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Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1002 of 2002

Allahabad, this the 14th day of July, 2009.

Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. S.N. Shukla, Member-A

Ghanshyam Bihari, aged about 36 years, S/o Shri Uma Shankar Tiwari, r/o Village Machhahar alias Purwa, P.O. Rokdi, District Allahabad.

...Applicant

By Advocate : Shri A. Srivastava

Versus

1. Union of India, through Director General of Posts, Ministry of Communication, Department of Post, Govt. of India, Dak Bhawan, New Delhi.
2. Sr. Superintendent of Railway Mail Service A- Division, Allahabad.
3. Head Record Officer, Railway Mail Service, A' Division, Allahabad.
4. Shri Anand Prakash, Assistant Director General (GDS), Government of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.

.....Respondents.

By Advocate : Shri R.K. Srivastava

ORDER

By Hon'ble Mr. A.K. Gaur, Member-J :

We have heard Shri A. Srivastava, learned counsel for the applicant and Shri R.K. Srivastava, learned counsel for the respondents.

2. The brief facts of the case are that the applicant has filed O.A. No.1789 of 1994 - Ghanshyam Bihari Vs. Union of India & ors. The said OA was finally disposed of by this Tribunal vide judgment and

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(15)

order dated 15.1.2002. The operative portion of the order is being reproduced as under :

"4. In these circumstances we are of the opinion that the matter may be sent back to the Director General Post, New Delhi, to reconsider the case of the applicant in the light of the observation made above and also the judgment of this Tribunal dated 2.9.1992 passed in OA No.118/88 Rang Nath Dwivedi & others Vs. Union of India & ors. Copy of which shall be filed by the applicant alongwith copy of this order. As the matter is very old, Director General Post, New Delhi, is directed to decide the representation of the applicant within four months from the date of communication of this order."

3. Learned counsel for the applicant would contend that this Tribunal while examining the case of the applicant has clearly observed as follows " From perusal of order dated 14.9.1992 as well as order impugned in this OA dated 26.7.94, we do not find any ground on which basis the case of the applicant could be distinguished from Anand Prakash. Seeing the number of days worked, the applicant had better claim than Anand Prakash." In strict compliance of the order of this Tribunal dated 15.1.2002, the respondents have considered and disposed of the representation of the applicant vide Annexure-A-5 dated 16.7.2002. It is seen from the impugned order that the respondents have passed the order while deciding the representation of the applicant, wherein, it is clearly observed that Anand Prakash, who was working as GDS Substitute in the Rest House, was granted relaxation, although his candidature has not been sponsored through Employment Exchange. While granting relaxation it was clearly

16

enjoined upon the concerned appointing authority to satisfy himself about the merit/suitability of the candidate. It is also observed in the order dated 16.07.2002 that no substitute has been regularized. The competent authority has denied the allegation of the applicant that there is no difference between his case and that of Shri Anand Prakash. It has been contended by the learned counsel for the applicant that the competent authority has not at all applied its mind to the direction passed by the Tribunal in its judgment and order dated 15.1.2002. Learned counsel for the applicant would further contend that this Tribunal has clearly observed that there is no ground on which basis the case of the applicant could be distinguished from Anand Prakash. Moreover, the applicant has put in 472 days as against 300 days of working of Anand Prakash.

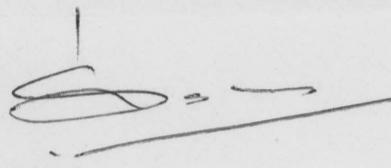
4. Having given our anxious consideration to the pleas advanced by the parties counsel, we are satisfied that the respondents have committed serious illegality in not considering the case of the applicant in accordance with law. It is seen from the record that the applicant has worked as substitute E.D. Mail Man from 19.10.1989 to 31.1.1991. While comparing the candidature of the applicant with Shri Anand Prakash, as regards working of number of days it has also been held by the Tribunal that the applicant had a better claim than Shri Anand Prakash. This observation of the Tribunal has not been taken into

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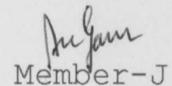
(17)

consideration by the competent authority while issuing the order dated 16.7.2002.

5. Accordingly, the OA is allowed. Order dated 16.7.2002 is hereby quashed and set-aside. The respondents are directed to consider the case of the applicant for regularization, within a period of three months from the date of receipt of copy of this order. While considering the regularization of the applicant, the benefits already granted to Anand Prakash shall also be taken into consideration. No costs.



Member-A


Member-J

RKM/