

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

THIS THE 3rd DAY OF AUGUST, 2005

Original Application No. 624 of 2003

CORAM:

**HON. MR. D.R. TIWARI, MEMBER (A)
HON. MR. K.B.S. RAJAN, MEMBER (J)**

Peetambar Dutt, S/o late Prem Ballabh
R/o Village & Post Patkot, district
Nainital. .. Applicant

(By Adv: Shri A.Tripathi)

Versus

1. Union of India through its Secretary
Department of Post, Ministry of
Communication, Dak Bhawan, Sansad Marg,
New Delhi.
2. Chief Post Master General,
Dehradun Circle, Uttaranchal.
3. Senior Supdt. Of Post Offices,
Nainital Division, Nainital. .. Respondents

(By Adv: Shri Saumitra Singh)

ORDER

BY K.B.S. RAJAN, MEMBER-J

This is the second round of litigation. The facts of the case as narrated by the applicant are as under:-

The post of Extra Departmental Branch Post Master, Patkot, Nainital fell vacant due to the promotion of regular incumbent namely Dinesh Chandra Kashmira on the post of postman and need arose to make the regular appointment on the said post. The respondent no.4 placed a general notification and the copy of the same was endorsed to the employment exchange as well as the other local authorities and the application were invited from the open market and also from the Employment Exchange by

specifying the eligibility condition for appointment on the said post and the name of the applicant was sponsored by the Employment Exchange and the applicant was informed by the Employment Exchange and if he wish to work on the said post, submit the application upto 10.5.2000. The applicant submitted his application alongwith all the required certificates/documents within the stipulated date. The respondents made an enquiry through the Sub-Divisional Inspector submitted his enquiry report in the office of the respondent no.3 in which applicant was found most meritorious suitable and eligible candidate for appointment on the said post of EDBPM, Patkot, Nainital. The applicant was selected and appointed as EDBPM vide office order dated 14-08-2000. One Dinesh Chandra Kashmira whose son could not be selected due to low merit, submitted a complaint/representation and on the basis of the said complaint, the enquiry was held by the Post Master General, Bareilly Region, Bareilly and it was found that there was no infirmity or illegality in the appointment of the applicant, but he again made a complaint to the Post Master General, Dehradun Region, Dehradun. The respondent no.2 without making any enquiry and without providing any opportunity to the applicant, cancelled the appointment of the applicant. The applicant was not offered an opportunity to explain his case. Thus, the action taken by the respondents canceling the appointment of the without affording any opportunity or without issuing any show cause notice is illegal, arbitrary. The Rules prescribed by the D.G. Post specifically mentioned that if the Reviewing authority wants to cancel the appointment made by the competent appointing authority then it is required to issue a show cause notice before passing the cancellation order. The applicant being aggrieved filed O.A. no. 31 of 2001 (U) before this Tribunal, which after examining and merit of the case granted an interim order in favour of the applicant vide order dated 6.7.2001. The said O.A. was finally allowed by quashing the order dated 26.8.2001 and directed the respondents to reinstate the applicant on the post except back wages. It shall also be open for the respondents to pass a fresh order in accordance with law after giving an opportunity to the applicant. After receiving a copy of the judgment passed by this Tribunal, referred the respondent no.2 again reviewed the appointment of the applicant and directed the respondent no.3 to take an appropriate action in accordance with rules. The respondent no.2 issue a show cause notice dated 7.1.2003 for cancellation of the appointment of the

applicant and directed the applicant to submit his reply within 15 days. The applicant submitted his reply, but the respondents did not take any further action. It was alleged that the respondent no.3 was not competent to review or cancel his own order, but the respondent no.3 instead taking appropriate action for forwarding the same cancelled the appointment of the applicant, which was made by him.

2. Being aggrieved by the cancellation of the appointment, the applicant has moved this OA on the following amongst the other grounds:-

- (a) The order is not only illegal, arbitrary, but the same also without jurisdiction and against the rules.
- (b) The order is non-speaking order and discriminatory.

3. The applicant prayed this Hon'ble Tribunal to grant the following relief(s):-

- (a) The Applicant has prayed for a direction for quashing and setting aside the show cause notice dated 7.1.2003.
- (b) The applicant has further sought a direction for quashing and setting aside the impugned cancellation order of appointment dated 23.5.2003.
- (c) The applicant has also sought a direction in the nature of mandamus directing the respondents to allow the applicant to continue to work on the said post of EDBPM by giving all consequential benefits."

4. The version of the respondents is as under:-

The Chief Postmaster General, Uttranchal, revised the appointment case and found that the selection of the petitioner was irregular as the candidates who have secured higher marks in the High School Examination then the petitioner have been

ignored illegally. Therefore, the appointment of the petitioner was cancelled by the Reviewing authority to issue show cause notice to the petitioner. The petitioner instead of giving the reply to show cause filed the O.A. no. 31 of 2001 (u) and this Tribunal was pleased to dispose of the said petition directing the respondents to pass order in accordance with law. After due consideration, the appointment of the petitioner has been cancelled. Thereafter the petitioner went on medical leave from 24.5.2003 and submitted the medical certificate of private Doctor from 24.5.2003 to 2.6.2003 on 2.6.2003 itself the petitioner submitted the stay order granted by this Tribunal in O.A. no. 624 of 2003. It is not correct that the petitioner was found most meritorious amongst all the candidates. The basic criteria for selection amongst eligible candidates is the marks obtained in the High School examination as per this criteria, two candidates were more meritorious than the petitioner ignoring the candidates secured higher marks in the High School Examination and selecting the candidate who secured less marks is irregular and against the instructions. The applicant was third in merit.

