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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

OA No. 257/1992

Lucknow, this 19th day of February 2001

Hon'ble Mr. Rafiquddin, JM  
Hon'ble Mr. M.P. Singh, AM

Pushp Raj Singh  
Vill. & Post Konchha  
PS Bikapur, Dt. Faizabad ..      Applicant

(By Mr. P. Upendran, Advocate)

Versus

Union of India, through

1. Secretary  
Doptt. of Posts/Min. of Communication  
Sansad Marg, New Delhi
2. Sr. Supdt. of Post Offices  
Faizabad Dn. Faizabad
3. Sub-Divisional Inspector (Postal)  
Faizabad South Sub Division, Faizabad ..      Respondents

(By Dr. D. Chandra, Advocate)

ORDER(oral)

By Mr. Rafiquddin,

The applicant Mr. Pushp Raj Singh was appointed as Extra Departmental Runner (EDR, for short) at Konchha Branch, District Faizabad by the Sub-Divisional Inspector of Post Offices, Faizabad South Sub-Division vide order dated 17.8.91. Applicant claims that his appointment was against the vacancy available substantively and permanently on account of services of one Sri Satya Narain Singh, EDR having been regularised as Grade D by the Department. The Sub-Divisional Inspector, however, vide his order dated 22.5.92 (Annexure A-1 to the OA) has terminated the services of the applicant under Rule 6 of EDA Conduct & Service Rules, 1964. Applicant has filed this OA for quashing the impugned termination order dated 22.5.92.

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2. The main grounds on which the impugned order has been challenged are that the same has been passed in controvention of the instructions issued by the Government of India as contained in DGP&T's letter No.10/1/82-Vig. III dated 13.4.83 and in controvention of provisio s of Article 311(2) of the Constitution of India.

3. We have heard the learned counsel for the parties and perused the records.

4. It has been pleaded by the respondents that the post in question was inadvertently advertised because the post was not vacant. It is also stated that the appointing authority deliberately ignored the fact that the applicant was son of Branch Post Master, Konchha and he was being posted in the same office where his father was employed, while the rules strictly prohibit employment of near relatives in the same office. Accordingly, the reviewing authority reviewed the case and ~~expunged~~ one Shri Hari Nath Tewari who was deputed to work in some other newly created post was asked to resume duty.

5. The learned counsel for the applicant has contended that the impugned order is liable to be set aside because the same has not been passed by the appointing authority of the applicant and the same has been passed in pur-  
cuance of the order and direction given by the reviewing authority namely Respondent No.2, who is the next <sup>higher</sup> authority to the appointing authority. In support of his contention he has referred to the Full Bench decision of Hyderabad Bench of the Tribunal in OA No.57/1991 decided on 10.2.1995, in which it has been held as under:

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(i) Rule 16 of the P&T BDA (Conduct & Service) Rules, 1964 does not confer power upon a higher administrative authority to revise the order of appointment purported to have been passed by the lower authority under Rule 3.

(ii) Under the rules, a higher administrative authority has no power either inherent or otherwise to revise the order of appointment passed by the lower administrative authority or to set aside the same.

6. It is relevant to mention that the aforesaid decision has been given by the Full Bench after considering various decisions given by other Benches of this Tribunal. Therefore, we do not find any reason to differ with the views expressed by the Full Bench. Considering the fact that admittedly the impugned termination order has been passed pursuant to the directions of the reviewing authority given to the appointing authority, the impugned order is therefore quashed. We accordingly allow this OA and direct the respondents to reinstate the applicant forthwith. It is however open to the respondents to take action as per rules in respect of appointment of the applicant. No order as to costs.

*M.P. Singh*  
(M.P. Singh)  
Member(A)

*Rafiquddin*  
(Rafiquddin)  
Member(J)

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