

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A.No. 395/92

Lucknow this the 2nd day of January, 2001.

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Tulsi Ram Yadav, aged about 21 years son of Sri Devi Prasad, resident of Mahmood nagar, Post Office Gugauli, District Gonda.

Applicant.

By Advocate Shri R.C. Singh.

versus

1. Union of India through Post Master General, Hazratganj, Lucknow.
2. Director Postal Services Gorakhpur Region, Gorakhpur.
3. Superintendent of Post offices Gonda, District Gonda.
4. Assistant Superintendent of Post Offices Gonda (North) Sub Division, Balrampur.
5. Sri Swami Pasad r/o Bichhupurvs, P.O. Gaguali, District Gonda.

Respondents.

By Advocate Dr. D. Chandra.

O R D E R (ORAL)

By D.C.VERMA, MEMBER(J)

The relief claimed by the applicant is to quash the order of termination of the applicant's services and the order of appointment of respondent No. 5 Swami Prasad.

2. The brief facts of the case are that one Ram Chhabile Extra Departmental Delivery Agent (E.D.D.A) Gaguali District Gonda was to superannuate on 19.9.91. In anticipation of the vacancy, the applicant Tulsiram Yadav was selected for the said post. <sup>Ram</sup> Chhabile proceeded on leave prior to his retirement and engaged his son in-law Swami Prasad to work as E.D.D.A. Unfortunately, Ram Chhabile expired on 15.9.91. Consequently, the post of E.D.D.A. fell vacant. In pursuance of the order dated 14.9.91, Tulsi Ram, the present applicant, took over the charge of E.D.D.A. Gagauli from Swami prasad on 17.9.91. The applicant has been working on the said post



thereafter. On 27.7.92, the applicant was served with a notice to show cause why his services be not terminated, on the ground that the post of E.D.D.A. which fell vacant due to death of Ram Chhabile has been reserved for dependant of Ram Chhabile on compassionate grounds. In the said notice, the date of retirement of Ram Chhabile was wrongly typed as 19.2.92 instead of 19.9.91. Similarly, the date of appointment of applicant was wrongly typed as 14.2.92 instead of 14.9.91. Consequently, for correction of above dates a corrigendum was issued on 3.8.92 (copy Annexure-3 to the O.A.). Thereafter, the services of the applicant were terminated by the impugned order (Annexure-1 dated 8.8.92). The applicant was treated as retrenched employee and the charge of the post of E.D.D.A. was given to Swami Prasad who is respondent No. 5, on 31.8.92.

3. The applicant has challenged the impugned order on the ground that the appointment of applicant was in a clear vacancy and the order of termination is without following the due procedure. The other ground is that the appointment of respondent No. 5 Swami Prasad who was son in-law of Ram Chhabile is illegal.

4. As per the brief history given in the Counter affidavit of the respondents, the admitted facts are that Ram Chhabile was to retire on 19.9.91. It is also admitted that Assistant Superintendent of Post offices, Gonda, after completing the appointment formalities of E.D.D.A. Gagauli, issued orders of provisional appointment to the applicant Tulsiram on 14.9.91. It is also admitted fact that Ram Chhabile proceeded on leave and engaged his son in-law Swami Prasad to work as E.D.D.A. The other admitted fact is that unfortunately Ram Chhabile expired on 15.9.91 and the charge of E.D.D.A. was taken over by the applicant from Swami Prasad on 17.9.91.

5. In the case of Auditor General of India vs. G. Anant Rajeshwar Rao, reported in 1994(1) SCC, 192, the apex court held that the Office memorandum providing for appointment on



compassionate grounds to "near relative" is violative of Article 16(2) of the Constitution of India, as it amounts to appointment on "descent". The apex court has, however, held that appointment to the son/daughter or widow of deceased government employee who died in harness is valid. In view of the above decision of the apex court, the son in law could not have been given appointment under dying in harness rules.

6. As per the admitted facts, Ram Chhabile was to retire on 19.9.91 and the selection of the applicant had been made after completing the appointment formalities prior to the due date of retirement of Ram Chhabile. The applicant had also taken over charge of the post of E.D.D.A. on 17.9.91. After the selection of the applicant had been made and the applicant had taken over charge on 17.9.91, the post could not be subsequently declared reserved for appointment on compassionate grounds. For this reason also the ground for termination of applicant's services is not valid.

7. Swami Prasad was impleaded by the applicant as respondent No. 5 in the O.A. Registered notice was issued to him on 9.9.92 and again on 27.4.92, but none appeared, nor any reply was filed on behalf of respondent No. 5. Consequently, ex parte decision has been taken against respondent No. 5.

8. In view of the discussions made above, the O.A. is allowed. The impugned order of appointment dated 8.8.92 in favour of respondent No. 5 Swami Prasad and the order of termination of services of applicant are quashed. The applicant shall be taken as in service with all consequential benefits from the date of termination of his services. Costs easy.

  
MEMBER(A)

  
MEMBER(J)

Lucknow; Dated: 2.1.2001

Shakeel/