

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
Allahabad Bench, Allahabad.

(5)

Original Application no. 389 of 2000

this the 31st day of January 2001.

HON'BLE MR S. DAYAL, ADMN. MEMBER.
HON'BLE MR RAFIQUDDIN, JUDICIAL MEMBER.

Jitendra Nath Srivastava, S/o Sri Vikram Lal, R/o Village
& Post Hemdnapur via Pipraich Tehsil Sadar, District
Gorakhpur.

... Applicant.

By Advocate : Sri S. Prakash.

Versus.

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

2. The Senior Superintendent of Post Offices, Gorakhpur
Division, Gorakhpur.

3. The Post Master General, Gorakhpur Region,
Gorakhpur.

4. Sri Ashnand Singh, S/o Sri Ram Jatan Singh, R/o
Village & Post Hemdnapur via Pipraich, Tehsil Sadar, District
Gorakhpur.

.. Respondents.

By Advocate : Sri Pankaj Srivastava for Sri Satish Chatubedi
& Rakesh Bahadur.

connected with

Original Application no. 1236 of 2000

Ash Nand Singh, aged about 47 years, S/o late Ram Jatan Singh
EdBM, Hemdnapur (Pipraich) Gorakhpur.

... Applicant.

By Advocate : Sri Rakesh Bahadur.

Versus.

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

2. The Senior Superintendent of Post Offices, Gorakhpur
Division, Gorakhpur.

3. The Post Master General, Gorakhpur Region, Gorakhpur.

4. Jitendra Nath Srivastava, R/o Village & Post Hemdhapur via Pipriach Tehsil Sadar, District Gorakhpur.

Respondents.

By Advocate : Sri Pankaj Srivastava proxy counsel for Sri Satish Chaturvedi and Sri S. Prakash.

ORDER (ORAL)

S. Dayal, Member(A)

The applicant in O.A. no. 389/2000 has sought setting-aside of the order dated 29.10.99 appointing the respondent no.4 on the post of EDBPM. He has also prayed that he may be appointed in the said vacancy incase the appointment of the respondent no.4 was set-aside. The order of appointment of the respondent no.4 (O.A. no. 389/2000) was set-aside by the official respondents by order dated 19.10.2000, which has been challenged in O.A. no. 1236/2000. Therefore, the first relief made by the applicant has already been allowed by the respondents.

2. The prayer made in O.A. no. 1236/2000 is for setting-aside the impugned order dated 19.10.2000 and permission to the applicant to perform his duties and receive his salary and other benefits.

3. Before we took-up these two cases for hearing, the learned counsel for the applicant in O.A. no. 1236/2000 filed a Misc. Application praying for a direction to the official respondents to decide the Revision dated 19.12.2000 filed with the respondents and to extend the interim order by which the applicant in O.A. no. 1236/2000 is continuing on the post of EDBPM, (Hemdhpur (Pipriach), District Gorakhpur. We find that the applicant Application Ashnand Singh has filed Revision/against the order dated 19.10.2000 by making an application to the Post Master General, Gorakhpur Circle. We also find that the provisions for Revision has been incorporated in Rule 16 of EDA (Conduct & Service) Rules

1964 (in short Rules of 1964) by which it has been provided that the Central Government or the Head of the Circle or Post Master General or any authority immediately superior to the authority passing the order or any other authority specified in this behalf by the Central Government by general or special order may, at any time, either on its own motion or otherwise call for records of any enquiry or disciplinary case and revise an order under these Rules by re-opening the case and after making such enquiry as it considers necessary. The authority in revision has power to confirm, modify, set-aside the order or to pass such orders as it deems fit. We find that O.A. no. 1236 of 2000 has been filed in which it has been stated that there was no alternative remedy. The remedy of revision which now the applicant seeks during the pendency of the O.A. is a belated step taken by the applicant and revision is subject to satisfaction of the respondents in invoking the provision for Revision. Besides, the revision filed during the pendency of the O.A. cannot be entertained by the respondents. Therefore, we do not consider it appropriate to issue the directions as sought for in the Misc. Application, which has been filed today by the applicant in O.A. no. 1236/2000, and the same stands rejected.

