

RESERVED.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH; ALLAHABAD.**

ORIGINAL APPLICATION NO. 1009 of 2000

ALLAHABAD THIS THE 24th DAY OF April 2006.

Hon'ble Mr. K.B.S Rajan, Member-J
Hon'ble Mr. A.K. Singh, Member-A

Munna Yadav aged about 39 years s/o Shri Iorik Yadav R/o Village Hata P.O. Hata- Banuadih (Deoria), District Deoria, employed as E.D.D.A/E.D.M.C Banuadih in the District Deoria.

.....Applicant.

(By Advocate: Sri J.M Sinha/Sri A. Tripathi

Versus.

1. Union of India through
The Secretary Ministry of Communication,
Deptt. Of Posts Cum D.G. Department of
Posts Dak Bhawan New Delhi. 110001.
2. Post Master General, Gorakhpur Region,
Gorakhpur-273008.
3. Senior Supdt. Post Offices, Deoria
Division, Deoria-274001.
4. Shri Sri Niwas Kumar Mishra S/o Shri Ram
Naresh Mishra R/o Village Banuadih, P.O.
Hata Banuadih, presenting B.P.M Hata
Banuadih.

.....Respondents.

(By Advocates: Sri J.N Sharma/Sri S. Dwivedi/
Sri S.K. Upadhyay)

O R D E R

By Hon'ble Mr. A.K. Singh, Member-A

O.A. NO.1009 of 2000 has been filed by
applicant Munna Yadav against memo/order No.H-
264/Hata Banuadih dated 10.9.1999, passed by
Senior Superintendent of Post Offices (Respondent

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NO.3), quashing the appointment of applicant as Extra. Departmental Branch Post Master Hata Banuadih as per direction bearing NO.RPG/Rect./M-14/11/139/99 dated 1.9.99 from the Post Master General, Gorakhpur (Respondent No.2).

2. Brief facts of the case are that the applicant was initially appointed as Extra Departmental Delivery Agent-cum-Mail Carrier at Hata Banuadih Branch Post Offices, after regular selection on 19.7.1982, and as per appointment order bearing NO.A/Hata Banuadih dated 19.7.82 issued by the Inspector East Sub-Division Deoria. Consequent to involvement of Shri Ram Pravesh Singh, Branch Post Master, Hata Banuadih in a case of fraud, he was put off duty. In consequence thereof, respondent NO.3 declared the aforesaid post of Branch Post Master, Hata Banuadih, vacant vide his letter NO.H/264/Hata Banuadih dated 11.7.97 and accordingly called for names of suitable candidates from the Employment Exchange for selection to the above post. However, during the intervening period, the applicant in the present O.A. was directed to look after the duties of the post on a temporary basis. Employment Exchange Deoria sponsored the names five suitable to respondent No.3 for selection to the aforesaid post. The applicant also applied for the post directly. It may be worth while to mention that

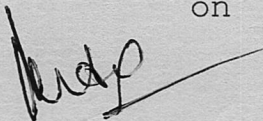
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the applicant is posted as permanent Extra Departmental Delivery Agent in the same Branch Post Office i.e. Hata Banuadih.

3. The name of five suitable candidates sponsored by the Employment Exchange, included the name of one Sriniwas Kumar Mishra (of the address given in the notice) who is the Private Respondent No.4, in this case.

4. After examining the suitability of candidates sponsored for the post, including the applicant, Respondent No.3 found the applicant most suitable for appointment and accordingly issued a provisional order of appointment vide Memo No.H-264/Hata Banuadih dated 22.6.1999 (Annexure-15).

5. The applicant joined the post on 6.7.1999 and the provisional order of appointment of the applicant thus became operative as on that date. But when the applicant had just put in a service of slightly over two months, his appointment to the aforesaid post was cancelled by Respondent No.3, vide Memo No.H-264/Hata Banuadih dated 10.9.1999 in response to direction bearing No.RPG/Redt/M-14/11/139/99 dated 1.9.1999 issued by Post Master General, Gorakhpur, who is respondent No.2, in this case. Respondent No.2, on review of the selection process, found one



Srinivas Mishra, Private Respondent No.4, more suitable than the applicant for selection to the post as he had obtained a higher percentage of marks than the applicant in the Matriculation Examination. On cancellation of his appointment, the applicant was brought back to his original substantive post of Extra Departmental Delivery Agent-cum-Mail Carrier Hata Banuadih with immediate effect.

