

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 253 of 2009

Order Reserved on 16.10. 2014

Order Pronounced on 12/11/14

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Mohd. Ibrahim aged about 41 years son of Sri Mubarak Ali Resident of Village and Post Shivpur Bairagi (Bisheshwar Ganj) District-Bahraich.

Applicant

By Advocate Sri Praveen Kumar

Versus

1. Union of India through Director General of Posts, Dak Bhawan New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Post Master General, Gorakhpur Region, Gorakhpur.
4. Superintendent of Post Offices, Bahraich Division Bahraich.

Respondents

By Advocate Sri S.P. Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original application is preferred by the applicant u/s19 of the AT Act, 1985 with the following reliefs:-

- (i) To quash the impugned orders dated 6.5.2009 and 7.5.2009 contained as Annexure No. 1 and Annexure No. 2 with all consequential benefits.
- (ii) To direct the respondents to permit the applicant to perform his duties as GDSBPM, Shivpur Bairagi with his regular salary and allowances.
- (iii) To direct the respondents to pay the arrears of pay with interest from the date of illegal cancellation of appointment till reinstatement of the applicant.
- (iv) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- (v) To allow the Original Application with cost.

2. The brief facts of the case are that the applicant was initially appointed as GDSBPM, Shivpur, Bairagi vide order dated 6.5.2005 after following the due process for the appointment. Subsequently, the applicant is served with a show cause notice on the basis of O.A. No. 98



of 2008 filed by one Shri Krishna Mohan Yadav challenging the appointment of the applicant. After receiving the notice, the applicant appeared before the Tribunal and the Tribunal vide order dated 4.6.2008 disposed of the O.A whereby the Tribunal directed the CPMG to look into the matter and satisfy him as to whether it is a fit case for taking action under the Rule 4 (3) of GDS (Conduct and Service) Rules, 2001. It is also directed by the Tribunal that the CPMG should first take a decision as to whether such rule is required to be invoked and if yes, to take action. After that the applicant received a show cause notice dated 19.3.2009. The applicant received the copy of orders dated 6.5.2009 and 7.5.2009 directing the applicant to hand over the charge of GDSBPM, Shivpur Bairagi on 8.5.2009 and the charge of GDSBPM, Shivepur Bairagi was taken by the authorities of the department on the same date in a most arbitrary and illegal manner. The learned counsel for the applicant has also indicated that the impugned order dated 6.5.2009 has been passed in a most mechanical manner and without application of mind because the appointing authority i.e. opposite party No. 4 has duly considered the eligibility criteria for appointment and after non-fulfilling the eligibility criteria by the candidate No. 1 and candidate No. 2 higher in merit, the applicant was appointed by the opposite party No. 4 because he has fulfilled all the eligibility criteria. Not only this, the learned counsel for the applicant has also argued that the impugned order dated 6.5.2009 and 7.5.2009 is a non speaking order and violates the principles of natural justice.

3. On behalf of the respondents, reply is filed and through reply, it is pointed out by the respondents that the impugned order dated 6.5.2009 and 7.5.2009 as contained in Annexure No. 1 and 2 to the O.A. are reasoned and speaking order and there is no illegality in the same. The respondents also indicated that the applicant was appointed on the basis of marks obtained in High School Examination. On the basis of a selection, 11 candidates applied for the post and as per the comparative statement a list of the 11 candidate was prepared and the applicant

was on 3rd place of the merit list with 62.16% marks and the candidate of first place did not have independent source of livelihood hence he did not fulfill the eligible criteria and the second placed candidate withdrew his candidature, as such the applicant was appointed on the said post. It is also pointed out that one Shri Krishna Mohan yadav who has also applied for the said post, but his application was received after the prescribed date was not considered. Thereafter he has filed O.A. No. 98 of 2008 challenging the appointment of the applicant on the basis of marks sheet submitted by him which shows that the applicant submitted the marks sheet of the Board Examination in 1989 with Roll No. 1526961 and date of birth as 26.12.1968. While the applicant earlier passed the High School Examination in 1977 with Roll No. 244546 and the date of birth is shown as 1.7.1959. The said examination was passed by the applicant in the second division. It is also indicated by the applicant of O.A. No. 98 of 2008 that on the basis of High School Examination certificate submitted in the year 1989, the applicant was appointed. The respondents also made a categorically statement in their counter reply that the O.A. was disposed of by the Tribunal with a direction to the CPMG to look into this matter and satisfy himself as to whether it is fit case for taking action under the abovementioned rule 4 (3) of the GDS (Conduct and Employment) Rules. After the receipt of the judgment of the Tribunal, departmental inquiry was conducted and it was revealed that the applicant passed the High School Examination twice first in the year 1977 showing his date of birth as 1.7.1959 and securing marks 250/500 and again in the year 1989 showing his date of birth as 26.12.1968 and securing marks 373/600 and on the basis of subsequent examination he was given appointment. It is also indicated by the respondents that on the direction of the CPMG, the suitable action under Rule 4(3) of the GDS (Conduct and Employment) Rules 2001 was taken and it was found that the appointment of the applicant on the post of GDS BPM shivpur Bairagi (Bisheshwaraganj) Bahraich made by then SPO Bahraich is irregular because the said appointment was not under

the provisions of Rules. Accordingly, show cause notice was issued to the applicant and he was asked to submit his representation. The applicant submitted his representation on 8.4.2009 and after careful consideration of all the facts and rules, the respondents passed an order dated 6.5.2009 as well as 7.5.2009.

4. On behalf of the applicant, the rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

5. Heard the learned counsel for the parties and perused the record.

6. The applicant was given appointment by the respondents vide order dated 6.4.2005 on the post of GDSBPM, Shivpur, Bairagi. One Sri Krishna Mohan Yadav preferred the O.A. before this Tribunal vide O.A. No. 98 of 2008 through which it is indicated that he along with present O.A. applicant applied for the post of GDSBPM, Shivpur, Bairagi District Bahraich and the applicant of O.A. No. 98 of 2008 was not appointed, whereas the applicant of the present O.A. is appointed. Sri Krishna Mohan Yadav applicant of O.A. No. 98 of 2008 has taken a ground that the applicant appeared twice in the High School Examination once in the year 1977 and again in the year 1989. When he was appeared in the year 1977, the date of birth is shown as 1.7.1959 and when he appeared in the year 1989, his date of birth is shown as 26.12.1968 and has secured 250 marks out of 500 in 1977 and 373 out of 600 in 1989. Accordingly, he has taken the benefit of 1989 examination and was selected. After the direction of the Tribunal, the CPMG UP Circle issued direction to the PMG Gorakhpur Division to consider the case and take suitable action under Rule 4(3) of the GDS (Conduct and Employment) rules 2001 and in pursuance thereof, the show cause notice was issued to the applicant vide show cause notice dated 19.3.2009 and the applicant has also submitted his representation dated 8.4.2009 and the Post Master General, Gorakhpur Region after a careful consideration of the facts and rules passed an order through which appointment of the applicant dated 6.4.2005 has been cancelled by memo dated 6.5.2009 and accordingly,

another order dated 7.5.2009 was issued and the applicant was asked to handover the charge. The respondents have also corresponded with the Madhyamik Shiksha Parishad, Varanasi and has also indicated the Roll Numbers of the applicant in 1977 Examination as well as in 1989 examination. The name of the school is also shown.

7. The rule 4 (3) of GDS (Conduct and Employment) rules reads as under:

“5. Rule 4(3) of the GDS (Conduct and Employment) Rules, 2001, as inserted in May 2003, reads as under:-

“Notwithstanding anything contained in these rules, any authority superior to the Appointing Authority as shown in the Schedule, may, at any time either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such appointing authority appears-

- (a) to have exercised a jurisdiction not vested in it by any law or rules time being in force: or**
- (b) to have failed to exercise a jurisdiction so vested; or**
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, such superior authority may, after giving an opportunity of being heard, made such order as it thinks fit.”**

8. The bare reading of the material available on record, it is clear that the applicant appeared twice in the year 1977 and again in the year 1989 with different Roll Numbers and name of the applicants are also different and obtained appointment on the basis of 1989 Examination. As such, it is clear that the applicant obtained the appointment by way of fraud. As such no interference is called for in the present O.A. and is fit to be dismissed.

9. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

vidya

Navneet Kumar
(Navneet Kumar)
Member (J)