

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 139 of 2003.
this the 1st day of ~~March~~^{April} 2004. 12

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Sudama Singh Yadav, aged about 25 years, S/o Sri K.P.
Yadav, R/o Village Bubanion Raipur Chandauli, District
Varanasi.

Applicant.

By Advocate : Sri T.S. Pandey.

Versus.

1. Union of India through Secretary, Ministry of Communication, New Delhi.
2. Director, postal Services, District Allahabad.
3. Postmaster General Post offices, District Allahabad.
4. Sr. Supdt. post offices, Eastern Division, Varanasi.
5. Awadhesh Singh, aged about 36 years, S/o Sri J. Singh, R/o Babhariyan Raipur, Chandauli, District Varanasi.

Respondents.

By Advocate : Sri R.C. Joshi.

O R D E R

PER MRS. MEERA CHHIBBER, MEMBER(J)

By this O.A., applicant has sought the following relief(s):

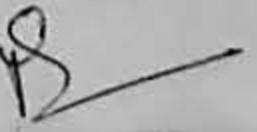
"(i) issue any writ, order or direction in the nature of certiorari quashing the order of removal/cancellation of appointment order dated 3rd January, 2003 communicated vide order dated 4th February 2003 served on 11th February, 2003 with the further order or direction in the nature mandamus commanding the respondents to regularise and confirm the applicant on the post of Branch postmaster, Bubanion, Raipur Chandauli, Varanasi.

(ii)
(iii)"

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2. It is submitted by the applicant that respondent no.4 vide his letter dated 9.4.99 called for the names from Employment Exchange for the post of Branch Postmaster Bubanion, Raipur, Chandauli, Varanasi. Employment Exchange sponsored six names including that of applicant. These candidates were called upon to give their applications provided they fulfilled the terms and conditions as mentioned in letter dated 6.5.99 (Annexure-4). It is submitted by applicant that he gave his application alongwith all relevant certificates (Annexure-5). After getting police verification, respondent no.4 issued appointment letter dated 5.8.99 in favour of applicant as Branch Postmaster, Bubanion, Raipur, Chandauli, Varanasi (Annexure-6). He joined on 13.8.99 after taking charge from Sri Prem Chandra, Adhoc appointee (Annexure-7). However, applicant was given a show-cause notice to explain why his services should not be terminated as he had been appointed irregularly by the SSPOS, Varanasi East Division in contravention of rules as another candidate had secured more marks than the applicant because he had secured 66.45% marks, while applicant had secured 61.33%. Applicant gave his reply stating therein that he was appointed in accordance with rules after full verification and he had been working to the ^{full} ~~all~~ satisfaction of superiors, therefore, his appointment cannot be said to be irregular, yet vide order dated 31.1.2000-3 P.M.G. cancelled the appointment of the applicant and directed that Shri Awadesh Singh Yadav, who had secured higher marks should be considered for appointment on the said post after necessary verification that he satisfies the required eligibility condition as on date (page 19). It is this order which has been challenged by the applicant on the following grounds:

- (i) PMG could not have cancelled the appointment without following due process of law.
- (ii) It amounts to major penalty in terms of Rule 7. Respondent no.2 had no power to pass this order



without holding an enquiry as stipulated under Rule 8. In support of his contention, applicant's counsel relied on 2003 (11) ATJ 705 and 2003 (11) ATJ 277.

3. He further submitted in any case since the applicant had already worked for three years, he should have been considered for some alternative appointment.

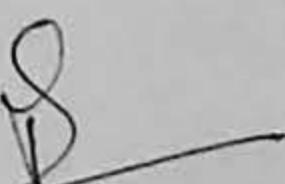
4. Respondents on the other hand have opposed this O.A. on the ground that applicant has not impleaded Shri Awadesh Singh Yadav, who has been appointed on the post, therefore, this O.A. is liable to be dismissed for non-joinder of necessary parties. On merits, they have submitted that a notice was issued on 9.4.99 whereby last date for submission of application was fixed as 10.5.99. Five candidates were sponsored including the applicant as well as Sri Awadesh Singh Yadav, while two persons applied pursuant to open advertisement. All the candidates were asked vide letter dated 6.5.99 to send their applications on or before 17.5.99. A comparative chart was prepared wherein applicant had secured 61.33% in High School, while Sri Awadesh Singh Yadav had secured 66.45% in Secondary Technical Certificate course organised by Board of Technical Education. However, since marksheets of Sri Awadesh ~~Ma~~ Singh was not received either from the Institution or Board of Technical Education despite several reminders and it was doubtful whether Secondary Technical certificate course was equivalent to High School of U.P. Board or not, therefore, applicant was appointed.

