

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.208 of 2003

Thursday, this the 13th day of May, 2004.

Hon'ble Maj. Gen. K.K.Srivastava, A.M.
Hon'ble Mr. A.K. Bhatnagar, J.M.

Arun Kumar Sahani,
Son of late Ram Suresh Ram
resident of Village Baikunthpur
(Khukhundu), District - Deoria.

.....Applicant.

(By Advocate : Shri R. Trivedi)

Versus

1. Union of India,
through Secretary,
Ministry of Communication,
Dept. of Post, New Delhi.
2. Post Master General,
Division Gorakhpur.
3. Senior Superintendent Post,
Deoria.
4. Chief Post Master General,
Lucknow.
5. Sub-Divisional Inspector
Post, Sub-divisional,
Salempur, Deoria.

.....Respondents.

(By Advocate : Shri R.C. Joshi)

ORDER

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

In this OA, filed under Section 19 of A.T. Act, 1985, the applicant has prayed for quashing the impugned punishment order dated 13.11.2002 (Annexure-12) with direction to the respondents to treat the applicant to be appointed on clear vacancy and with back wages.

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2. The facts, in short, are that the father of the applicant was working as Branch Post Master at Baikuntpur, District- Deoria. He died in harness and the applicant applied for appointment under dying in harness rule . The appointment of the applicant on compassionate ground was approved by Chief Post Master General, U.P. Circle, Lucknow vide order dated 17.2.2000. The applicant was issued appointment letter dated 19.9.2000 (Annexure-3) and the applicant took over the charge as EDBPM on 10.10.2000. However, the services of the applicant were terminated vide order dated 28.2.2001 . The applicant challenged the termination order by filing the QA No.452/2002. The same was allowed vide order dated 13.5.2002 (Annexure-9). The applicant was re-appointed on the post of Branch Post Master Baikunthpur on 24.6.2002. However, the respondent No.5 i.e. Sub-divisional Inspector, Sub-divisional, Salempur, Deoria vide order dated 13.11.2002 again terminated the services of the applicant. The applicant moved representations before respondent No.2 on 14.11.2002, 27.12.2002 and 30.1.2003 and also moved before respondent No.3 on 31.1.2003. Since the representations of the applicant have not been decided by respondent No.2 & 3, the applicant filed this QA, which has been contested by the respondents by filing counter affidavit.

3. We have heard counsel for the parties, considered their submissions and perused the records as well as the pleadings.

4. It is an admitted fact that the applicant's appointment on compassionate ground was approved by the Chief Post Master General, U.P. Circle, Lucknow and in pursuance to that ^{in the} appointment letter dated 19.9.2000

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was issued. The applicant joined the post. The applicant was terminated by the order of respondent No.5 dated 28.2.2001 which was quashed by this Tribunal by order dated 13.5.2002. The following order was passed :-

"In view of the above impugned order dated 28.2.2001 (Annexure-6) is quashed. Respondent No.3 is directed to reinstate the applicant as EDBPM, Baikunthpur within one month from the date this order is filed before him. Respondent No.2, i.e. P.M.G. Gorakhpur, is directed to look into the entire issue and take effective steps to avoid recurrence of such arbitrary action by his subordinate officers. We further direct that P.M.G. Gorakhpur after decision in OA No.1397 of 1997 will look into totality of the matter and ensure that the applicant's right of appointment on compassionate ground is safe-guarded."

Once the above clear cut order was given by the Tribunal we are of the view that the respondent No.3 & 5 could not issue the order dated 13.11.2002^{and} again terminated^{the} the services of the applicant. The impugned order dated 13.11.2002 has been passed in pursuance to the order of respondent No.3 dated 7.11.2002.

5. In the counter affidavit, the respondents in para-6 have stated that since this Tribunal in OA No.1397/97 filed by Sri Raj Kumar Gupta passed the interim order dated 23.12.1997, the applicant could not be given an appointment on regular basis till the pendency of the OA No.1397/97. While we agree with the respondents on this point but we would like to hold that a provisional appointment order issued in favour of the applicant did not give leverage to the respondents to terminate the services of the applicant by impugned order dated 13.11.2002. The OA No.1397/97 was finally decided by order dated 13.5.2002 and the notification dated 28.6.1995 and 24.11.1997 were quashed with direction to issue fresh notification for appointment on the post of Branch Post Master, Baikunthpur and complete the process within six months.

