

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

.....

ORIGINAL APPLICATION NO. 1029 of 1999

this the 22nd day of May' 2001.

HON'BLE MR. S. DAYAL, MEMBER (A)

HON'BLE MR SKI NAQVI, MEMBER (J)

Onkar Chand, S/o Sri Ram Briksh Chand, R/o Village & Post
Singha, Kheri Ram, District Gorakhpur.

Applicant.

By Advocate : Sri A. Tripathi.

Versus.

Union of India through Secretary, Department of Post,
Ministry of Communication, Dak Bhawan, Sansad Marg,
New Delhi.

2. Postmaster General, Gorakhpur Region, Gorakhpur.
3. Senior Supdt of Post Offices, Gorakhpur Division,
Gorakhpur.

Respondents.

By Advocate : Km. S. Srivastava.

O R D E R (ORAL)

S. DAYAL, MEMBER (A)

This application has been filed under section 19
of the A.T. Act, 1985 for setting-aside the order dated
20.8.99 by which the appointment of the applicant has been
cancelled and pursuant to the order dated 27.8.99 passed
by the respondent no.3.

2. The case of the applicant is that he was appointed
after following due procedure for appointment as EDBPM on
the basis of competitive merit of the candidates sponsored
by the Employment Exchange. He was appointed as EDBPM

Singha (Kauri Ram) by order dated 29.4.88. Suddenly, by order dated 27.8.99 passed under Rule 6 (b) of EDA's (Conduct & Service) Rules 1964, the services of the applicant were terminated. It is claimed that the applicant was given no opportunity to show-cause before his services were terminated.

3. The arguments of Sri A. Tripathi, learned counsel for the applicant and Km. S. Srivastava, learned counsel for the respondents have been heard.

4. We find that the order under Rule 6(b) of EDA's (Conduct & service) Rules, 1964 has been passed on the ground of certain irregularities. Firstly, the applicant as well as his wife did not disclose in their applications that they were husband and wife and the applicant submitted a fictitious address and, therefore, his candidature was liable to be rejected on this ground alone. Secondly, there was short fall in S.C. candidates in the recruitment unit and thirdly the higher authority had reviewed the case of the applicant and termination order was passed by the appointing authority in pursuance of the review done by the higher authority.

5. The respondents have taken objection that the husband and wife had applied for ~~the same post~~ the same post without informing the respondents of their relationship. We are also not aware of any provision prohibiting two persons related to each other from applying for the same post and for being considered for the same. Hence, this ground appears to be untenable.

6. The applicant was admittedly appointed by order dated 29.4.98 and termination order was passed on 27.8.99 terminating the services of the applicant after more than a year on the ground that there was

short fall in S.C. candidate in the recruitment unit.

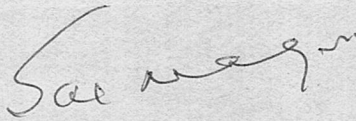
We find from the notification issued by the respondents not for reserved category but the respondents that ~~it was~~ have mentioned that the candidates belonging to Scheduled Caste will be given preference. The name of the candidates from all the communities were requisitioned with the above stipulation. It appears that Sri Kamlesh Prasad whose candidature was required to be considered on the ground of direction given by this Tribunal in O.A. no. 152/97 by order dated 2.9.97, has been considered and not found fit and Kamlesh Prasad is stated to be a S.C. candidate. Since at the time the requisition was sent to the Employment Exchange for the post of EDBPM, Singha (Kauri Ram) was not required to be filled-up by S.C. candidate, the respondents cannot subsequently review and cancel the candidature of the applicant on this ground.

7. Under the circumstances the termination order of the applicant on the ground that he did not belong to S.C. community, cannot be considered legally tenable.

8. With regard to the appointing authority passing an order on the ground of review made by the superior authority, the learned counsel for the applicant has relied-upon the decision in the case of Saroj Kumar Mohanty Vs. Union of India & Others (2001 (1) ATJ 161). In this case the order of the Tribunal, the earlier order of the Full Bench in the case of Tilak Dhari Yadav Vs. Union of India & Others has been cited. Similar view was taken in the case of Ambujakshi Vs. Union of India & others in O.A. no. 57/91. It has been laid down in the case of Ambujakshi (supra) that the termination of such appointment under the orders of higher authority is ~~held to be~~ bad in law. It is now settled

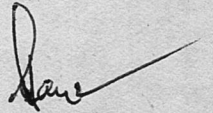
that if the appointing authority cancels the order of appointment only on the basis of the direction given by the higher authority, such cancellation will not be considered to be as per law. The endorsement in the impugned order dated 27.8.99 made at item no. 5 shows that this order has been passed in response to letter of Post Master General dated 20.8.99. We, therefore, find that the order of termination is not sustainable and is set-aside. The applicant shall be reinstated ^{in service} within a month from the date of communication of this order. The applicant shall be entitled all the consequential benefits except back wages.

9. The O.A. stands allowed as above with no order as to costs.



MEMBER (J)

GIRISH/-



MEMBER (A)