

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 521 of 2005

This the 23rd day of August, 2011

**Hon'ble Mr. Justice Alok Kumar Singh , Member-J
Hon'ble Mr. S.P. Singh, Member-A**

Smt. Mamta Mishra, Aged about 23 years, W/o Sri Vinod Kumar Mishra, R/o Village Pure Nanha Shukla, Aindha (Kunda) District Pratapgarh, presently posted as GDS BPM, Aindha (Kunda), Pratapgarh

.....Applicant

By Advocate : Sri A.P. Singh

Versus.

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Postmaster General Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices, Pratapgarh.

.....Respondents.

By Advocate : Sri S.P. Singh

O R D E R (Oral)

By Justice Alok K Singh, Member-J

This O.A. has been filed for the following relief(s):

"(a) to issue/pass an order or direction setting aside the impugned order no. B-3/8 Aindha dt. 28.9.2005 issued by respondent no.3, terminating the services of the applicant with effect from the date of expiry of one month from the date of service of impugned notice as contained in Annexure no. A-1 after summoning the original from records.

(b) issue/pass an order or direction directing the respondents not to interfere in the smooth functioning of the applicant to the post of GD BPM Aindha, District Pratapgarh.

(c) issue/pass any other order or direction which this Hon'ble Tribunal deem fit in the present circumstances of the case.

(d) allow the application with costs".

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2. The case of the applicant is that in response to the advertisement dated 7.10.2004; the applicant submitted her application for appointment against the post of GDS Branch Post Master Aindha (Kunda), District Pratapgarh. After considering her candidature, she was selected for the post, in question, and appointment order dated 13.4.2005 was issued. Thereafter, she was appointed on the said post on 23.4.2005. But all of sudden, the impugned termination order dated 28.9.2005 was served upon her asking to show cause against her appointment and also saying that after expiry of one month's time from the date of service of notice, her services shall stand terminated (Annexure A-1). On enquiry, it was found that the show cause notice was issued on the ground that the respondent no.3 had not followed the directions issued by the Chief Post Master General contained in letter dated 22.4.1991 in which it was provided that it is necessary to mention in the advertisement that the physically handicapped candidates of the concerned community would be given preference. In this connection, an electrostat copy of the letter dated 26.9.2005 has been annexed as Annexure no.A-4. It is further pleaded that in this letter the direction was only for seeking explanation and there was no direction for terminating the services of the applicant. But the authorities concerned travelled beyond the ambit of this letter and issued impugned notice/termination order in an arbitrary manner in excess of the directions issued by the respondent no.2. It is further pleaded that in furtherance of the letter dated 28.6.2002 issued from the Directorate, Department of Posts, a letter dated 5.7.2002 (Annexure A-6) was issued clarifying that in the advertisement no indication of preference should be given as this may lead to different interpretation and complications. It was also clarified that the preference has to be given after taking into account the degree of disability and the ability of the candidate to undertake his responsibility and that the instructions in this regard contained in the earlier letter (22.4.1991) in respect of physically handicapped candidates in GDS categories should be treated as an administrative guidelines only.

3. The respondents have contested the O.A. by filing Counter Reply saying that the post, in question, was considered for physically handicapped candidate due to shortfall of eight posts of physically handicapped candidates against sanctioned strength. Smt. Mamta Mishra (applicant) had secured the highest marks i.e. 399/600 (66.5%) in High School in comparison to other physically handicapped candidates and hence was found suitable for the post in question and she also fulfilled all the essential conditions and, therefore, she was appointed on the said post on 13.4.2005. But after receiving a complaint from R.O. Allahabad, a report dated 13.9.2005 was sent to the Post Master General, Allahabad and Post Master General, Allahabad had sent reply disagreeing with the report and instructed to issue a show cause notice to the appointed candidate and accordingly the impugned show cause notice was issued. It is further pleaded that at the time of issuance of advertisement, a condition should have been stipulated for physically handicapped candidates with a condition that the concerned candidates would be considered only subject to suitability for performing the duties of the post, in question. But, it was not mentioned in the advertisement dated 7/8.10.2004. It is further said that in view of interim order dated 25.10.2005 passed by this Tribunal in this O.A., the applicant is continuing on the post, in question. However, the applicant has submitted her explanation dated 17.10.2005 in response to show cause notice.

4. The applicant did not file any Rejoinder Reply.

5. We have heard the learned counsel for the parties and perused the material on record.

6. From the close scrutiny of the aforesaid pleadings, it comes out that according to the respondents in the advertisement, in question, it should have been notified that the physically handicapped candidates would be considered only subject to suitability for performing the duties of the post in question. This contention is based on the aforesaid letter dated 22.4.1991 which itself was subsequently modified by none other the respondents themselves by issuing subsequent letter dated

5.7.2002 (Annexure A-6). This letter clarifies that the instructions contained in the earlier letter dated 22.4.1991 should be treated as an administrative guidelines only. It was further clarified in this letter that preference is to be given after taking into account the degree of disability and the ability of the candidate to undertake his responsibility. But, it was also directed in this letter that it should be ensured that no indication of preference is given in the advertisement as this may lead to different interpretation and complications including avoidable litigation. In view of this, infact there was no significant justification for mentioning the directions contained in the first letter dated 22.04.1991 in the advertisement in question. Therefore, on the ground of this alleged lapse in the advertisement there was no justification either for issuing a show cause notice or for terminating the services of the applicant altogether. It is noteworthy that there is no denial from the side of the respondents about issuance of the aforesaid subsequent letter dated 5.7.2002. Therefore, the impugned order asking the applicant to show cause and simultaneously terminating the service of the applicant after expiry of one month's from the date of service of notice was uncalled for and without any justification and it was in excess of the directions issued by respondent no.2 as mentioned above. It appears that probably subsequent letter dated 5.7.2002 could not be brought before the authorities concerned at the relevant time on account of which this notice was issued. Be that as it may. But the notice/order, in question, was without any basis and justification. Otherwise also, as has been pleaded in the counter affidavit itself, the applicant had secured highest marks (66.5%) in the High School and as such she had secured highest marks in comparison to the other handicapped candidates and hence was found suitable for the post in question. Not only this in para-7 of the counter affidavit, it is also mentioned that she also fulfilled all the essential conditions; therefore, she was appointed on the post in question. Therefore, the spirit of the aforesaid letters dated 22.4.1991 or 05.07.2002 to the effect that the physically handicapped candidate should be considered only subject to suitability for performing the duties of the post in question,

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was totally fulfilled because she was found suitable for the post as specifically pleaded by the respondents themselves in para-7 of the Counter affidavit. It has been also pleaded by the respondents that there was shortfall of physically handicapped candidates against the sanctioned strength of GDS BPM. Therefore, from this point of view also there was nothing wrong in her selection.

7. More-over, the impugned order also appears to be bad in law because on one hand the applicant has been asked to show cause and on the other hand simultaneously her services have also been directed to stand terminated after expiry of one month's from the date of service of notice. Apparently, this order is against the professed principles of natural justice. Hence, it requires to be set-aside. The learned counsel for respondents feels handicapped in defending the impugned order as he does not have any substantial point in favour of the impugned order.

8. Finally, therefore, this O.A. deserves to be allowed and impugned order/notice deserves to be set-aside and accordingly it is so ordered. No order as to costs.



(S.P. Singh)
Member-A



(Justice Alok K Singh)
Member-J

Girish/-