

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD

Dated : This the 29th day of MAY 2002

Original Application no. 1010 of 2000.

Hon'ble Maj Gen K.K. Srivastava, Member (A)  
Hon'ble Mr. A.K. Bhatnagar, Member (J).

Promod Chittodia, S/o Sri Hari Singh,  
R/o Sub Division Inspector of Post Offices,  
Khatauli Sub Division, Distt : Muzaffar Nagar.

... Applicant

By Adv : Sri A. Tripathi

Versus

1. Union of India through its Secretary,  
Department of Post, Ministry of Communication,  
Dak Bhawan, Sansad Marg,  
NEW DELHI.
2. Post Master General, Dehradun Region,  
Dehradun.
3. Senior Supdt. of Post Offices,  
Muzaffarnagar Division,  
Muzaffarnagar.
4. Senior Post Master, Muzaffarnagar.

... Respondents

By Adv : Sri R.C. Joshi & Sri G.R. Gupta

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 17.8.2000 passed by respondent no. 2 by which respondents no. 2 after review has cancelled the appointment of the applicant on the post of Extra Departmental Stamp Vender (in short EDSV), Muzaffar-

2.

nagar and also the order dated 29.8.2000 passed by respondent no. 4 (Ann A-1) by which the services of the applicant as EDSV, Muzaffarnagar, have been terminated and has prayed that both these orders be quashed.

2. The facts, in short, giving rise to this OA are that the post of EDSV, Muzaffarnagar, fell vacant due to retirement of the regular incumbent from service. Respondent no. 4 issued a general notification on 3.2.1999 with copy to Employment Exchange, inviting the applications for the said post. The applicant appeared for the same and was selected and appointed as EDSV, Muzaffarnagar, Head Post Office vide order dated 12.4.1999 passed by respondent no. 4. The applicant joined on the said post on 16.4.1999. He was working on the post continuously since then. The applicant's services have been terminated by impugned order dated 29.8.2000. Aggrieved by this, the applicant has filed this OA which has been contested by the respondents by filing counter reply.

3. Sri A. Tripathi, learned counsel for the applicant submitted that the applicant was appointed as EDSV, Muzaffarnagar, after due process of selection. He worked for about 16 months without any complaint. The applicant was not offered any opportunity before passing the impugned order of termination and no reasons have been disclosed for the termination in the impugned order.

4. Sri A. Tripathi, further submitted that in notification dated 3.2.1999 (Ann 2) there is a clause regarding preference to be given to SC/ST/OBC. Since the applicant fulfills all the eligibility conditions and belongs to SC community he has rightly been selected.

Learned counsel for the applicant also submitted that as per the counter reply filed by the respondents it has been pleaded in para 11 that the applicant's appointment was irregularly done and the respondent no. 4 committed innumerable irregularities in issuing the notification as well as in selecting the applicant, but the applicant cannot be held responsible for these irregularities and the action of the respondents in terminating his services without show cause is violative of principle of natural justice. Besides the order of the cancellation has been passed by superior authorities which is not tenable in the eyes of law. In support of his arguments that the opportunity should have been granted before taking any action, learned counsel for the applicant has relied upon the judgment of Hon'ble Supreme Court in Basudeo Tiwary Vs. Sido Kanhu University and others 1998 (2) SCSL pg. 358 in which it has been held that the order terminating the services without giving opportunity, including opportunity of hearing is not sustainable in the eyes of law. A similar view has been taken by this Tribunal in order dated 21.5.2002 in OA 1000 of 2001, Vinod Kumar Verma Vs. Union of India & Others.

5. Learned counsel for the applicant on the point of review and cancellation of appointment, ordered by superior authority has in addition to the rule of DG (P&T) dated 13.11.1997 (Ann A6) has relied upon the judgment of this Tribunal, Chandigarh Bench, in case of Sri Amar Singh Vs. Union of India & Others ATJ 1995 (1) 64, in which it has been held in para 9 that an authority administratively higher than appointing authority has no power in the matter of appointment by appointing authority. Sri Tripathi,

has also relied upon Full Bench judgment of this Tribunal in case of Tilak Dhari Yadav Vs. Union of India & Others (1997) 36 ATC 539 (FB) holding that the termination of services of the EDA's, appointed on regular basis, other than unsatisfactory services by appointing authority or superior to appointing authority without giving an opportunity to show cause is violative of principle of natural justice. Learned counsel for the applicant has relied upon the decision of Lucknow Bench of this Tribunal in Hari Prasad Mishra Vs. Union of India and others 1999 ATJ (3) 550, wherein it has been held that termination from service under rule 6 by authority superior to appointing authority without opportunity of hearing is in violation of principle of natural justice.

