

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.1323 of 2002
alongwith
Original Application No.574 of 2003

Dated: This the 09th day of January, 2004

HON'BLE MR.JUSTICE S.R.SINGH, V.C.
HON'BLE MR. D.R. TIWARI, MEMBER J

Madan Pandey aged about 23 years S/o Shri Ram Briksha Pandey
R/o Vill. & P.O. Maniachhapar (Laxmiganj), Distt. Kushinagar
and residing at Village & P.O.Deoria Baboo (Laxmiganj), Distt.
Kushinagar, formerly employed as G.D.S., B.P.M.Deoria Baboo,
Distt. Kushinagar.

...Applicant

By Advocate : Shri A.Tripathi

Versus

1. Union of India through Secretary, Ministry of Communication,
Department of Posts, Dak Bhawan, New Delhi
2. Sr. Supdt. Post Offices, Deoria Division, Deoria.
3. The Secretary, Madhyamik Shiksha Parishad, U.P.,Allahabad.
4. The Regional Secretary, Madhyamik Shiksha Parishad, U.P.
Varanasi Region, Varanasi.

...Respondents.

By Advocate : Shri R.C.Joshi and Shri G.R.Gupta

ALONGWITH

Smt. Sarita Singh W/o Surya Nath Singh,
resident of Village and Post Office Deorai Babu
(Laxmiganj) District Kushinagar

...Applicant.

By Advocate : Shri A.K.Singh

Versus

1. Union of India through Secretary, Ministry of Communication,
Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Lucknow.
3. Post Master General, Gorakhpur.
4. Director, Post Department, Gorakhpur.
5. Senior Superintendent of Post Offices,
Deoria Division, Deoria.
6. Ravindra Mani Tripathi son of Badri Nath Tripathi,
R/o Village and Post Office Deoria Babu, District
Kushinagar.
7. Ramesh Singh, son of Samarjeet Singh, resident of Village
and Post Office Deoria Babu, District Kushinagar.

REV

8. Jata Shanker Prasad, S/o Maghai Prasad,
Resident of Village and Post Office Deoria
Babu, District Kushinagar.

... Respondents.

By Advocate :- Shri R.C. Joshi

O R D E R

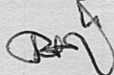
By Hon'ble Mr. Justice S.R. Singh, Vice-Chairman

Madan Pandey, the applicant of OA no. 1323 of 2002 was appointed as Extra Departmental Branch Post Master (in short EDBPM), Deoria Baboo, Laxmiganj, Distt. Kushinagar vide order dated 23.10.2000 (Annexure V). The appointment letter would indicate that the appointment was in the nature of a contract liable to be terminated by the applicant or the appointing authority by notifying the ^{order} ~~order~~ in writing. The appointment was, however, to be governed by the Posts and Telegraph Extra Departmental Agents (Conduct & Services) Rules, 1964 and amended from time to time. The Rules aforestated have since been replaced by Gramin Dak Sevak (Employment & Conduct) Rules, 2001.

2. It is not disputed that appointment to the post of E.D.B.P.M. is made by selection based on the marks secured in Matriculation or equivalent examination. The applicant, Madan Pandey was appointed on the basis of marks obtained in High School Examination 1995 in which he had appeared as a regular student of Rastriya JIC Bhadir, Mau with roll no. 1091032. It ^{is} ~~is~~ also not disputed that the UP Board of High School and Intermediate Education subsequently cancelled the result of the said examination of the applicant vide order dated 11.6.2002. The applicant Madan Pandey was selected and appointed to the post of E.D.B.P.M. on the basis of the marks obtained in the said High School Examination. The respondents on coming to know that the examination result of the High School Examination of the applicant ^{has} ~~has~~ been

cancelled vide order dated 11.6.2002, cancelled the appointment order issued in favour of the applicant vide letter dated 23.10.2000 with immediate effect by order dated 15.7.2002.

