotion of applicant's husband the post of E.D.B.P.M. Dubaha District Allahabad fell vacant. Applications were invited through Employment Exchange office Allahabad. The Employment Exchange Officer sent five names including the name of the applicant. After scrutiny and verification, the applicants states that she was found fit for the post and consequently the appointment letter was issued dated 26.4.95. The order for termination of services was passed which is under challenge.

3. The respondents have filed counter affidavit in which they do not dispute the main averments of the applicant. Their case is that a complaint was received from one Shri Prakash Mishra and the Director of Potal Services Allahabad examined all the relevant documents concerning appointment file and he found that the appointment of the applicant was not in accorance with the standing orders and instructions of the Director General of Posts, New Delhi. An enquiry, it is stated, revealed that the applicant had obtained less marks amongst the candidates sponsored by the Employment Exchange and therefore her appointment was canceled by the order dated 7.6.95. Consequently, the notice of termination of service was issued.

4. The said Shri Prakash Mishra has filed O.A. No. 385/96. It was connectd with the O.A. filed by Smt. Archna Dwivedi and we have heared the learned counsel for the parties. Both the O.As are accordingly being disposed of by a common single order. Shri Prakash Mishra through his O.A. has challenged the selection and appointment of Smt. Archana Dwivedi who has been impleaded as respondent No. 4. He has

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pleaded that amongst five candidates sponsored by the Employment Exchange, he was also one of the candidates. He alleges that he was more suitable as per requirement shown in the notification, but despite the same the respondent No. 4 was appointed due to false report of concerning Assistant Superintendent of Post Office. He has pleaded that respondent No. 4 had lesser marks in the High School Examination and had owned lesser agricultural land.

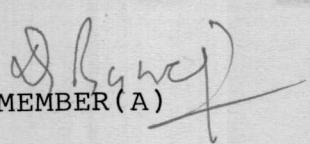
5. Counter and Rejoinder have been exchanged between the parties.

6. The learned counsel for the applicant Smt. Archana Dwivedi urged that the pleadings clearly go to show that the order for cancellation of appointment of the applicant Smt. Archana Dwivedi was passed by the Director Postal Services on a complaint made by Shri Prakash Mishra. He submitted that the question about the jurisdiction of the Director Postal Services to pass orders for cancellation of review has been the subject matter of consideration in various cases. He submitted that matter also engaged the attention of larger Bench in O.A. 910/94 Tilak Dhari Ydav vs. Union of India through the Secretary, Ministry of Communications, Govt. of India, New Delhi. The learned counsel for the said applicant laid stress on the proposition of law laid down in paragraphs 4 and 5 of the order of the larger Bench dated 9th July, 97. Therein the case before the larger Bench also an order in purported exercise of power ~~of~~ review was passed by the higher authority and the applicant's appointment was cancelled. The larger Bench, after referring to a few decisions, expressed the view that Rule 6 of the E.D. A. (Conduct and Service) Rules does not confer unbridled or absolute power to the appointing authority in the matter of termination of service of E.D. Employee who has not already rendered more than 3 years service from the date of his appointment. It was also held that since the action for

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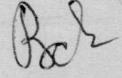
cancellation was initiated, on the basis of a complaint, the said complaint clearly ~~stated~~ <sup>stated</sup> the foundation and not the motive for taking the impugned action, and therefore, the impugned order of termination was not sustainable in law. The learned counsel for the respondents as also the learned counsel for the applicant, Shri Prakash Mishra attempted to persuade us to take a different view in the light of the facts of the present case and submitted that since Smt. Archana Dwivedi amongst the candidates sponsored by the Employment Exchange had secured lesser marks, in the High School Examination, the illegality in her appointment found by the higher authorities should not be interfered with lest the said illegality be perpetuated. We are afraid that we cannot take a different view and the larger Bench decision is binding upon us.

7. In view of the above, the O.A. 965/95 succeeds and the order of termination dated 8.9.95 is quashed. The order passed by the Director, Postal Services Allahabad vide letter dated 7.6.95 in consequence also stands quashed. It will, however, be open to the respondents to act in accordance with law and <sup>pass</sup> ~~be passed~~ suitable orders after affording an opportunity ~~of~~ <sup>to</sup> showing cause to the applicant Archana Dwivedi ~~be passed~~. The O.A. No. 385/96 filed by Shri Prakash Mishra fails and is dismissed.

  
MEMBER (A)

Allahabad Dated: 28/11/97.

Shakeel/

  
VICE CHAIRMAN