6. In order to appreciate the controversy, we have carefully perused the pleadings in OA No.1397/97. The respondents in their counter affidavit filed in OA No.1397/97 stated in Para-4 that the applicant applied for the post but his case could not be considered as he was minor. This fact has been recorded in Para-3 of the order dated 9.9.2002 passed in OA No.1397/97. The OA No.1397/97 was finally heard on 9.9.2002 and we are constrained to point out that the respondents did not give a whisper that the case of the applicant for appointment on the compassionate ground had already been approved by respondent No.4 on 17.2.2000 itself. If this fact was brought to our notice by respondents counsel we would have certainly examined this aspect also while passing the order dated 3.9.2002. It appears either this fact was deliberately not brought ⁱⁿ before us or it was ^{an inadvertent} the omission on the part of the respondents.

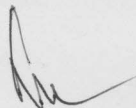
7. There are number of decisions of this Tribunal as well as superior Courts ^{wherein} whether it has been held that the compassionate appointment is granted to mitigate the financial hardships ⁱⁿ of the family which is ⁱⁿ indigent condition because of the death of bread earner. The compassionate appointment is always ^{of} a permanent nature and it was the duty of the respondents to have brought to the notice of this Tribunal on 9.9.2002 that the applicant ^{had} ^{been} already granted appointment on compassionate grounds ⁱⁿ on the post vide respondents' order dated 19.9.2000.

8. Further the respondents ^{have} brought ^{out in} on para 9 of the counter affidavit that the order of this Tribunal 9.9.20002 passed in OA No.1397/97 has been challenged by Shri Raj Kumar Gupta by filing Writ Petition No.54434 of 2002 before Hon'ble

High Court of Allahabad. They have also pleaded in Para-16 and 18 of their counter affidavit that in view of the judgment of this Tribunal dated 9.9.2002 passed in OA No.1397/97, the applicant could not be given appointment for more than six months. We find that the pleas of the respondents contained in Para 9, 16 & 18 have no substance. The respondent No.3 appears to have interpreted the order without application of mind and irregularly passed the impugned order dated 13.11.2002. We are also not aware whether the respondents have filed any counter affidavit in Writ Petition referred to above pending ^{in case} before Hon'ble High Court of Allahabad bringing out the fact that the applicant had already been appointed on the post on compassionate grounds ⁱⁿ much before the order dated 9.9.2002, under challenge, was passed by the Tribunal.

9. In view of the above, we find that the action of respondent No.3 ^{in the same way} is wholly illegal and ^{be} they cannot sustained in the eyes of law. Under the circumstances, the OA is allowed. The order of respondent No.3 dated 7.11.2002 and order dated 13.11.2002 of respondent No.5 are quashed with direction to the respondent No.3 to reinstate the applicant and pay the backwages.

10. In our order dated 13.5.2002 passed in OA No.452/02 the respondent No.2 i.e. Post Master General, Gorakhpur was directed to look into the entire issue and take effective steps to avoid recurrence of such arbitrary action by his subordinate officers. It was further directed that respondent No.2 after the final decision in OA 1397 of 1997



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will look into totality of the matter and ensure that the applicant's right of appointment on compassionate grounds^h is safe-guarded. It appears to us that nothing has been done by respondent No.2 in this regard otherwise the respondent No.3 could not have passed the order dated 7.11.2002 followed by order of respondent No.5 dated 13.11.2002. The respondent No.2 is directed to ensure that due to the arbitrary action of respondent No.3 the department is not made to suffer^h and^h the amount to be paid towards backwages to the applicant shall be recovered from respondent No.3 whose actions are totally arbitrary and illegal.

11. There shall be no order as to costs.


MEMBER (J)


MEMBER (A)

RKM