6. Being aggrieved by the termination of his appointment to the aforesaid post, the applicant has filed the present original application on the following main grounds :

- (i) The vacancy relating to post of E.D.B.P.M was in the same office, where the applicant working as Extra Departmental Delivery Agent-cum-Mail Carrier, on a substantive basis. Hence, he was entitled to appointment to post of Extra Departmental Branch Post Master, in the station, as per DG posts letter No.43/27/85-Pen (EDC-Trg) dated 12.9.1988.
- (ii) The cancellation of his order of appointment was malafide and the PMG Gorakhpur had a personal interest in the appointment of Srinivas Kumar Mishra, Private Respondent No.4 in this case.
- (iii) That Srinivas Kumar Mishra did not own any property as on 10.8.1997, which was an essential pre-condition

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for such appointment under the Rules. He, however, acquired some land on 24.8.1997 i.e. after his selection to the aforesaid post. Hence, he did not fulfill the condition of eligibility on the closing date of receiving application i.e. on 10.9.1997 nor on the date of sponsoring the application i.e. 10.8.1997. His appointment to the post of E.D.B.P.M is consequently illegal and deserves to be quashed. The applicant consequently seeks the following relief(s) :-

- (i) *To quash order No.H-264/Hata Banuadih dated 10.9.1999 terminating the appointment of applicant to the post of Extra Departmental Branch Post Master, Hata Banuadih as well as order of even no dated 12.6.2000, of respondent No.3 appointing, Private respondent No.4, namely Sriniwas Mishra.*
- (ii) *And in consequence thereof, to order restoration of the applicant to the post of Extra Departmental Branch Post Master, Hata Banuadih with immediate effect.*
- (iii) *To award cost of litigation to the applicant.*
- (iv) *To grant him any other relief which the Tribunal deems fit in the circumstances of this case.*

7. Respondents, on the other hand have contested the O.A. on the following grounds :-

- (i) The selection of Shri Sriniwas Kumar Mishra to the post of Extra Departmental Branch Post Master, Hata Banuadih was made exclusively on merits as he had obtained higher marks in the matriculation examination vis-à-vis the applicant. The applicant had obtained only 49% while Sriniwas Kumar Mishra obtained 56% in the matriculation Examination.

Ans

- (ii) The appointment of the applicant was made only for the period of 6 months and that too, only as a stop-gap arrangement.
- (iii) That the only ground on which the case of Sri Srinivas Kumar Mishra was not considered for appointment was non-receipt of Police verification Report from Deoria Police Authorities. This objection became untenable after receipt of Police verification report. As Srinivas Kumar Mishra had obtained higher percentage of marks, in the matriculation examination, there was no option before the authorities except to select him for appointment to the aforesaid post, on the basis of merits.
- (iv) The applicant's mark-sheet in respect of BA Part-II was found forged, on enquiry from Principal Sant Vinoba Mahavidya, Deoria where the applicant had studied for the aforesaid course.
- (v) The allegation of malafides on the part of PMG Gorakhpur, respondent No.2 levelled by the applicant is false and baseless.

Accordingly, the respondents pray for dismissing the O.A. on the ground that the same is devoid of merits.

8. We have carefully considered the submission made by learned counsels on both sides. We find

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that the arguments of the applicant that respondent NO.4 was not eligible for the post of Extra Departmental Branch Post Master, as he acquired land subsequent to his selection, is not very relevant, as it is a settled law that in selection to the aforesaid posts, merit alone is the main criterion and the other requirements like ownership of property etc, were secondary, and could be complied with subsequently after selection by the candidates. Similarly the allegations leveled by the respondents that the applicant had submitted a forged marksheet in respect of B.A Part II examination and that is why he met such a fate after appointment, is also not relevant to the issue, in view of the following.

- (i) In the first place, the Academic qualification required for the post of Extra-Departmental Branch Post Master is matriculation. The Post Master General, Gorakhpur region relied on the same and decided in favour of Srinivas Mishra mainly on the ground that he had scored higher percentage of marks in matriculation examination than against the applicant.
- (ii) In the second place, if the applicant had forged his marksheet for B.A. Part II examination, then a separate course of action was required in the matter. The applicant could have been chargesheeted for misconduct. The respondents themselves took no notice of the same as they themselves, on

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cancellation of the appointment of the applicant, brought him back to his original post of Extra Departmental Delivery Agent Cum-Mail Carrier.

