

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 566/92

this the 25th day of May, 2000

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

Anil Kumar Mishra, aged about 21 years s/o Sri
Pashupati Nath r/o Village and Post Rehuwa
Mansoor, District- Behraich.

...Applicant

By Advocate: Sri R.P. Awashthy B/h of Sri P.Khare

Versus

1 Union of India through the Secretary,
Ministry of Tele Communication, Department of Post
and Telegraph, Central Secretariat, New Delhi.

2. Director, Postal Services, Lucknow.

3. Superintendent of Post Offices, Behraich
Division, Behraich.

4. Chandra Bhal Misra s/o late Ganga Pd.
Mishra, r/o village and post office-Rehuwa Mansoor,
Dist.- Behraich.

...Respondents

By Advocate: Sri D.S. Gaur B/h of Sri D.R.Sinha

ORDER (ORAL)

D.C. VERMA, MEMBER (J)


Anil Kumar Mishra has prayed through this
O.A., to quash the impugned order dated 13.10.92
(Annexure 3 to the O.A) and to allow the applicant
to continue in service as Branch Post Master,
Branch Post Office, Rehuwa Mansoor, Behraich. Further
prayer has been made by the applicant that a
direction be given to the respondents to ^{appoint} transfer
the applicant at any other post office of district-
Behraich considering the applicant's previous
experience.

...2/-

2. Brief facts of the case is that after retirement of one Bhagat Ram, ^{the} post of Branch Post Master, Rehuwa Mansoor ~~had~~ fallen vacant. ~~one~~ Names were called from the employment exchange. Chandra Bhal Mishra (Respondent No. 4 of the present O.A.) sent his application directly. After ^{the various names,} considering, ^L Chandra Bhal Mishra was appointed. Against the appointment of Chandra Bhal Mishra, a complaint was received by Director of Postal Services, who reviewed the appointment order and cancelled the appointment of Shri Chandra Bhal Mishra. Against the termination order, Chandra Bhal Mishra filed a Writ Petition No. 2698/1985 before the Hon'ble High Court. The same was transferred to this Tribunal after enforcement of the AT Act 1985. The Writ Petition was registered as T.A. No. 1759/87. The said Writ Petition was decided by a bench of this Tribunal vide order dated 15.9.92, which is as below:-


"Accordingly, this application is allowed and the cancellation order dated 31.5.1985 is quashed. The applicant shall be deemed to be continuing in service. However, it will be open for the authorities concerned, to consider the case of the applicant along with other candidates after giving him an opportunity of hearing. Any appointment which may have been made during this period cannot stand. No Order as to costs."

3. In compliance of the Tribunal's order dated 15.9.92, it appears, ~~that~~ ^{to} Chandra Bhal Mishra ^{been} was posted back ^L his post. The applicant, who had ^L in the meanwhile appointed, was removed from service. Consequently the applicant has filed the present O.A.



4. The submissions of the learned counsel for the applicant is that the applicant's appointment was made as per Annexure 1 dated 26.9.90 during the period the case of Chandra Bhal Mishra was pending. Further submission of the learned counsel for the applicant is that applicant namely Anil Kumal Mishra was not a party before the Tribunal in T.A. No.1759/87. Consequently, the applicant had no opportunity to defend his appointment.

5. After hearing counsel for the parties after perusing and the pleadings on record, we find while that the Tribunal vide its order dated 15.9.92, quashing the calcellation order passed against Chandra Bhal Mishra, also directed that Chandra Bhal Mishra shall be deemed to be continuing in service. A further direction was also given that any appointment made during the period cannot stand. We also find in para 3 of the appointment letter dated 26.9.90, a condition was imposed in the appointment letter to the effect that Anil Kumar Mishra should clearly understood if ever it is decided to take Chandra Bhal Mishra back into service, the provisional appointment will be terminated without any notice. This itself shows that the appointment of Anil Kumar Mishra was not a regular appointment and was only to fill up the post till the proceedings of Chandra Bhal Mishra is concluded. Thus the applicant has no right to continue on the post as against the regularly appointed candidate namely Chandra Bhal Mishra.

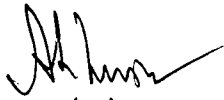


6. Learned Counsel for the applicant has submitted that the applicant should have been given an opportunity of hearing before the applicant was removed from the service. In our view, it was not necessary because there is clear recital in the appointment letter that the applicant's services would be terminated without any notice in the case Chandra Bhal Mishra is reinstated. Chandra Bhal Mishra was reinstated in the light of the Tribunal's order dated 15.9.92. We also do not find any force in the submissions of the learned counsel for the applicant that the Tribunal's order dated 15.9.92 is invalid because ~~as~~ the applicant Anil Kumar Mishra was not a party in T.A. No. 1759/87. The submission is that the applicant could not file a review against the said order as applicant was not a party in TA, case has no merit in the light of the decision in the case of Vs. Addl. Chief Mechanical Eng. S.C. Rly. & J'ohn Lucas & Ors. / reported in full bench ors. decision of CAT published by Behari Brothers in Vol One at page 136 .T.A. No. 1759/87 was against an order of termination and applicant was not a necessary party in the case. Secondly, in case applicant had any grievance against the order dated 15.9.92, he could have filed a review against the said order.

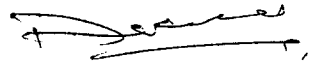
7. The submissions of the learned counsel for the applicant is that the present O.A. be treated as a review application. This submission too has no merit. As has been already held above, the applicant has no better claim to the post against the regularly appointed candidate Chandra Bhal Mishra. Secondly, because removal of the applicant is as per his conditions of appointment. As pointed out in para 3 of the appointment

letter, no notice was required to be given to the applicant. Further, even if this O.A. is treated as review application, it will have no merit to effect the order passed by the Tribunal on 15.9.92. Consequently, the applicant's claim to hold the post occupied by Chandra Bhal Mishra earlier has no merit.

8. As per the discussions made above, we do not find any merit in the case, same is accordingly dismissed. Cost easy.



MEMBER (A)



MEMBER (J)

Lucknow: Dated 25.5.2000

HLS/-