

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA.

O. A. No. 331 of 1996

Date of order : ^{1st April} March, 2004.

Hon'ble Mrs. Shyama Dogra, Member (Judicial)

Hon'ble Mr. Mantreshwar Jha, Member (Administrative)

Vinay Kumar Singh, son of late Bhagwat Singh, aged 29 years resident of Village-Nagariawan, P.O.-Nagariawan via Buniaganj, P.S.Khizersarai, District-Gaya, and at present posted as EDDA-cum-EDMC, Nagariawan, EDBO in account with Buniaganj S.O. (Gaya Postal Division). Applicant.

By advocate Shri S.N.Tiwary.


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1. Union of India through the D.G. Post, New Delhi-1.
2. The Chief Postmaster General, Bihar Circle, Patna-1.
3. The Director of Postal Services, Patna Region, Patna-1.
4. The Sr. Superintendent of Posts, Gaya Division, Gaya.
5. The Sub-Divisional Inspector of Post Offices, Gaya East Sub-Division, Gaya.
6. Shri Manish Kumar, son of Shri Ram Pravesh Singh, Village- and P.O.- Nagariawan, P.O.Khizersarai, District- Gaya. Respondents.

By advocate Shri V.M.K.Sinha, Id. Sr.S.C. for the official respondents
Shri V.P.Sharma for pvt. respondent.

ORDER

By Mantreshwar Jha, Member (A) :-

 This application is filed for declaring Annexure-A/16 as illegal by which the appointment of the applicant

Shri Vinay Kumar Singh to the post of HDA-cum-EDMC ,
Nagariawan EDBO has been cancelled by the Respondent No. 2.
The prayer has also been made for cancellation of appointment
of Shri Manish Kumar on the said post consequent upon the
termination of appointment of the applicant.

2. The case in short is that the applications from
intending candidates ^{for the above mentioned post} were called through the Employment
Exchange, Gaya on 23.8.1994, where upon names of 12
candidates were sponsored by the Employment Exchange. The
applicant has secured 472 marks in the matriculation
examination as against 601 marks obtained by the Respondent
No. 6, Shri Manish Kumar. However, the applicant was
appointed on the ground that the Respondent No. 6 had
withdrawn his candidature on 8.5.1994. Another candidate
Shri Shekhar Kumar who had secured higher marks than the
applicant Shri Vinay Kumar Singh filed an O.A. No. 442 of 1995
against the order of appointment of Shri Vinay Kumar Singh.
The court directed the Respondent No. 2, the Chief Postmaster
General, Bihar Circle, Patna to dispose of the represen-
tation of Shri Shekhar Kumar Singh who rejected the claim
of Shri Shekhar Kumar Singh and ordered for appointment of
the Respondent No. 6, Shri Manish Kumar as he had obtained
higher marks and there ^{was} ~~is~~ no provision for withdrawal of
his candidature. Being aggrieved with the decision of the

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Chief Postmaster General, i.e. the Respondent No.2, filed an O.A. No.331 of 1996, which was also rejected by the Single Bench of this Tribunal on 16th July, 1996 with liberty to the applicant to press the matter again before the division Bench if so advised. This case has been preferred by the applicant on the basis of liberty given to him by the Single Bench of this Tribunal as mentioned above.

3. The case of the applicant is that he fulfilled all the conditions prescribed for appointment for the aforementioned post and have been appointed for the said post after due verification. He also joined the post of EDDA-cum-EDMC, Nagariawan and continued on the said post. He has been removed from the said post by the order of the Respondent No.2 dated 26th June, 1996 (Annexure-A/16) which is the order under challenge. The contention of the ld. counsel for the applicant is that the show-cause notice issued to him before his termination is only a formality and ^asham as a decision to remove him had already been taken. The applicant had also filed another case before this court bearing O.A. No.393 of 1995 which was disposed of by the Division Bench with a direction to the Respondent No.5, i.e. the Sub-Divisional Inspector

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Gaya, East Division to dispose of his show-cause within a period of three months by passing reasoned and speaking order. The show-cause of the applicant was considered but was rejected and termination order of his appointment was passed.

4. The applicant has mainly insisted upon two points, (i) proper course of action has not been taken on his termination and (ii) it was wrong on the part of the respondents no. 2 to order for appointment of the Respondent No. 6 Shri Manish Kumar even though he had withdrawn his candidature at the time of selection.

5. Both, official respondents as well as private respondent no. 6 have filed their written statements protesting the claim of the applicant. The case of the official respondents is that the ^{show cause order} termination of the appointment of the applicant ~~who~~ was not a mere formality but a legal requirement and the Respondent No. 2 ^{has} asked a reasoned and speaking order after examining all the relevant documents. It has also been submitted that the Respondent No. 2, i.e. the Chief Postmaster General has passed this order in response to the directions of this court in O. A. No. 442 of 1995, and, therefore, cannot be faulted by the applicant on trivial technicality.

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6. On behalf of the private respondent, Shri Manish Kumar, it has been submitted that he has been appointed in pursuance of the order of Respondent No. 2 as he was the most meritorious candidate and has secured much higher marks than the applicant. It has also been submitted that the applicant has not exhausted his remedy before coming to this court as a remedy to file review/revision petition before the competent authority is available to him as per D.G., Post's instruction no. 8 below Rule 6 of P. & T. EDA (C'S) Rules which provides for review against an order of termination. The learned Counsel appearing on behalf of the Respondent No. 6 has also contested other conditions of the applicant in the application.

7. We have heard both parties at length and also gone through the original record relating to the appointment of EDDA-cum-EDMC, Nagariawan B.O. We have also carefully scrutinised the order passed by the Respondent No. 2 (Annexure-A/16) which ^(a)the order under _(b)challenge. The Respondent No. 2 has passed this order in pursuance to the order of this court in O. A. No. 442 of 1995 and has examined the case of the applicant and found that the claim of Shri Manish Kumar has wrongly been ignored in appointment even though he had secured

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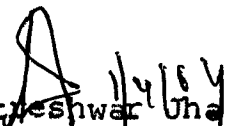
highest marks merely on the ground that he had withdrawn his candidature. In course of argument, it transpires that the Respondent No. 6 had been prevailed upon to withdraw his candidature which came to light in course of enquiry by the postal vigilance. It has been submitted on behalf of the official respondents in their written statement that if Shri Manish Kumar was really not interested for the job, he would not have joined the post and would not have continued in the job till date. It has also been submitted that since he was the best candidate, he should have been offered the appointment after which he was free to decline the offer. There was unnecessary delay in finalising the appointment letter even after screening had been completed. It has also been submitted that Shri Manish Kumar had represented to the Chief Postmaster General, Bihar Circle, Patna regarding fraudulent withdrawal of his candidature. The same was enquired into by the Assistant Superintendent of Post Offices, Vigilance who confirmed the genuineness of his complaint.

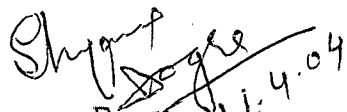
8. The ld. counsel for the applicant has referred to several rulings in support of his contentions. But in view of the facts and circumstances of the case as discussed above, and keeping in mind the order passed by this court

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in O.A. No. 331 of 1996, wherein the claim of the applicant has been rejected and also considering the facts that the Respondent No. 2 has passed the reasoned and speaking order in pursuance of the order of this court in O.A. No. 442 of 1995, we are satisfied that the case of the applicant is devoid of merit.

9. The O.A. is, accordingly, dismissed with no order as to costs.


(Mantreshwar Uha)
Member (Admn.)


(Shyama Dogra)
Member (Judicial)

MPS.