

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 406/92

this the 25th day of May, 2000

Hon'ble Mr. D.C. Verma, Member (J)

Hon'ble Mr. A.K. Misra, Member (A)

Sudarshan s/o Jhagroo Ram r/o Village and Post
Office- Kataiya, EDDA Branch Post Office, Kataiya,
Sadar, Pratapgarh.

...Applicant

By Advocate: Sri Surendran P.

Versus

1. Inspector Post Offices, Western
Sub.Division, Pratapgarh-230001.
2. Senior Superintendent of Post offices,
Pratapgarh.
3. Post Master General, U.P. Circle, Lucknow.
4. Union of India through Secretary, Deptt.
of Post, Communication, Govt. of India, Parliament
Street, Dak Bhavan, New Delhi.
5. Uma Prakash Shukla son of Sri Kishan
Kumar Shukla r/o Village Shukulpur, P.O.- Kataiya,
district- Pratapgarh.


..Opp. Parties

By Advocate: None

ORDER (ORAL)

D.C. VERMA, MEMBER (J)

Applicant Sudarshan has prayed through
this O.A. that the order dated 18.8.92 passed by
the opposite party No. 1 be quashed. Further prayer
is for issue of a direction to quash order
dated 16.11.92 and 1.9.92.



2. Facts of the case is that one Sri Kishan Kumar Shukla was working as Extra Departmental Delivery Agent (EDDA) Kataiya (Sahebganj), Pratapgarh. Kishan Kumar Shukla expired on 28.9.89. Consequently, the post of EDDA had failed vacant. The Deptt. sent a requisition to the District Employment Officer, Pratapgarh for sponsoring the name of suitable candidates to fill up the posts. Name of five candidates were sponsored by the Employment Officer. Candidature of Anirudh Kumar, Sudarshan and Ram Naresh were considered. The applicant was selected and provisionally appointed as EDDA, Kataiya, Pratapgarh vide order dated 20.1.90. The applicant Sudarshan joined the post on 28.1.90. Thereafter, as per the recitals made in the counter affidavit, Divisional Officer, Pratapgarh has submitted a letter regarding compassionate appointment of Uma Prakash (Respondent No. 5) s/o Kishan Kumar Shukla who was earlier holding the post. This appointment was to be made on compassionate ground. In pursuance thereto, the applicant was served with order dated 18.8.92 (Copy Annexure 1 to the OA) under Rule 6 of the Extra Depttl. Staff Rules. Thereafter, by Annexure 9 dated 1.9.92, respondents No. 5 was given appointment on compassionate ground.

3. The applicant initially filed a Writ Petition before the Hon'ble High Court, Allahabad but the same was dismissed on the ground of jurisdiction, as under AT Act, 1985, the Central Administrative Tribunal has jurisdiction to entertain the O.A. in respect of relief claimed by the applicant. Thereafter, the applicant filed

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the present O.A. before this Tribunal.

4. The main ground advanced by the learned the applicant counsel for the applicant is that ~~XXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXXXXXXXXXX~~ (Respondent no. 5) was appointed on regular basis after following the due procedure prescribed for selection. The appointment of the applicant could not have been cancelled under rule 6 of the Rules of 1964 to accommodate a person under Dying in harness Rule for giving compassionate appointment. In support of this submission, l/c for the applicant has placed reliance on the decision of Patna Bench of this Tribunal given in the case of Kameshwar Chaudhary Vs. Union of India reported in 1990 (13 Administrative Tribunal Case page 809) wherein it has been held that cancellation of appointment of regularly selected candidate, in order to offer compassionate appointment to another person in relaxation of rule, is bad.


5. We have considered the facts of the present case and also the facts of the cited case and we are also of the view that once the applicant had been appointed on regular basis, after following the due procedure prescribed for selection, the appointment of the applicant could not be cancelled under rule 6 of Rule 1964 to accommodate a person on compassionate ground. In our view, the Annexure 1 dated 18.8.92 is, therefore, invalid.

6. The second submission of the learned counsel for the applicant is that to fill up the vacancy caused due to death of Kishan Kumar Shukla, the Deptt had sent a requisition to the Employment Exchange on 17.11.87. Copy of the requisition letter and the covering letter has been

annexed by the applicant as Annexure 1 with his Rejoinder Reply. The covering letter shows that the respondents in their requisition have informed the Employment Exchange that the post is reserved for SC candidates. All the names sponsored by the Employment Exchange were of SC candidates. The name of the applicant was also in one of five. The applicant belongs to SC category. From the requisition, it is clear that the Deptt. intended to fill up the vacant post of EDDA and it had been notified as a reserved post for SC candidate. Applicant, a SC candidate ^{was} found suitable and appointed on regular basis. A regular appointee cannot be removed to accommodate another candidate under Dying in harness Rules after relaxation of Rule. On this fact also, the termination of the applicant is not valid.

7. The respondent No. 5 was issued notice on earlier date. No reply has been filed by the Respondent No. 5. Thus respondent No. 5 has not contested the applicant's claim. Learned Counsel for the applicant has submitted that the respondent himself sent application for seeking appointment at some other place on the post of Extra Departmental Runner/Packer/Peon. This fact is admitted by the respondent in para 4(E) in their supplementary CA filed in reply to the amendment application of the applicant.

8. In view of this fact instead of cancelling the appointment of the respondent No. 5, we only direct the respondents to immediately give charge of EDDA, Kataiya to the applicant and to post respondent No. 5 Uma Prakash Shukla to any other suitable place/post which may be available.



9. In view of the discussions made above, notice dated 18.8.92 (Annexure 1) to the extant, it is against the applicant, is quashed. Annexure 8 dated 16.11.92 is quashed in toto. Annexure 9 dated 1.9.92 is quashed ~~on~~^{to} to the extant it provides for appointment of respondent No. 5 to the post of EDDA, kataiya.

10. We however, provide that the applicant would not be entitled to back wages. He shall be given his seniority from the date of his initial appointment.

11. The O.A. is decided accordingly. Cost easy.


MEMBER (A)


MEMBER (J)

Lucknow:Dated 25.5.2000
HLS/-