4. We have heard Sri S. prakash, learned counsel for the applicant in O.A. no. 389 of 2000 and of respondent no.4 Sri Rakesh Bahadur, who is applicant in O.A. no. 1236 of 2000 as well as Sri Pankaj Srivastava proxy counsel for Sri Satish Chaturvedi for official respondents in both the cases.

5. The facts of the case are that on 27.2.1999 one post of EDBPM, Hemdhapur (Pipraich) District Gorakhpur fell vacant due to retirement of the previous incumbent. An advertisement was issued for that post on 5.4.1999 fixing 4.5.1999 as the last date for receiving the applications. Ten applications most were received, which were scrutinized and three meritorious candidates were found to be the applicant in O.A. no. 389/2000 namely Jitendra Nath Srivastava as the best candidate, Sri

Vidya Sagar Mall as the second best candidate and Sri Ashanand Singh is the third best candidate, who is the respondent no.4 in O.A. 389 of 2000. Thereafter, the application were verified during which the second best candidate namely Sri Vidya Sagar Mall had withdrawn his application as he has been appointed as Teacher in Junior High School, Amahia. The case for appointment of the applicant in O.A. no. 389/2000 namely Jitendra Nath Srivastava was not found acceptable by the respondents on the ground ^{that} _A Character and antecedent were not satisfactory because the Senior Superintendent of Police, Gorakhpur reported a case against Sri Jitendra Nath Srivastava under Section 323/504 of IPC and nothing was reported in the case of Sri Ashnand Singh, who was a-t serial number 3 on the ground of said report of Senior Superintendent of Police the applicant in O.A. no. 389/2000 was denied the appointment and the applicant in O.A. no. 1236/2000 Sri Ashnand Singh was appointed on 29.10.99 and he assumed the charge of the post on 1.11.1999.

6. Since O.A. no. 389/2000 was filed earlier in time and challenges the appointment of the respondent no.4, who is the applicant in O.A. no. 1236/2000, we take-up the said O.A. first as O.A. no. 1236/2000 has been filed as the alleged fall-out of the orders said to have been passed by the official respondents on the ground of the allegations made in O.A. no. 389/2000, as per the contention of the learned counsel for the respondent no. 4 in O.A. no. 389/2000.

7. We find that the applicant in O.A. no. 389/2000 was subjected to verification of character and antecedent through the District Magistrate, Gorakhpur as well as Senior Superintendent of Police, Gorakhpur. The District Magistrate Gorakhpur vide his letter has stated that no adverse entry was found in the police record against Sri Jitendra Nath Srivastava. The Senior Superintendent of Police, Gorakhpur in his report dated October' 99 had stated that the character and antecedent against the applicant-Jitendra Nath Srivastava

and it was found that an FIR and non-cognizable report 51/99 under Section 323/504 of IPC was registered on 18.6.1999 and that the villagers mentioned his character to be good and register no. 8 shown no offence against the name of the applicant- Jitendra Nath Srivastava and the applicant was not previously convicted for any offence. The learned counsel for the applicant has drawn attention to the notice dated 5.4.1999 seeking applications for eligible candidates of the post of EDBPM, Hemdhapur (Pipraich) District Gorakhpur. The condition no.7 of the said notification requires that the applicant should not be convicted by any Court. The applicant- Jitendra Nath Srivastava was thus, certified from character and antecedents angle by the authority at the time of consideration of appointment on the post of EDBPM, Hemdhapur (Pipraich) District Gorakhpur and he fulfilled the conditions which were stipulated in the notification dated 5.4.99. Therefore, the reasons stated by the respondents in their Counter reply for refusing the appointment on the ground of character and antecedent be not satisfactory, is not tenable.