3. Shri Avānish Tripathi, counsel for the applicant has submitted that the order impugned herein is illegal and void having been passed in breach of principles of natural justice embodied in the relevant rules which provide for an opportunity being given before cancellation of appointment. Learned counsel has placed reliance on a decision of Central Administrative Tribunal, Jaipur Bench in case of Pawan Kumar Vs. Union of India & Others, ATJ 2000 (1) 456. The services of the applicant therein were terminated on the ground that he had secured the selection by submitting a false mark sheet. The applicant pleaded before the Tribunal that he had passed the examination in first division and ^{the} mark sheet issued to him contained incorrect roll no. Postal authorities made no verification or enquiry in the matter and terminated the services of the applicant therein. The Tribunal in these circumstances allowed the application with all consequential benefits. The decision relied on, in our opinion, has no application to the facts of the present case. The applicant there had pleaded that he had passed the examination with first division yet his services were terminated without holding any enquiry. In the instant case the fact that the mark sheet on the basis of which the applicant was selected and appointed has been cancelled by the Board is not disputed. Consequently it would be deemed for all practical purposes, that the applicant had not passed the High School examination on the basis of which he was selected and appointed. It is true that no adverse order should be passed against a person without affording an opportunity of showing cause but in the instant



case the fact that the High School examination has been cancelled being a established fact it would be an exercise in futility to direct the respondent authorities to afford an opportunity of showing cause to the applicant. Therefore, the said decision is of no avail to the applicant.

4. The learned counsel for the applicant then placed reliance on another decision of ^{the} Central Administrative Tribunal in case of M Bhaskar Raju Vs. Supdt. of Post Offices, vizian gram, 2001 (3) ATJ 622. In that case the services of G.D.S. of Branch Post Master were terminated by authorities on the ground that the documents provided by him for securing the job were not genuine. An enquiry under Rule 82 of the G.D.S. (Employment & Conduct) Rules, 2001, was, however, not held. In the facts situation of the case it was held that termination order was not sustainable. As said supra, the very examination of the High School on the basis of which the applicant was selected and appointed having been cancelled and the factum of cancellation of High School examination having not been disputed, it would be futile to quash the order of termination on the ground that no enquiry was held. The decision relied on, in our opinion, is of no avail. Another decision in Smt. Arpita Chakraborty Vs. Union of India & Ors 2002 (2) ATJP 58 too will be of no avail to the applicant for similar reasons, violation of principles of natural justice on the facts admitted herein would not lead to any prejudice.


5. The learned counsel for the applicant then placed reliance on a decision Jyothiraj Thirakappa Lalege Vs. The Senior Supdt. of Post Offices, Belgaum and Others 2003 (1) ^{ATJ} 705. The reviewing authority therein had cancelled the selection of the applicant on the ground that the

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restriction of resident condition and income condition were not properly notified. The case relied ^{by} the counsel is is distinguishable and has no application to the facts of the present case.

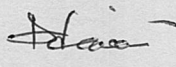
6. The learned counsel for the applicant taken placed reliance on Hari Prasad Singh Vs. Union of India & Ors 2000 (3) ATJ 513 and submitted that Rule 6 of E.D.A. (Conduct and Discipline)Rules, 1964 and for that purpose, Rule 8 of G.D.S. (Conduct and Employment) Rules 2001 has no application to the applicant for the reason that he had completed three years of services. The decision, in our opinion, has no application firstly for the reason that the order impugned herein does not purport to have been passed under Rule 6 or Rule 8 of the Rules, and secondly, for the reason that the applicant had not completed three years of service on the date of order impugned was passed.

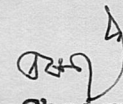
7. The O.A. is dismissed in view of the above discussion with no order as to costs. This order will not, however, prejudice the claim if any, of the applicant, to seek alternative appointment under the provisions contained in Rule 13 (2) of the Rules.// So far the O.A. no. 574 of 2002 is concerned, it had been instituted for issuance of a direction to the respondents to appoint the applicant on the post of Branch Post Master of Branch Post Office, Deoria Babu, District Kucshinagar in the vacancy caused by the cancellation of appointment of Shri Madan Pandey on the basis of the select list already prepared ignoring the name of Shri Madan Pandey and respondent nos. 6, 7 & 8. The relief claimed by the applicant cannot be granted by the Court for the



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appointment to the post is based on the basis of marks obtained in the High School examination. It is not the case of the applicant that he had secured the highest marks in the High School examination amongst the candidates, who had applied for the post. The applicant according to his own case, was at serial no. 5 in order of merit. The O.A. is accordingly dismissed with no order as to costs.


Member (J)


Vice-Chairman

Brijesh/