

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ALLAHABAD THIS THE 2nd DAY OF ~~September~~ 2005.

HON'BLE MR. A.K. BHATNAGAR, MEMBER- J
HON'BLE MR. S.C. CHAUBE, MEMBER- A.

REVIEW APPLICATION NO. 59 OF 2002

(on behalf of U.O.I)

IN

ORIGINAL APPLICATION NO. 367 OF 2002

Ashok Kumar Yadav

Vs.

U.O.I & Ors.

For the Review Applicant : Sri S. Chaturvedi
For the Review Respondents: Sri A. Tripathi

ORDER

BY Hon'ble Mr. A.K. Bhatnagar, JM

This Review Application has been filed on behalf of the Union of India for reviewing the order dated 08.04.2002 passed in O.A No. 367/2002 on the ground that the order dated 08.04.2002 suffers from an error as the O.A has been allowed on the ground that no termination order was passed by the respondents' department. It has been further stated in the Review Application that the termination order was passed on 18.03.2002 and that was tried to be served upon the applicant but he refused to receive the termination order.

[Signature]

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2. The Review Applicant has also averred in para 3 of the Review Application that the appointment has to be made on the basis of the marks obtained in High School Examination. The applicant of the original application was appointed on 14.09.1999 who was stated to be at Sl. No. 5 of the merit list. The charge was also given to him on 16.09.1999. He secured 49.3% marks in High School Examination whereas one candidate, Sri Bechan Singh, who was at Sl. No. 4, obtained 66.6% marks in High School Examination. The S.D.I, Kauriram Sub Division, Gorakhpur has ignored the merit of the best candidate i.e. Sri Bechan Singh and illegally appointed the applicant of O.A.

3. On the complaint made by Sri Bechan Singh an enquiry was held and the appointment of Sri Ashok Kumar, the applicant in O.A was found illegal hence his services were terminated vide order dated 18.03.2001 (Annexure RA-2), which was tried to be served upon him but he refused to receive the same. The Review Applicants has also filed a report of Mail Over Seer (Annexure RA- 3) to show that the applicant of the O.A Sri A.K. Yadav refused to receive the termination order.

4. In the counter affidavit, the Review Respondent in para 1(e) has stated that the termination order was never served on him as he was on leave. Even if it is taken to be true then why the respondents in O.A did not send the termination order through the registered post, immediately after the refusal of the next day i.e. on

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20.03.2002. The applicant of the O.A Sri A.K. Yadav has filed a copy of the envelop to show that it was sent to him by the Registered AD on 26.04.2002, i.e. after the date of judgment of this Tribunal in O.A 367/2002.

5. We have also gone through Annexure A- 2 of the O.A, which is notification dated 10.06.1999 for appointment on the said post wherein at Sl. No. 2 it has been clearly stated that the minimum qualification for the said post was 8th class and preference would be given to the High School pass candidates.

6. We have heard counsel for the parties and perused the record available before us including the O.A 367/03. This is an admitted fact that the applicant of the O.A was given appointment vide order dated 14.09.1999, who continued to work on the post for more than 2 years. It is also found that none of the parties have stated anywhere whether the marks obtained in Class 8th (the minimum qualification prescribed under the notification) has been taken into account or not. The Review Applicant has placed reliance on the various judgments in cases of Anjani Kumar Vs. U.O.I & Ors ATJ 2004(1)442, Indian Bank Vs. M/s Satyam Fibers (India) Pvt. Ltd. JT 1996(7)SC 135, S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. JT 1993(6) SC 331, Raghunath Prasad Upadhyay Vs. State of UP & Ors. E.S.C (All.) 2004 (4) and Jhumman Singh & Ors. Vs. CBI & Ors. JT 1995 (3)SC 360 in support of his arguments. It is also noteworthy that the order dt. 08.04.2002, under challenge in this

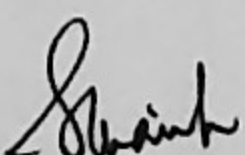
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Review Application, has been passed in presence of the respondents' counsel and even if it is taken to be true that the applicant of the O.A. refused to accept the termination order on 19.03.2001 then this very fact could have been brought to the notice of the court before passing of the judgment dated 08.04.2002. There is also no explanation from the Review Applicant that why the said termination order was not sent to the applicant by Registered post .

7. Under the circumstances as explained above, we find no illegality/error apparent on the face of record in the order dated 08.04.2002 passed in O.A. No. 367/2002. The present attempt of the Review Applicant is to have the matter re-argued, which does not fall within the purview of Section 22(3) (f) of the Administrative Tribunals Act, 1985. The decision of the Apex Court in case of Avatar Singh Sekhon Vs. U.O.I & Ors. AIR 1980 (SC) 2041 also fortifies our stand. It has also been held by the Apex Court in case of Meera Bhanja Vs. Nirmala Kumari Chaudury AIR 1995(SC) 455, that if inference drawn by the Tribunal is considered to be erroneous , the review is not appropriate course.

8. In view of the aforesaid we do not find any merit in this Review Application and the same is dismissed.


MEMBER- A.


MEMBER- J.

/ANAND/