

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 10th day of January, 2001

C O R A M :-

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Mr. S. Dayal, Member- A.

Orginal Application No. 1402 of 2000

Bali Ram Das S/o Late Basant Lal
R/o Village and Post- Bhiansara Bazar,
Mirzapur, at present posted as E.D.B.P.M at
Branch Post Office Bhinsara Bazar, Mirzapur.

.....Applicant

Counsel for the applicant :- Sri Satish Dwivedi

V E R S U S

1. Union of India through the Secretary

Postal Department, Government of India,

New Delhi.

2. The Superintendent of Post Offices,

Distt. Mirzapur.

.....Respondents

Counsel for the respondents:- Sri Ratnakar Chaudhuri
Sri B.N. Mishra

O R D E R (oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

This O.A was heard by learned Single
Member Bench on 14.12.00 and interim order was

granted with following effect :-

" In the meantime, the applicant be allowed as E.D.B.P.M, Bhinsara Bazar, Mirzapur if some duly selected candidate does not join prior to it i.e. the next date. "

2. Misc. application No. 65/2001 has been filed by Shri Nath Tiwari for his impleadment as party and for giving opportunity of hearing alongwith counter affidavit. Copy of the order dt. 06.11.00 passed by this Bench in O.A No. 1212/00 and order of Hon'ble High Court Dt. 13.11.00 passed in writ petition No. 49441/00 have been filed. Sri Ratnakar Chaudhuri, learned counse for the respondents has submitted that applicant earlier had filed O.A No. 1212/00 for similar relief which was rejected by this Tribunal. The order was up held by the Hon'ble High Court and concealing all these facts this O.A has been filed and interim order has been obtained. It has also been submitted that though in eariler O.A applicant impleaded Shri Nath Tiwari as respondent No. 5 he has not been impleaded in the present O.A. It has been submitted that filing of this O.A amounts to gross abuse of process of the court and O.A is liable to be dismissed with heavy cost.

3. Sri S. Dwivedi, learned counse for the applicant on the other hand submitted that the present O.A has been filed for fresh cause of action and reliefs claimed are also different. It has been submitted by Shri Dwivedi that he did not deliberately conceal the facts and annexed the copy of order dated 6.11.2000 of this Tribunal and order dated 13.11.2000 passed by Hon'ble High Court, As the aforesaid

orders were for different cause of action and relief. In the facts and circumstances of the case it is necessary to ascertain whether the relief claimed in this O.A. is substantially ~~claimed~~ same or not. It has also been seen that ^{whether} the materials were concealed by the applicant for obtaining order ^{from} this Tribunal.

4. The facts in short giving rise to this controversy are that the post of E.D.B.P.M. Bhinsara Bazar, Mirzapur had fallen vacant on account of retirement of Shri Kedar Nath, applications were invited from the eligible candidates. The applicant ^{the} was one of/candidates. He was selected and appointed on 02.07.99. This appointment was challenged by Shri Nath Tiwari in O.A. No. 820/2000 which was disposed of by this Tribunal by order dated 31.07.2000. with the direction to the Post Master General to decide the representation of the applicant within the period of three months in accordance with law after hearing the concerned parties by a reasoned order. Post Master General by order dated 19.10.2000 after hearing both parties cancelled the appointment of the applicant. He was disengaged by order dated 24.10.00. Both these orders were challenged in O.A. No. 1212/2000. The O.A. however, ^{W.P.} dismissed by order dated 06.11.2000. The order of this Tribunal was challenged in writ petition No. 49441/2000 which was dismissed by Hon'ble High Court with following order:-

"In our opinion, the Post Master General was justified in quashing the appointment on the ground that the notification of vacancy was incorrect. The Post Master General has also taken notice of the fact that the petitioner is a previous convict and this fact was not taken notice of earlier. The Tribunal, in

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our opinion, has committed no error in rejecting the original application filed on behalf of the petitioner. The writ petition is devoid of merit and it is dismissed accordingly."

It is not disputed that ^{both} although these orders have become final and have ^{not} been challenged further.