6. In support of his arguments that SC/ST/OBC should be given preference for appointment, learned counsel for the applicant has placed reliance on Full Bench decision of this Tribunal, Hyderabad Bench, in M Satyasheela Reddy Vs. Union of India & Others 1999 ATJ (2) pg 606, in which the appointment of an SC candidate has been upheld in preference to candidate who has obtained better marks in the SSC/High School examination.

7. Resisting the claim of the applicant, Sri G.R. Gupta, learned counsel for the respondents submitted that the action of the respondents is in accordance with rules on the subject. Sri Gupta invited our attention to para 11 of the counter affidavit in which the irregularities committed by the appointing authority have been mentioned.

As per this paragraph the following irregularities were committed :-

- a. In the notification dated 3.2.1999, it was not clearly mentioned whether the post of EDSV, Muzaffarnagar Head Office was reserved for SC/ST/OBC or unreserved, as required under the Director General Post New Delhi communication dated 27.11.1997.
- b. Vide Director General (P&T) letter dated 4.9.1982, list of candidates should have been received within 30 days, whereas in the notification issued on 3.2.1999 the applications and list was required to be submitted till 6.2.1999 ie beyond 30 days of the prescribed period.
- c. The preference clause given in the notification dated 3.2.1999 is in violation of service rules for Postal E.D. Staff for the appointment of E.D.As, EDSV and all other categories of EDAs.
- d. Shri Anuj Kumar Sharma and Shri Anil Kumar who were also candidates for consideration have been secured better marks in High School than the applicant.

Keeping in view the above irregularities, Shri G.R. Gupta, learned counsel for the respondents submitted that respondent no. 2 is quite correct in cancelling the appointment of the applicant, as the appointment of the applicant is not in accordance with rules and instructions issued on the subject.

8. Shri G.R. Gupta, learned counsel for the respondents finally submitted that the case of the applicant's appointment was reviewed by the higher authorities on receipt of complaint and when it was found that the appointment of the applicant was irregular and was in violation of rules and instructions it was rightly directed to be cancelled. There is no arbitrariness and illegality. Shri Gupta also submitted



that the applicant was initially appointed on provisional basis, he has not completed 3 years and, therefore, his services can be terminated by giving one month's notice under Rule 6 of EDA (C&S) Rules 1965.

9. We have heard learned counsel for the parties, carefully considered their submissions and have closely perused records and case law cited by the learned counsel for the applicants.

10. We find substance in the submission of learned counsel for the applicant that since there is a clause in the notification dated 3.2.1999 that a preference will be given to SC/ST/OBC candidates, the appointment of the applicant, <sup>who</sup> belongs to SC community, in preference to other candidates is valid. This issue is well covered by Full Bench decision of Hyderabad Bench of this Tribunal in M Satyasheela Reddy's case (supra). The contention of the respondents that the entire case was reviewed because of the complaint filed by one Shri Anuj Kumar Sharma. We have perused the <sup>Complaint</sup> chart of the candidates for appointment to the post of EDSV at Muzaffarnagar, Head Office, which has been filed as annexure CA-6, and we observed that Sri Anuj Kumar Sharma did not possess the required eligibility condition on the day of selection and, therefore, he did not have any right <sup>to</sup> agitate against the appointment of the applicant which in our view was rightly done.

11. Since, we do not find any error of law in the appointment of the applicant we are not going into the question whether show cause notice should have been given or not. The impugned order suffers from error of law

and is liable to be quashed.

12. In the facts and circumstances and in our aforesaid discussion, the OA is allowed. Order dated 17.8.2000 of respondent no. 2 ie P.M.G., Dehradun Region, Dehradun and order dated 29.8.2000 (Ann A-1) of respondent no. 4 ie Senior Post Master, Muzaffarnagar, are quashed. The respondents are directed not to interfere with the working of the applicant duly selected as EDSV, Muzaffarnagar, Head Post Office. The O.A. is decided accordingly.

13. There shall be no order as to costs.

  
Member (J)

  
Member (A)

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