5. Subsequently, it was found from Gazette notification of U.P. Board dated 13.8.73 that Secondary Technical Examination instituted by the Board of Technical Education U.P. is equivalent to High School examination of U.P. Board (Annexure CA-7) and Sri Awadesh ^{had P} given complaint to the PMG whereof on verification it was found Sri Awadesh was a better qualified candidate as such giving appointment to

the applicant by ignoring his case was not proper. Accordingly a Show-cause notice dated 15.1.2002 was given to the applicant in accordance with instructions of Directorate dated 13.11.97 as to why his services may not be terminated (Annexure CA-2). Applicant's representation was considered but since applicant's appointment was found to be irregular it was cancelled by the PMG by passing a reasoned order. They have stated that the applicant was given personal hearing by the DPS on 14.2.2002. Accordingly, as per the order dated 3.1.2003 applicant's services were terminated vide memo dated 4.2.2003. He filed the present O.A. and obtained interim order dated 20.2.2003. They have relied on the judgment given by this Tribunal in the case of Gyan Prakash and upheld by Hon'ble High Court.

6. We have heard both the counsel and perused the pleadings as well as judgments. The main plea of the applicant's counsel was that since the impugned order amounts to a penalty, the same could not have been passed without resorting to the procedure laid down under rules of EDA Rules. Perusal of the impugned order itself shows that applicant's appointment was not cancelled due to any misconduct on the part of the applicant, but because his appointment was found to be irregular, therefore, it cannot be said that his services were terminated by way of penalty as stipulated under Rule 7. Since it does not amount to penalty, there is no need to follow the procedure laid down under Rule 8.

7. It is now settled law that if all the candidates are eligible, the only criteria for selection is the High School marks obtained by the candidates, therefore, ^{so ever} who had highest marks, had to be appointed as EDBPM, which was mentioned in the notification also as it was specifically mentioned therein as follows :



“पद पर नियकित के लिए अभ्यर्थी को हाई स्कूल अधिकार मान्यता प्राप्त समकक्ष परीक्षा के प्राप्तांक को देखा जाये बशत कि उन्हें तभी शर्ते पूरा करता है उसके मेरिट का आधार माना जाएगा ।”

8. Admittedly, applicant had scored only 61.33% in High School, while Sri Awadesh Singh Yadav had scored 66.45%. The only reason why Sri Awadesh Singh Yadav was not given appointment was because there was some doubt in the mind of appointing authority whether the Secondary Technical was equivalent to High Shool or not and the marksheet of Sri Awadesh Singh was not received. It goes without saying that if there was any doubt in the mind of appointing authority, he should have called upon the said candidate to clarify the position. The appointing authority could not have ignored the higher marks obtained by Sri Awadesh Singh Yadav as it has been held by Hon'ble Supreme Court in the case of Bali Ram Vs. U.O.I. & ors reported in 1997(1) SCC (L&S) 24, that selection has to be done on the basis of merit in the High School. Once Sri Awadesh Singh complained to the higher authorities that he had been denied appointment even though he had obtained higher marks in the High School and also gave the letter dated 25.7.2001 issued by department of Personnel & Training to the effect that Junior/ Secondary Technical School examination was equivalent to matriculation and is recognised as clarified by DP&T letter dated 22.7.96, naturally the higher authority had to look into the matter and on verification when he found that Sri Awadesh Singh had indeed got more marks than the applicant, it was clear he was more meritorious and since the appointment had to be given only on the basis of merit alone, obviously the appointment order issued in favour of applicant was

R. wrong, so in accordance with the circular dated 13.11.97 the applicant was given a show cause notice calling upon him to explain as to in these circumstances why his services should not be terminated. Applicant gave reply and after considering his reply, the competent authority passed the impugned order as he was satisfied that the appointment order issued in favour of the applicant was not in accordance with rules. At this juncture, it would be relevant to quote the relevant extract from circular dated 13.11.97 which for ready reference reads as under :