- (iii) In the third place, we do not find any mention or reference of it in memo/order NO.H-264/Hata Banuadih dated 10.9.99 issued by the respondent NO.3, cancelling the appointment of the applicant. The order under reference reads as under:-

"Department of Posts

**O/o The Sr. Superintendent of Post
Offices Deoria Division, Deoria.**

**Memo No.H-264/Hata Banuadih district
Deoria Dated 10.9.99.**

**In pursuance of the P.M.G Gorakhpur Region,
Gorakhpur D.O. letter No. RPG/Rectt./M-
14/11/139 dated 1.9.99 the provisional
appointment of Shri Munna Yadav on the post
of EDBPM Hata Banuadih made vide this
office memo NO. even dated 22.6.99 hereby
ordered to be quashed with immediate
effect".**

**Charge report should be submitted.
Sd/-**

**Sr. Suptdt. Of Post Offices, Deoria
Dn. Deoria 274001".**

There is nothing in the aforesaid order which refers to involvement of applicant in any act forgery in respect of his marksheet for B.A. Part II Exams as a possible reason for termination of his appointment as E.D.B.P.M.

9. Hence the point made by respondent in this regard are a clear after thought.

10. We also find that the main reason for cancellation/termination of appointment of applicant as E.D Branch Post Master Hata Banuadih

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as per averment made by the respondents is that respondent NO.4, namely Srinivas Kumar Mishra, obtained higher percentage of marks in the matriculation examination in comparison to the applicant. When we closely examine the selection process in the recruitment for the post under reference, we find that respondents have committed a grave wrong in calling for names of suitable candidates from employment exchange for selection to the abovementioned post as the applicant was fully eligible and had also applied for the same and in view of the instructions contained in D.G Post letter NO. 43-27/85 Pen (EDG & Trg) dated 12th September 1988, the applicant should have been considered for appointment directly without his having to go through the abovementioned process of selection. The relevant para of the aforesaid instructions reads as under:-

"When an ED Post (which will obviously include the post of an Extra Departmental Branch Post Master) falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against the post, he may be allowed to be appointed against the vacant post, without coming through Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions".

11. The respondents instead of relying over the abovementioned instructions, have relied on the instruction of P.M.G. Gorakhpur, Region contained in his letter NO.RPG/Appointment/MC/28/97 dated 17.10.97 which is in variance with the above

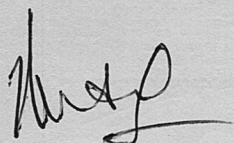
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instructions of the D.G. Posts under reference above. Respondent NO.4 has made specific reference of aforesaid instructions of P.M.G. Gorakhpur in para 10 of his counter affidavit dated 19.8.2001 which reads as under:-

".....It is submitted that the instruction of D.G. Post referred in para under reply did not exist on the date of notification of vacancy. Moreover the Post Master General, Gorakhpur Region vide letter NO.RPG/appointment/MC/28/97 dated 17.10.1997 has issued direction that any E.D.A may not be appointed directly on any other post without proper selection for the post....."

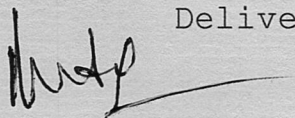
The above arguments advanced by the respondent do not stand the test of judicial scrutiny, in view of the following:-

- (i) It is a settled law as also a matter of common sense that in case there is a conflict between executing instructions issued by a higher and lower authority, the instructions issued by the higher authority will prevail.
- (ii) The second argument of the respondent NO.4, that the aforesaid instruction of D.G. Post were not inexistence as on the date of notification of the vacancy, also does not hold water, in view of clear facts available on record. The instruction of D.G. Posts were issued vide letter NO.43-27/85-Pen (EDC & Trg) dated 12th Sept. 1988 while the notification of respondent NO.3 declaring the post of E.D.B.P.M vacant at Hata Banuadih and calling for names



of eligible candidates from the Employment Exchange is dated 11.7.97. The instructions of D.G. Posts under reference, were still in force and in operation as on the date and had not been rescinded or withdrawn. Hence the action of respondent NO.3 in calling for names of suitable candidates from the employment exchange, followed in case of regular selections, does not appear to be correct in law.

12. Respondent NO.3 was legally bound to comply with the instructions of D.G. Posts under reference. He was not justified in writing to employment exchange calling for names of eligible candidate especially when the applicant who was already working as an Extra Departmental Delivery Agent-cum-Mail Carrier at Hata Banuadih i.e. at the same station and was eligible for selection to the post and had also expressed his willingness to work on the post. The cancellation/termination of his appointment clearly violates the instructions contained in D.G. Posts letter No. 43-27/85-Pen (EDG &Trg) dated 12th September 1988, which was in operation. It is not the case of the respondents, that the applicant did not possess the required academic qualification or was found lacking in any other requirements prescribed under the rules such as ownership of property etc. Since the applicant was already working as Extra. Departmental Delivery Agent-Cum-Mail Carrier at the material



time on a permanent basis, it is presumed that he much be fulfilling these requirements but for which he would not have been selected for appointment to his present post.

