

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR**

Original Application No. 216 of 2004

Jabalpur, this the 17<sup>th</sup> day of December, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

Anil Kumar Shukla, S/o. Bharat  
Prasad Shukla, aged about 36 years,  
Extra Departmental Post Master,  
Magrora, District Satna (MP). ... Applicant

(By Advocate - Shri S. Paul)

## V e r s u s

1. Union of India, through its Secretary, Ministry of Communication, New Delhi.
2. Chief Postmaster General, Chhattisgarh Circle, Raipur (CG).
3. Superintendent of Post Offices, Rewa Division, Rewa (MP). . . . . Respondents

(By Advocate - Shri S.P. Singh)

ORDER

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"(ii) to set aside the order dated 16.2.2004 (Annexure A-1),

(iii) to command the respondents to continue the applicant as if the aforesaid order dated 16.2.2004 is never passed,

(iv) further command the respondents to pay TRCA/salary to the applicant from 8.10.2002 with interest on delayed payment."

2. The brief facts of the case are that a notification was issued for the purpose of selection on the post of Extra Departmental Branch Postmaster. The applicant was eligible for the said post. He belonged to General category. It was mentioned in the said notification that initially the post is reserved for ST candidates and in the absence of ST candidates other candidates can also be appointed. The

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applicant submitted his candidature with correct details and documents on 20.5.2002. He was given charge on 8.10.02. Although the applicant is continuously working from 8.10.02, no salary/time rated continuity allowance has been paid to him. The applicant preferred a representation dated 20.11.03 in this regard. But nothing was done by the respondents. The impugned order dated 16.2.2004 was passed by the respondent No. 2 in which it was mentioned that the post on which the applicant was appointed was reserved for Scheduled Tribe. No applications were received from the ST candidates and a non-availability certificate should have been obtained for appointment of general candidate from the next higher authority, which has not been done. Hence, he intends to cancel the appointment of the applicant. A bare perusal of the impugned order shows that there is an amendment by which Sub Rule 3 of Rule 4 has been inserted by Director General, vide letter dated 9th May, 2003. This Rule will be effective from 9th May, 2003 and thus the respondent No. 2 can exercise these powers after 9.5.2003. The applicant's selection was taken place way back in May, 2002. There was no mis-representation of fact by the applicant as the applicant has furnished correct informations and documents to the Department. If the department has committed any procedural error, the applicant's livelihood cannot be snatched. The applicant has also submitted his reply to the notice dated 16.2.2004. Hence, the applicant is entitled for all the reliefs claimed by him.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that he submitted his application as per the notification issued by the respondents for the alleged post. He has not concealed any fact and also has not given any wrong informations to the respondents Department. He was duly selected on the said post

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and started working with utmost honesty, sincerity and devotion. The alleged rule was inserted by the Director General, Post vide letter dated 9th May, 2003 and was effective after the appointment of the applicant. There was no misrepresentation of fact by the applicant and he has furnished correct information and documents to the Department. If there is any error committed by the respondents, then the applicant should not suffer. The impugned show cause notice issued by the respondents is against the law and rules and is liable to be quashed and set aside. Our attention is drawn towards the judgment of the Hon'ble Supreme Court passed in the case of Chief of Army Staff & Ors. Vs. Major Dharam Pal Kukreti, (1985) 2 SCC 412, in which it is held that "Notice to show cause against proposed termination of service by authority without jurisdiction open to challenge under - Labour and Service". Hence, this OA deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the present OA is premature because the respondents have not issued any order of termination of the services of the applicant. They have simply issued a show cause notice. He further argued that after completion of the formalities the Supdt. of Post Offices, Rewa Division, Rewa made a selection of Magrora on 4.8.2002 and in the said post office the applicant has been appointed as a Gramin Dak Sewak by order dated 8.10.2002. It was found that according to the notification dated 22.4.2002 the alleged post was reserved to candidate of ST and no applications were received from the ST candidates and also no objection later has been received from the competent authorities. The respondents further argued that if the effective candidates are less than 3 then within the period of 15 days, the posts should be readvertised but the Supdt. of Post Offices Rewa Division failed to do so and made the appointment of the applicant against the said post contrary to the recruitment

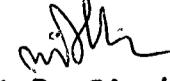
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rules. Hence, the impugned notice was issued. He further argued that the applicant has no right to file an Original Application for cancellation of the show cause notice. He should file objections against it in the Department and if subsequently any adverse order is passed against him, then he should come to the Tribunal by way of filing an Original Application.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that in view of the notification dated 22.4.2002 (Annexure A-2) the applicant had applied for the aforesaid post with required documents. The Supdt. of Post Offices, Rewa Division, Rewa has appointed him on the said post. However, we find that the said post was reserved for ST candidates. On non-availability of ST candidates, the respondents-authority was required to obtain the necessary permission from the competent authority regarding filling up the said post by a general candidate after following the prescribed procedure laid down under the rules. It is apparently clear that the respondents have not followed the prescribed procedure before filling up the post of ST candidate by a general candidate. Thus there is an apparent error committed by the respondents. In this view of the matter we find that the aforesaid judgment cited by the applicant does not support his claim.

7. Hence, considering all the facts and circumstances of the case, we are of the opinion that the present OA is bereft of merits and is liable to be dismissed. Accordingly, the same is dismissed. No costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman