

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 17th day of April 2002.

QUORUM : HON. MR. C. S. CHADHA, A.M.

HON. MR. A. K. BHATNAGAR, J.M.

O. A. No. 1550 of 1999.

Dinesh Brahmchari a/a 32 years s/o Shri Gaya Prasad Mishra
r/o Village Badanpur, Post Ismailganj, District Allahabad.

.....

..... Petitioner.

Counsel for petitioner : Sri R. Verma.

Versus

1. Union of India through the Secretary, Ministry of Communication, New Delhi.
2. The Chief Post Master General, UP Region, Lucknow.
3. The Superintendent, R.M.S. 'X' Division, Jhansi.

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..... Respondents.

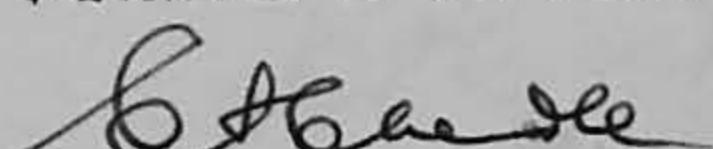
Counsel for respondents : Sri S.C. Tripathi.

ORDER (ORAL)

BY HON. MR. C. S. CHADHA, A.M.

The case of the applicant is that he was selected in the year 1983 for the post of Sorting Assistant, thereafter duly trained and employed as Sorting Assistant in 1983 for short duration of 4 days between 16.5.83 to 19.5.83 and 17 days between 1.9.83 to 17.9.83. The claim of the applicant is that he ~~was~~ never absented from duty as alleged by the respondents vide impugned order dated 10.5.89 and his representation to be taken back on duty was wrongly rejected. The impugned order states that the applicant was sent several notices for joining duties but he never reported for work and further he applied after several years to be appointed and, therefore, his case was rejected.

2. The counsel for applicant states that as soon as he learnt that another person in the same selection as him namely Sri Brijesh Kumar (sl.No.12 of the select list) was



appointed in 1988 and, therefore, he sent representation to the concerned authorities in 1988, 1989, 1990, 1997 etc. vide Annexure A5 to A-12. Counsel for the applicant has stated that in view of the Principal Bench judgment that if a person represents ^{the} and later representation is considered and rejected on merit, the limitation period will count from that day and, therefore, his representation, which has been rejected by the impugned order, was within time. We have no doubt that since his representation was considered on merit it could not be considered as time barred. However, the representation was disposed of with an order at Annexure A-17 which directed the applicant to file within one week, the copies of the correspondence that he exchanged with the department for renewal of his appointment. Apparently he was unable to do so and that is why no such record has been placed before us. The representation purported to have been sent between 1988 to 1997, all have not been acknowledged by the department. ^{La ares} In the counter affidavit, the department ~~surrenders~~ that the representation was given after five years.

3. The main issue to be decided whether the applicant was given due opportunity to be appointed or was his claim ignored without any reason. Counsel for respondents states that he was sent registered notice to appear before the authorities but he did not do so. Vide Annexure C-3 in their Counter affidavit, it has been claimed that a letter was sent to him in April 1984 by registered post but the applicant did not appear. The notice clearly stated that if he did not appear, his name would be deleted from the list. This was followed by another letter (Annexure C-IV) that because of the non-appearance of the applicant, his name would be deleted from the select list. Counsel for the applicant states that the respondents must prove that they have sent such letters by registered post. Counsel for the applicant has challenged

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this averment of the respondents on the ground that in the counter affidavit they have not mentioned that the letter was sent by registered post. However, we do not agree with this contention because in the impugned order itself it has been mentioned that notices were sent earlier and the notice at Annexure-III bares the remarks 'Registered' at the top of the letter. In fact while contending the validity of the letter at Annexure CA-III, counsel for the respondents himself brought to our notice that the impugned order bares the remark 'Registered' whereas CA-III does not bare such a remark. However, it was brought to his notice that Annexure CA-III also bares such a remark. Under the Indian Evidence Act it has been ~~laid down~~ ^{laid down} that the acts done by public authority in due course of business and claimed to be so, are presumed to have been done in that manner. If the Govt. department has given a photo copy of a letter baring the inscription 'Registered' at the top of the letter, we have no reason to disbelieve that.

4. In view of the above, we find that the applicant was given opportunity to return to work and was duly informed in 1986 on 30.12.86 that his name would be deleted from the panel. Therefore, the applicant is not entitled to any relief. The O.A. is, therefore, rejected.

No order as to costs.

J.M.
J.M.

A.M.
A.M.

Asthana/
18.4.02