13. Moreover it is an established practice that an employee who is already working on the same post or in similar position is accorded preference over a fresh candidate in the matter of recruitment, in view of his expertise and experience in similar or identical job. The applicant, before his appointment, was asked to look after the duties of the post of Extra Departmental Branch Post Master on a temporary basis before his formal, appointment to the post, on adhoc basis, by respondent NO.3. Moreover, he had already put in nearly 17 years of service as Extra. Departmental Delivery Agent, a job with almost of a similar nature and that too, at the same station. (The applicant joined there as E.D.D.A on 19.7.1982) Hence even as a matter of practice, he merited preference over Srinivas Kumar Mishra, the respondent No.4 in selection to the aforesaid post.

14. It is on record that the applicant had passed matriculation and Intermediate and had obtained 49% marks in the High School Examinations (245 out of 500). It is also on record that he is an OBC and possesses agricultural land measuring 69 acres

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in plot NO.172 of Village Babhani, Tappa Bawla Pargana Salempur, Tehsil Sadar, District Deoria and his income from agriculture is stated @ Rs.1000/- P.M. The above averment of applicant is supported by documentary evidences.

15. Since the applicant was qualified and eligible for the post, he ought to have been directly appointed to the post in view of his expressed willingness to join the aforesaid post, as per instructions of D.G. Post referred to above. The entire case of respondents thus crumbles under its own weight.

16. Moreover Full Bench of Tribunal at Hyderabad in O.A. No.57/1991, in the case of N. Ambujakashi Vs. Union of India & others has held that Rule 6 of Extra Departmental Agents (Conduct and Service) Rules, 1964 (for short, "the Rules") did not confer power upon a higher administrative authority to revise the order of appointment purported to have been passed by the lower authority under Rule 3 of the said Rules. The higher authority has no inherent power or otherwise to revise the order¹² of appointment passed by the lower administrative authority. Our learned Brothers of Full Bench at Madras in the case of R. Jambukeswaran and others Vs. Union of India and others in O.A. NO.587, 588 and 589 of 2002 decided on 8.1.2004, reiterated the same view. In view of

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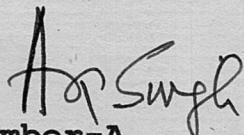
this settled point of law by the Full Benches of Central Administrative Tribunal ^{by Madras & Hyderabad} as referred to above; ^{the} instruction issued by Director General Post and telegraph empowering the Higher Authority to review the decision of subordinates in the matter of appointment, therefore, will not hold any water, since it is settled law that judicial pronouncement cannot not be overruled by executive instructions. Hence the review of the order of Senior Superintendent of Post Offices appointing the applicant on a provisional basis is not in accordance with the provision of law as settled by the Full Benches of Central Administrative Tribunal, referred to above. Hence the direction of Post Master General to cancel the appointment order of applicant, on review, and ordering the appointment of respondent NO.4, is not sustainable in law.

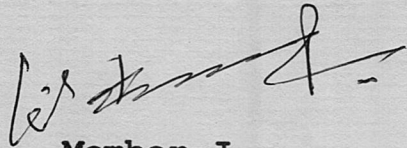
17. On the basis of the above, we hold that the order of provisional appointment of the applicant by respondent NO.3, to the post of Extra Departmental Branch Post Master vide memo NO.H-264/Hata Banuadih dated 22.6.99 was correct in law and is accordingly upheld. In consequence, thereof, the appointment of Sriniwas Kumar Mishra as per order NO.H-264/Hata Banuadih dated 12.6.2000 deserves to quash and set aside. Accordingly we quash and set aside the same. The

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respondents are accordingly directed to reinstate the applicant on the post of E.D.B.P.M Hata Banuadih w.e.f. 10.9.99 i.e. the date of termination of his service as E.D.B.P.M Hata Banuadih. The applicant will be entitled to all consequential benefit like difference in wages from 10.9.99 till date alongwith all other benefits available to him as Extra Departmental Branch Post Master, under the rules, in consequence of his reinstatement on the post, from the relevant date.

18. The O.A. is accordingly allowed. The parties will bear their own costs.


Member-A


Member-J

Manish/-