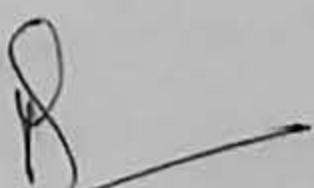
"The situation arising out of CAT judgments questioning the validity of the remedial action ordered by reviewing authority has been deliberated upon thoroughly, it is observed that an authority which is higher than the appointing authority in accordance with established principles, enjoys supervisory powers to revise the administrative orders of the subordinate authorities for good and sufficient reasons and pass appropriate remedial orders after following the procedure indicated below :

(i) The question whether appointment of a particular Agent to a post was ~~erroneous~~ or not should be decided by an authority next higher than the appointing authority in accordance with the established principles governing appointments.

(ii) In regard to appointment which was made in contravention of executive or administrative instructions, there is no objection to the competent authority/Review an order rectifying the earlier erroneous appointment order of the ED Agent which was passed in contravention of the existing rules/instructions whether statutory or administrative/executive, as otherwise it would amount to perpetuation of the mistake and would be detrimental to the larger interests of Govt. However, in these cases the principles of natural justice should be complied with by giving the ED agent a show cause notice and opportunity to be heard before passing any order adversely affecting him. There is no need to invoke ED Agents (Conduct & Service) Rules, while passing final orders in such cases.

(iii) Cases of erroneous appointment should be viewed with serious concern suitable disciplinary action should be taken against the officers and staff responsible for such appointments.

4. While complying with the directions given by the next higher authority, the appointing authority will ensure that a proper showcause notice is issued to the ED Agents concerned and his representation, if any is forwarded to the higher authority for taking it into account before passing the final orders."



9. A perusal of above circular makes it clear that the next authority did have the power to review the case and to take remedial steps but the only safeguard is that before doing so a show cause notice was required to be given to the person who was regularly appointed.

10. This circular has not been challenged by the applicant even though it has binding force. The judgment relied upon by applicant's counsel reported in 2003

(1) ATJ 705 would be of no help to the applicant herein firstly because the circular dated 13.11.97 was not brought to the notice of Bangalore Bench by either of the parties and secondly because the facts of said case were absolutely different. In that case there was no complainant and the reasons for termination were tried to be explained in the Counter, though no such reason was given in the termination order so it was keeping in view these two main grounds that Tribunal held that respondents could not have impeded their case in the counter in view of Mohinder Singh Gill's judgment. The said judgment, therefore, is not applicable in the present set of facts because here not only complaint was filed by the aggrieved candidate who had scored more marks in High School but the impugned orders also revealed all the facts. The reasons given by the higher authority for cancelling the appointment of the applicant are absolutely justified and we find no irregularity in the said order. The power is very much available to the higher authority to review the cases and since there was more meritorious candidate available than the applicant, naturally justice had to be done when the criteria laid down under the rules is as per merit, more meritorious person could not have been denied the appointment, as that would be violative of Article 14 & 16 of the Constitution of India and such an action itself would be absolutely arbitrary.

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11. As far as the Full Bench judgment is concerned, that is not at all applicable in the present set of facts as the issue involved therein ~~is~~ absolutely different. The said judgment, therefore, is not applicable in the present case at all.

12. In view of the above discussion, it is clear that respondents had only rectified a mistake by following principles of natural justice, we, therefore, do not find any illegality in the orders passed by the respondents in so far as it relates to terminating the services of the applicant and to consider Sri Awadesh Singh for appointment subject to his fulfilment of the eligibility conditions.

13. We would be failing in our duties if we do not deal with the last contention raised by applicant's counsel viz. that since applicant has completed 3 years of service, he should have been considered for some alternative job. It is seen that applicant was appointed on 5.8.99 and was given show-cause notice on 24.1.2002 and was ultimately terminated vide order dated 31.1.2003 meaning thereby applicant had already completed 3 years of service, we, therefore, direct the respondents to consider the case of the applicant for some alternative appointment if vacancy is available keeping in view para 2 of the letter dated 30.12.99 which for ready reference reads as under :

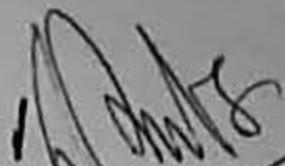
"Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G. P&T letter dated 23.2.1979".



14. The O.A. is accordingly disposed of in terms of directions given in para 13 (supra). NO costs.



MEMBER (J)



MEMBER (A)

GIRISH/-