

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 525 of 2006

Allahabad, this the 8TH day of December, 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Ashok Kumar Pathak Son of Lalta Prasad Pathak,
Resident of Village & P.O Kanwani (Kuteer Chakke) Tehsil
Kerakat, District Jaunpur.

Applicant

By Advocate: Mr. V.K. Srivastava

Vs.

1. Union of India through its Secretary Ministry of Communication, Department of Post and Telegraph, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P. Lucknow.
3. Director of Postal Services, Allahabad.
4. Superintendent of Post Offices, Jaunpur.
5. Smt. Nirmla Devi W/o Brij Bushan Pathak R/o Village and Post Kunwani Kerakat, Jaunpur.

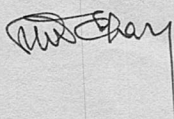
Respondents

By Advocate: Mr. Saurabh Srivastava

ORDER

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Instant O.A. has been instituted for giving a direction to the respondents to make appointment of the applicant to the post of Extra Departmental Branch Post Master (for



short E.D.B.P.M.), Kanuwani in pursuance of Notification dated 17.07.2000 issued by respondents. Further prayer has also been made for giving a direction to the respondents to make the payment of salary and other benefits as are admissible under rules for the post of E.D.B.P.M., Kanuwani on the basis of selection made in pursuance of the notification dated 17.07.2000 as the appointment of Ashok Kumar Yadav has already been terminated vide order dated 09.11.2005 passed by the respondents.

2. The facts of the case may be summarized as follows:

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That in pursuance of the notification issued by the respondents for filling up one permanent post of E.D.B.P.M., Village Kanwani, Tehsil-Kerakat, District Jaunpur on dated 14/17-07-2000, the applicants and other three persons submitted the applications on the prescribed format. Beside the applicant and three others, several other persons ² were also submitted the applications on the prescribed format but on scrutiny, applications of the applicant and Smt. Nirmala Devi, Sri Ramesh Chandra Pal, Sri Ashok Kumar Yadav and Sri Ashok Kumar Pathak-applicant were found in order. Later on, on scrutiny of documents, it was revealed that the mark-

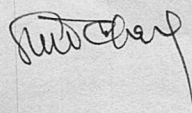
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sheet submitted by Smt. Nirmala Devi and Sri Ramesh Chandra Pal were bogus and forged, whereas the mark sheet submitted by Ashok Kumar Yadav and Ashok Kumar Pathak – applicant were found correct. A merit list was prepared by the respondents placing Smt. Nirmala Devi at serial No. 1, Sri Ramesh Chandra Pal at serial No. 2, Sri Ashok Kumar Yadav at serial No. 3 and Sri Ashok Kumar Pathak-applicant at serial N. 4. As the mark sheet submitted by Smt. Nirmala Devi and Sri Ramesh Chandra Pal were found forged and bogus hence, only Ashok Kumar Yadav who passed the High School Examination as 3rd Division in the year 2000, and the applicant's applications were found in order but there were discrepancies in the date of birth submitted by the applicant of the High School examination as well as Purva Madhyama Examination. In the High School certificate, the date of birth has been mentioned as 27.09.1983, and in the Madhyama examination, the date of birth has been shown as 28.10.1981. According to date of birth, Sri Ashok Kumar Yadav, on 02.02.2001 was under age and he could have not been appointed on the post. But, the appointment was given effect of Sri Ashok Kumar Yadav, and after knowing this fact, made representation to the respondents, and appointment of Sri Ashok Kumar Yadav was challenged by the applicant in O.A. No. 544 of 2001.

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However, the O.A. was dismissed by the Tribunal vide Order dated 10.11.2005. Smt. Nirmala Devi also challenged the appointment of Sri Ashok Kumar Yadav in O.A. No. 539 of 2004. The direction was given by the Tribunal to decide the representation of Smt. Nirmala Devi. The respondents vide order dated 09.11.2005 cancelled the appointment of Ashok Kumar Yadav on the ground of under age. After termination of the services of Ashok Kumar Yadav, applicant preferred a representation dated 20.04.2006 but the representation of the applicant was rejected on the ground that the panel is operative only for one year, whereas the fact was that only the candidature of the applicant was correct and only he was eligible and entitled for appointment on the post of E.D.B.P.M. as per notification. As the respondents rejected the representation of the applicant illegally, hence the O.A.

