

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 235/2008

This, the 4th day of April, 2009

**HON'BLE MR. M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)**

Amit Kumar Mishra aged about 26 years son of Sri Deep Kumar Mishra resident of village and Post Baundi, District- Bahraich.

.....Applicant

By Advocate: Sri V.D. Mishra

Versus

1. Union of India through Chief Post Master General, Lucknow.
2. Post Master General, Gorakhpur.
3. Superintendent of Post Offices, Bahraich Region, Bahraich.
4. Inspector , Post , Kaiserganj, District- Bahraich.

Respondents.

By Advocate: Sri Atul Dixit for Sri K.K.Shukla

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

This is an application challenging the order dated 21.5.2008 of respondent No.2 cancelling the appointment order dated 6.4.2005 made by respondent No.3 in favour of the applicant with a prayer to set aside the impugned order and also for a direction to the respondents to permit the applicant to continue on the post of Extra Departmental Branch Post Master.

2. Brief facts of the case are as follows:-

The mother of the applicant Smt. Parag Rani Mishra was working as Gramin Dak Sewak Branch Post Office Baundi (Fakhpur). She was to retire on attaining the age of superannuation on 28.9.2002. She requested for leave which was granted for the period of 1.6.2002 to 30.6.2002. Her son , the applicant , was allowed to work as a substitute in leave vacancy on the risk and responsibility of Smt.



Mishra for this period. But instead of joining her duty , she extended her leave upto the date of her superannuation. The authorities did not agree for continuance of the applicant as a substitute employee on this post and directed one Ram Kumar Mishra, GDS, MD/MC , Kauraha (Fakharpur) to take charge of this post office, but the applicant refused to handover the charge and filed O.A. No.441/2002 in this Tribunal requesting for regularization of his service against the vacant post. The application was dismissed with the observation that the applicant had no right to continue and he was not entitled to any relief . He filed a writ petition in the High Court , Lucknow Bench and obtained an interim direction on 27.11.2002 to the effect that he should be allowed to discharge the function of GDS Post Master on a short term basis purely as a stop gap arrangement till a regular person is appointed on the post. Thereafter, the applicant filed Misc. Appeal No. 307/2003 before High Court for modification of the order. This application was disposed of with the same direction to allow him to discharge the function of the Post Master on a short term basis and also with an observation that his prayer for giving him preference in the matter of regular appointment did not require any direction and his case for regular appointment would be decided by the authorities in accordance with rules. Accordingly, he was allowed to act as Branch Post Master at Boundi (Fakharpur) on a short term basis. Steps were taken for appointment of the Branch Post Master on a regular basis. Applications were invited for the purpose and 46 applications were received for consideration but the respondent No.3 did not process these applications and did not select a candidate on the basis of merit in the High School examination as provided for under rules. But, straightway, appointed the applicant vide his letter dated 6.4.2005, on the ground of applicant's long and satisfactory service. The matter came to the knowledge of respondent No.2 and he directed respondent No. 3 to



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make proper selection out of the 46 candidates who had applied for the job as per rules. Accordingly, a notice was issued to the applicant on 7.3.2006 asking him to show cause within 15 days why his irregular appointment should not be cancelled. The applicant filed O.A. No. 38/2006 against the show cause notice which was dismissed by this Tribunal on 17.1.2008. Finally, the respondent No. 2 rejected the representation of the applicant against the notice giving a detailed reasoned order for the rejection. Accordingly, the applicant was removed from his service.

3. The applicant filed a writ petition in the Hon'ble High Court which was disposed of on 18.6.2008 with a direction to him to seek alternative remedy available to him. Hence, this application.

4. The grounds taken by the applicant are the following:-

- i) that the action of the respondents is arbitrary, illegal and bad in the eyes of law
- ii) that the show cause notice was issued to him without any justification before terminating his service;
- iii) that no charge sheet had been issued to him, neither any inquiry conducted giving the applicant any reasonable opportunity of defence before the impugned order was passed;
- iv) that this order is violative of Articles 14 and 311 of the Constitution;
- v) that the action of the respondents in terminating his service is violative of principles of natural justice; and
- vi) that the respondent No.2 had not followed the provisions of rules before passing this order.

5. The case of the respondents, in brief, is that the applicant in collusion with his mother got himself engaged during 1.6.2002 to 30.6.2002 as a substitute employee during the leave vacancy of her mother, who extended her leave with ulterior motive to engage her son on the post which she was to vacate very soon on attaining the age of

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superannuation. The applicant refused to handover the charge to the employee who was directed by the competent authority to look after this post office during the extended leave vacancy of his mother. He was permitted to discharge the function only on the specific direction of the Hon'ble High Court. The High Court had not given any direction on his plea for giving him preference at the time of regular selection; on the other hand, had observed that the appointment should be made as per rules.

6. As per the rules and instructions issued thereunder, the selection has to be on the basis of marks obtained by the candidates in the matriculation or equivalent examination. The person having the highest marks is to be selected. There are no provisions for giving any weightage to any experience. For that matter, the applicant did not have long experience as stated by Respondent No. 3. He was engaged as a substitute employee in the leave vacancy as a stop gap arrangement. His ploy for extension of his engagement was not agreed to by the authorities. Subsequently, he was allowed to act on the post purely as a temporary arrangement as per the direction of the High Court. Therefore, he could not have any claim on the post on that basis.

7. Selection and appointment on the post has to be made as per recruitment rules and the direction of the High Court. The appointment made by the respondent No. 3 vide order dated 6.4.2005 was dehors the rules. Any such appointment violates the constitutional provisions and cannot be countenanced by a court of law. The respondent No. 2 has given cogent reasons in his impugned order dated 21.5.2008 by which he rejected the representation of the applicant made in pursuance of the show cause notice. We find that this order has been made strictly following the provisions of recruitment rules and there is no infirmity in it.

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Further an opportunity had been given to the applicant to defend himself before final action for the removal was taken against him.

8. In the circumstances, we do not find any merit in this application, which is accordingly dismissed. No costs.

Apri 2009
(Dr. A.K.Mishra)

Member (A)

Manu
(M. Kanthaiah)

Member (J)

HLS/-