5. The applicant has been continuing to function as EDBPM under an interim order passed by this Tribunal.

6. Arguments were heard and the documents perused. We have given our anxious consideration. The contention of the applicant is that the authority who reviewed the appointment is incompetent. Again, it has been argued that the applicant has secured 50% and though there were two more with higher marks, in their case the other conditions have not been fulfilled. A clear remark has been reflected in respect of the two persons who have secured the higher marks as under:-

H.S 300/600/50%	सभी अहतये पुरी है
H.S 345/600 57.5%	आय पर्याप्त नहीं है
H.S 342/600/57%4	संयम के नाम पुरी सम्पत्ति नहीं है प्रमाणपत्र पूरे नहीं है

7. It has also been submitted by the counsel for the applicant that the two who have scored higher marks have not challenged the appointment of the applicant. In this regard, the counsel for the applicant has relied upon the judgment of the Bangalore Bench of the Tribunal in OA 194/2001 Shri Ravi S. Banakar vs Superintendent of Post Office reported in 2002(3) ATJ 104, wherein the Hon'ble Tribunal has held as under:-

“10. In the instant case, the applicant has been a bonafide candidate for appointment and he has been appointed and if his appointment is to be set-aside only on any irregularity, it is permissible by adjudicative measure like the Tribunal if the aggrieved person challenges it and not by the Department itself. If the power to set-aside the appointment on some complaint is conferred on the department or superior authority, as it is proposed to be done by the Government notification dated 13.11.1997 extracted above, it would definitely lead to conferring judicial power on such authority without valid authority of law. If the appointment of a particular candidate or candidates is not agreeable either to the appointing authority or to the superior authority, and if such appointments are set aside on the ground of the alleged irregularity, then no such appointment can become final. In the circumstances *prima facie* we find that the said G.O. dated 13.11.1997 conferring unguided power on the superior authority or the appointing authority to review and set aside regular appointments, at time, would be discriminatory and violative of Article 14 and 16 of the Constitution. Though the said circular is not specifically challenged by the other party in this O.A., we thought it appropriate to consider its effect with reference to Article 14, 16 and 21 of the Constitution of India. But instead of striking down the G.O. dated 13.11.1997, we propose to direct the respondents to read it down as a provision after the selection is made by the competent authority before the appointment order is given to the concerned candidate. In other words, the power conferred on the superior authority as per the said circular should be taken as one considering the validity of selection before the actual appointment order is issued and not the power to be exercised after the appointment order is issued. Therefore, in terms of the said circular when the selection list is prepared before the

✓

appointment orders are issued to the concerned selected candidates, the appointment authority may reserve such selection for the approval of the superior authority mentioned in the said circular dated 13.11.1997 and appointment order shall be issued only after the approval of such superior authority. By reading it down the said G.O., thus, would avoid great hardship to the innocent citizens of India and it would put an end to a system of at his sweet will. We are constrained to come to this conclusion, since a large number of cases are filled before this Tribunal complaining that the power conferred by this notification dated 13.11.1997 is being misused by the authority by setting aside the appointment of the innocent citizens for the reasons best known to hem. Therefore, in our considered opinion, once an appointment is made according to the procedure, the same cannot be set aside on the ground untenable under law.

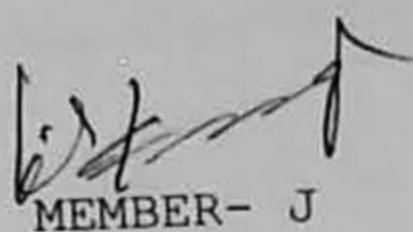
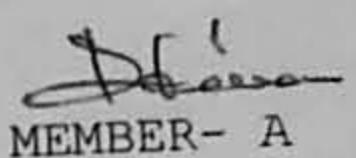
11. In the instant case, it is alleged that the applicant has scored lesser marks than some of the other candidates. Such other candidates who are aggrieved by the said order have not challenged the selection and appointment of the applicant. There may be cases that such other candidates those who have scored more marks than the applicant may not be interested in the appointment at all or they might have taken some other appointment. As it is the appointment of the ED Agents is only a temporary type of appointment. If any person is really aggrieved regarding the appointment made to the applicant, such person would be entitled under law to appoint him on such vacancies. This power of adjudication is always given to the judicial or quasi judicial authorities, but cannot be given to an administrative authority superior to him. Viewed from any angle, we find that the impugned order vide Annexure A-13 is liable to be set-aside. Accordingly, we pass the following order:

The application is allowed. The impugned order dated 22.12.2000 (Annexure A-13) is set aside with a direction to the respondents to reinstate the applicant forthwith. This order shall be complied within a period of 3 months from the date of receipt of a copy of this order. No costs."

8. We are in respectful agreement with the abovementioned order of Bangalore Bench. The case in hand before us is fully covered by the ratio in the aforesaid judgment. We further add that the individuals who have secured marks above the applicant have not been able to fulfill the other condition of income which was one of the requisite conditions during the period in question. We

therefore, allow this O.A. The order dated 07-01-2003 (Show cause) and order dated 23-05-2003 (cancellation of appointment) are hereby set aside. The applicant is entitled to continue to function as the EDBPM.

9. Under the circumstances, there would be no order as to cost.


MEMBER- J
MEMBER- A

GIRISH/-