8. The learned counsel for the private respondent no. 4 in O.A. no. 389/2000 has stated that the case against Sri Jitendra Nath Srivastava was investigated and a chargehseet filed on the basis of the investigation against Sri Jitendra Nath Srivastava under Section 323/504 of IPC. We find that the said chargesheet was submitted on 24.11.2000 and orders of registering the same were passed by the Magistrate thereon on 16.12.2000. This chargesheet was pursuant to the investigation having been carried-out by order of the Magistrate dated 13.11.2000. Thus, the submission of the chargesheet is a subsequent development and the applicant- Jitendra Nath Srivastava was not convicted by any Court even at the time of appointment of the respondent no.4 to the post of EDBPM, Hemdhapur (Pipraich) District Gorakhpur. The applicant- Jitendra Nath Srivastava ~~could~~ could, therefore, not have been deprived of appointment to the post of EDBPM. The applicant

in his O.A. has brought-out the fact that the respondent no.4 Sri Ashnand Singh was himself proceeded against under Section 323/504 and 325 of IPC, if the appointment has been denied appointment merely on the basis of non-cognizable report, the respondent no.4 Sri Ashnand Singh could not have been appointed as he was proceeded against as an accused in a case which was compounded and the judgment was based on such compounding.

9. The respondent no.4 Sri Ashnand Singh in corresponding O.A. no. 1236/2000 filed in which he is the applicant has challenged the impugned order dated 19.10.2000. By the said order, the Senior Superintendent of Posts, Gorakhpur had given the notice to the applicant stating that his services shall stand terminated w.e.f. the date of expiry of the period of one month under Rule 6 (a) of the Rules of 1964. The grounds on which the O.A. no. 1236/2000 Sri Ashnand Singh challenged are that he was not afforded any opportunity of hearing, that the order was not termination simplicitor, but an order of punishment as it had been passed on the basis of certain complaints made by Sri Jitendra Nath Srivastava and that the said order has been passed as a consequence of O.A. no. 389/2000 filed by Sri Jitendra Nath Srivastava. The learned counsel for the respondent in O.A. no. 1236/2000 has relied-upon the judgment of the apex court in the case of Ganganagar Zila Dugdh Utpadak & Sahkari Sangh Ltd. & Another Vs. Priyanka Joshi & Another (JT 1999 (5) SC 1). He has contended that the order of termination carried no stigma as was the case in the authorities relied-upon and, therefore, the order of termination was valid. However, in the case of Kaushal Kishore Shukla Vs. State of U.P. (1991 SCC (L&S) 587) the apex court has already held that the termination simplicitor can be resorted to even when an applicant had been proceeded against, but the ^{option} of departmental enquiry was not adopted. No opportunity to defend himself in such case before termination was considered necessary by the apex court in the case of those who were temporarily appointed. The applicant in the present case was temporarily appointed as he had been appointed on .

29.10.1999 and terminated on 19.10.2000, which was within a period of three years as stipulated in Rule 6 of the Rules of 1964. We therefore, find that the grounds ~~on~~ ^{of} which the applicant had challenged the order ~~is~~ ^{and} unsustainable and the order of termination simplicitor of Sri Ashnand Singh is valid.

10. Having come to the conclusion and taking into account the fact that the applicant in O.A. no. 389 of 2000 was found best candidate and was unjustly deprived of appointment, we direct the respondents to consider the applicant for appointment to the post of EDBPM, Hemdhapur (Pipriach), District Gorakhpur on the basis of the selection held pursuant to notification dated 4.5.1999.

11. In consequence, O.A. no. 1236/2000 is dismissed and directions to consider the appointment of the applicant in O.A. no. 389/2000 to the post of Hemdhapur (Pipriach) District Gorakhpur shall be carried-out by the respondents within a period of fortnight from the date of receipt of copy of this order. The parties shall bear their own costs.


MEMBER (J)

ALLAHABAD: Dated : 31.1.2001.
GIRISH/-


MEMBER (A)