5. The relief claimed in O.A. No. 1212/2000 is being reproduced below:-

"(i) a writ, order or direction in the nature of certiorary quashing the orders dated 10.10.00 and 24.10.00 after summoning the same from respondents.

(ii) a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the working of the petitioner on the post of E.D.B.P.M., Bihsara, P.O. District Mirzapur.

(iii) any other writ, order or direction as this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iv) to award costs."

6. The applicant concealed the aforesaid two orders dated 06.11.2000 and 13.11.2000 and filed this O.A. for the following reliefs :-

"(i) That the requisition dated 20.11.2000 Annexure A-1, may be declared illegal and the same may be quashed.

(ii) That the respondents be directed to consider the applicant for regular appointment on the post of E.D.B.P.M. in Branch Post Office Bhisahra, Mirzapur.

(iii) That the respondents be directed to allow

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the petitioner to continue on the post in question as E.D.B.P.M till the regularly selected candidate join on the post in question.

(iv) Any other and further relief which the Hon'ble Tribunal may deem fit and proper be also awarded to the applicant.

(v) That cost of the proceedings be awarded to the applicant. "

7. The applicant also did not implead Shri Nath Tiwari who was party in the writ petition as well as in the earlier O.A. From the comparison of ~~reliefs~~ claimed, there is no doubt ^{that} the relief Nos. 2 and 3 of the present O.A are substantially same to relief Nos. 2 and 3 of the earlier O.A. Once the order of cancellation of appointment of the applicant became final and was upheld by the Tribunal as well as Hon'ble High Court, applicant could not claim to continue on the post by formulating the relief in other words and in different manner. In our opinion after the judgment of Hon'ble High Court applicant could not be a candidate for the post as he was convicted and could not be appointed. Sri Dwivedi however, tried to justify the filing of the present O.A on the ground that the grievance is against requisition dt. 20.11.00 and cause of action is totally different. In our opinion this submission has also no merit. While disposing of O.A No. 1212/00 we clearly observed that if a fresh notification is issued, the applicant may appear and his case shall be considered in accordance with law. If applicant's name was not forwarded by the Employment Exchange he could have applied directly for appointment and thereafter his application could have been considered. There is no doubt about the legal position that against a vacancy for general candidates, applicants belonging to reserved category may also apply. The only difference is that in such a case benefit of reservation shall not be available.



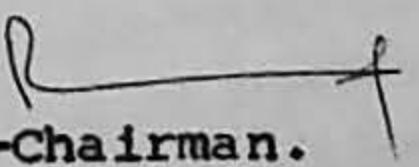
8. In our opinion this O.A has been filed for same reliefs which were refused to him earlier. Challange¹ with regard to the requisition dt. 20.11.00 was only a camouflage for filing another O.A and for claiming same reliefs. ^{Though} the filing of the second O.A amounts to gross abuse of the process of this Tribunal, he deliberately concealed material facts and the applicant is not entitled for any relief in this O.A. For the reasons stated above in our opinion this O.A is liable to be dismissed.

9. Next important question is what cost should be imposed on the applicant for abusing the process of this Tribunal. We have heard Sri S. Dwivedi and Sri Ratnakar Chaudhuri on this question. Taking into account all the facts and circumstances and the serious nature of the matter, in order to prevent the ^{re-occurrence} of such abuse of process of this Tribunal and ^{to} secure the ends of justice as provided in Rule 24 of Central Administrative Tribunal (Procedure) Rules 1987, in our opinion the applicant should be saddled with the cost of Rs. 5000/-.

10. The O.A is accordingly dismissed with the cost of Rs. 5000/- which ^{shall} be deposited by the applicant in this Tribunal within a month from today. Out of Rs. 5000/- amount of Rs. 2000/- shall be paid to the respondents and amount of Rs. 3000/- shall go to the Government fund. In case of default, the usual process of recovery shall be started against the applicant. The interim order dt. 14.12.2000 is vacated.

Copy of this order shall be given to the parties within a week.


Member- A.


Vice-Chairman.