3. The respondents contested the O.A. and filed the Counter Affidavit. The respondents have denied from the contentious issues alleged in the O.A. However, it has been admitted that besides Smt. Nirmala Devi, Sri Ramesh Chandra Pal, Sri Ashok Kumar Yadav and Sri Ashok Kumar Pathak-applicant, 7 applications were also received in response of the Notification. On verification,



only four applicants were fulfilling the conditions of the source of income along with character and antecedents also. But, on verification ^{mark sheet} submitted by Smt. Nirmala Devi and Sri Ramesh Chandra Pal, from Poorva Madhyama Pariksha were found bogus, whereas the mark sheet submitted by Ashok Kumar Yadav and Ashok Kumar Pathak were found correct. Smt. Nirmala Devi filed O.A. No. 539 of 2004 in order to challenge the appointment order of Ashok Kumar Yadav, and the O.A. was decided on 18.03.2005 with a direction to verify the genuineness of the mark sheet submitted by Ashok Kumar Yadav, and the matter was examined, and it was found that the appointment of Ashok Kumar Yadav was illegal, and hence the appointment was cancelled. It has also been alleged that if a person is appointed from the panel (merit list), the same stands worked out and subsequent vacancy that occurs on cancellation of appointment of such person is to be filled up by notifying the vacancy afresh and not on the basis of the earlier panel. As services of Sri Ashok Kumar Yadav were terminated in compliance of the CAT's Order dated 18.03.2005 in O.A. No. 539 of 2004, hence the post is to be advertised afresh. It is stated that the life of panel cannot ^{be} last more than one year. It has been decided by several Judgments of Central Administrative Tribunal and by the Hon'ble Apex Court. Now, the applicant cannot be

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appointed on the basis of merit list prepared earlier and O.A. is liable to be dismissed.

4. We have heard Mr. V.K. Srivastava, Advocate for the applicant and Mr. Dharmendra Kumar Tiwari, Advocate holding brief of Mr. Saurabh Srivastava, Advocate for the respondents, and perused the entire facts and materials available on record.

5. After considering all the facts mentioned by both the parties, we are of the opinion that the controversy is very narrow. It is a fact that in pursuance of the notification in order to fill up the post of E.D.B.P.M., applications of four persons were found in order namely Smt. Nirmala Devi, Sri Ramesh Chandra Pal, Sri Ashok Kumar Yadav and Sri Ashok Kumar Pathak-applicant. On further verification of the documents, the mark sheet submitted by Smt. Nirmala Devi and Sri Ramesh Chandra Pal were also found bogus, and as Sri Ashok Kumar Yadav was the next person in the merit list prepared in pursuance of the submission of the applications. The appointment was given to Sri Ashok Kumar Yadav in the year 2001, and the appointment of Sri Ashok Kumar Yadav was challenged by Smt. Nirmala Devi in O.A. No. 539 of 2004. The O.A. was decided on 18.03.2005, and a direction was given by the

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Tribunal to decide the representation of Smt. Nirmala Devi by a reasoned and speaking order, and in this connection order was passed by the respondents, and the appointment of Ashok Kumar Yadav was cancelled. Now, next person in the merit list is Ashok Kumar Pathak-applicant. It has been argued by learned counsel for the applicant that as the applicant was the only eligible candidate for appointment on the post of E.D.B.P.M., and after cancellation/termination of appointment of Sri Ashok Kumar Yadav, the applicant is entitled to be appointment on the post. The respondents have admitted all the allegations made in the O.A. but, the respondents' contention is that the panel prepared in the year 2000 was in existence only for one year, and after expiry of current year, the panel will automatically ^{be} ~~be~~ lapsed, and in case appointment of any person is cancelled or terminated, then a fresh notification is to be issued. The appointment of Ashok Kumar Yadav was cancelled in the year 2005, and the panel was prepared in the year 2000. The appointment of Ashok Kumar Yadav was cancelled after a lapse of 5 years of preparation of the merit list. Now there appears no justification for making appointment from the same merit list prepared about five years earlier. Learned counsel for the respondents argued that there are several Judgments, which provide that the panel shall ^{be} ~~lost~~ only

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for one year, and after expiry of one year, the panel shall automatically stand cancelled, and in case of termination or appointment of any person made from the merit list, then after lapse of period of one year, in order to fill up the vacancy, fresh notification is to be issued, and to invite fresh application. It is the case of the respondents that the applicant cannot be appointed on the post as one year had already elapsed, and the panel had also lapsed. Learned counsel for the respondents argued that as appointment of Ashok Kumar Yadav was illegal abinitio hence it will be presumed that the panel is still in existence and now the applicant is the eligible candidate of the panel hence he deserves to be appointed.

6. Learned counsel for the applicant cited a Judgment reported in *AIR 1984 Supreme Court 1831 Prem Prakash etc. Vs. Union of India and others*. It has been held by the Hon'ble Supreme Court as under: -

"The notification further shows that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name included in the list of selected candidates."

We have perused the Judgment of the Hon'ble Apex Court and we are of the opinion that this Judgment is not

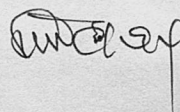
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applicable to the facts of the present case. Learned counsel for the applicant also cited the following Judgments: -

- “1. (1987) 4 A.T.C. 932 *Ishwar Singh Khatri and others Vs. Union of India and others*:
2. (1990) 14 A.T.C. 636 *S. Giri Rao vs. Director, Doordarshan Kendra, Hyderabad and anothers*;
3. (2000) 2 U.P.L.B.E.C. 1161 *Committee of Management Jagdish Saran Rajvansi Kanya Inter College, Meerut And others vs. Joint Director of Education, 1st Region Meerut and others.*”

We have considered the Judgment of the Central Administrative Tribunal, and we are of the opinion that these Judgments are not applicable to the facts of the present case. In the case of Committee of Management vs. Joint Director of Education, panel of three candidates was prepared but it could not be given effect due to different interim orders of the Court and in the meantime, candidate at serial No. 1 of the list attained the age of superannuation, and that case was decided against the applicant as no extension can be granted after superannuation. Learned counsel for the respondents cited a Judgment of Hon'ble Apex Court in the case of *State of Punjab vs. Raghubir Chand Sharma and others* 2002 SCC (L&S) 104, wherein it is held as under: -

“With the appointment of the first candidate for the only post in respect of which the select panel was prepared, the panel ceased to exist and has outlived its utility and no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The



circular order dated 22.3.1957, relates to select panels prepared by the PSC and not a panel of the nature under consideration herein. That apart, even as per the said circular, no claim can be asserted and countenanced for appointment after the expiry of six months."

Hence, in view of this Judgment of the Hon'ble Apex Court, if the panel prepared by the PSC, and not a panel of the nature under consideration, then no claim can be asserted and countenanced after expiry of a period of one year. We have gone through the Judgment of Hon'ble Apex Court and in our opinion, the panel prepared in pursuance of the Notification, is to continue only for one year and after expiry of a period of one year, the panel will ^{be} ~~be~~ lapsed. Learned counsel for the respondents also cited a Full Bench Judgment of CAT at Hyderabad Bench reported in *Administrative Tribunal Full Bench Judgments* (Full Bench Hyderabad in O.A. No. 1315 of 2000, decided on 12.04.2001) *M. Sarojini vs. The Senior Superintendent of Post Offices, Visakhapatnam & Ors.* It has been held by the Full Bench at CAT Hyderabad that the department is expected to prepare a panel for selection purpose, and that size of the panel should not be disproportionate to the number of posts and its validity should be one year. In view of the Judgment, the panel is to continue only for one year and after expiry of one year, the panel will automatically ~~be~~ lapsed. The Judgment of Hon'ble Apex Court as well as the CAT Full Bench at CAT, Hyderabad

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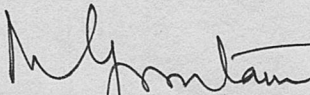
Bench, it has been held that the panel prepared in pursuance of the Notification will continue only for one year. In the present case, the panel was prepared in the year 2000, once the appointment of Ashok Kumar Yadav was terminated vide order dated 09.11.2005 after expiry of period of 5 years. Hence, it cannot be said that after a lapse of five years, the panel was in existence and hence the applicant deserves to be appointed on that post from the panel. As the panel has already lapsed hence the respondents are justified in denying the appointment to the applicant on the basis of earlier panel. The procedure, as has been held by the Hon'ble Supreme Court also, that in such circumstances, the fresh notification ^{shall} be issued in order to invite the applications from the eligible person and then make the selection from those applicants according to the Rules. Now after expiry of five years, it is not justified for the respondents to appoint the applicant. Seeing the position of law, as has been laid down by the Hon'ble Apex Court, the applicant cannot be said to be entitled to ^{be} appointed ^{on} the post of E.D.B.P.M.

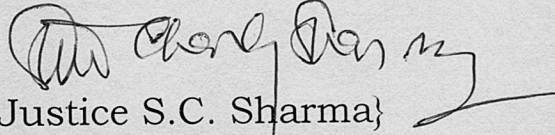
7. For the reasons mentioned above, we are of the opinion that the O.A. lacks merit and considering the legal position, as has been laid down by the Hon'ble Apex Court that the panel prepared in the year 2000, automatically

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stands cancelled after a period of one year. It is not going to make any difference that appointment of Ashok Kumar Yadav was made illegally and on complaint, his appointment was terminated. But, as the panel had already elapsed and the appointment of Ashok Kumar Yadav was terminated after expiry of five years, it is most justified that fresh applications be invited so that more deserving candidates may submit fresh applications for appointment. O.A. is liable to be dismissed.

8. O.A. is dismissed. No cost.


(Manjulika Gautam)
Member - A


{Justice S.C. Sharma}
Member - J

/M.M/