

Reserved
(On 09.05.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the **15th** day of **May** 2018.

Hon'ble Dr. Murtaza Ali, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A).

Original Application Number. 330/00196 of 2008

Digvijay Nath Dubey, S/o Lalji Dubey, R/o Jhajhawa, Belaghat, P.O. Shankerpur, District : Gorakhpur.

.....Applicant.

By Adv: Shri Anand Kumar & Shri S.K. Kushwaha

VER S U S

1. Union of India, through the Secretary, Ministry of Communication, Department of Posts, Dak Tar Bhawan, Parliament Street, Government of India at New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. Senior Superintendent of Posts Offices, Gorakhpur.
4. Inspector of Post Offices, Uruwa Bazar, Sub Division Gorakhpur – 273407.

.....Respondents

By Adv : Shri P. Srivastava & Shri S. Srivastava

ORDER

By Hon'ble Gokul Chandra Pati, Member (A)

The applicant has prayed for the following relief in this OA:-

- "i. to issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 12.02.2008 (Annexure A-1) passed by respondent no. 4, and order dated 13.02.2008 passed by respondent No. 4.*
- ii. To issue a writ, order or direction in the nature of mandamus commanding the respondents no. 3 and 4 to given the effect and implementation of impugned order dated 12.02.2008 during the pendency of present O.A. before this Hon'ble Court.*
- iii. to issue a writ, order or direction in the nature of mandamus directing the respondents nos. 3 and 4 to permit the applicant to work as usual as before 12.02.2008.*
- iv. to issue a writ, order or direction in the nature of mandamus directing the respondents to pay the salary month to month for which he is entitled.*
- v. the Hon'ble Tribunal may be pleased to issue any such other and further orders or direction in favour of the applicant as this Hon'ble Tribunal may deem to be just and*

proper in the facts and circumstances of the case and which the applicant may be entitled to under law, otherwise the applicant shall suffer irreparable loss and injury.”

2. The brief facts of the case are that on a notice/advertisement for the post of GDS MD/MC Lakhuapakar by the respondents, the name of the applicant was sponsored by the Employment Exchange, Gorakhpur. The applicant had furnished the details as required by the notice of the respondents alongwith his application. After scrutiny of papers of the applicant and other candidates having higher marks than the applicant, the Respondent no.4 selected the applicant as a physically handicapped candidate vide letter dated 15.12.2007 (Annexure A-3) and he joined as GDS on 19.12.2007 (Annexure A-4). Before issuing appointment order to the applicant, the case of another candidate namely Ved Prakash Bhatt with marks of 59.83%, which is higher than the applicant's marks of 54% in High School, was examined and he was called on a scheduled date for documents verification. It is stated in the OA that Ved Prakash Bhatt did not produce his documents for inspection and he said that he was not interested to join the said post. The Respondent no.4 had submitted a report dated 12.11.2007 (Annexure A-5) in this regard.

3. Thereafter, the Respondent No. 3 issued a notice to the applicant vide letter dated 17.01.2008 (Annexure A-6) stating that appointment of the applicant has been made irregularly, as against the applicant's marks of 54%, there was another physically handicapped candidate with marks of 59.83% besides other candidates of general category with higher marks. In paragraph No. 3 of the letter dated 17.01.2008 (Annexure A-6), it has been stated that the date on which the appointment letter of the applicant was issued i.e. 15.12.2007, two separate orders were approved by the Inspector of Posts (Respondent No. 4). Therefore, an opportunity was given to the applicant to produce his documents on 04.02.2008 at 3.00 pm in the office of the Senior Superintendent of Post, Gorakhpur

(Respondent no.3), who had issued the letter dated 17.01.2008 (Annexure A-6).

4. It was further submitted in the OA that the applicant was selected under physically handicapped category, under which there were two other candidates. One of them i.e. Ved Prakash Bhatt who has secured higher marks than the applicant, refused to get the verification of his documents done when he was asked by the respondents and other candidates had less marks than the applicant. It was, therefore, submitted that applicant's appointment was just and proper under handicapped quota as the post was vacant till his appointment i.e. 15.12.2007. It was also stated in the OA that the Respondent no.3 had no jurisdiction to issue the show cause notice dated 17.01.2008.

5. It was further submitted in the OA that the Senior Superintendent of Post Offices, Gorakhpur (in short SSPO) issued a letter to Respondent no. 4 to terminate the services of the applicant. Accordingly, Respondent No. 4 terminated the services of the applicant with immediate effect vide the impugned letter dated 12.02.2008. It was stated in the OA that the SSPO being the higher authority than appointing authority for the applicant, had no power and jurisdiction to review the appointment of the applicant made by the appointing authority i.e. Respondent no.4. Therefore, the impugned termination order dated 12.02.2008 is illegal and without jurisdiction and malafide. It was also stated that vide instructions dated 13.11.1997 of D.G. Posts, the higher authorities were given power to review the appointment issued by the lower authority and this instruction was quashed by the Full Bench of Madras Bench of this Tribunal in OA Nos. 577, 588 and 589 of 2002, R. Jambukeshwaran and others Vs. Union of India and others decided on 08.01.2004 and reported in 2004 (2) ATJ page 1. The Hon'ble Apex Court in the case of Union of India & Ors vs.

Bikash Kunwar reported in 2006 (111) FLR 707 has held that authority exercising their executive powers cannot review the appointment made by the lower authority.

6. In the counter affidavit filed by the respondents, it was stated that Ved Prakash Bhatt having 59.83% of marks in High School and being a physically handicapped candidate, was not issued any letter on 30.10.2007 referred to in the OA. It was further submitted that as per the departmental instructions, next higher authority can review the appointment order issued by appointing authority for GDS / EDDA. The applicant was served a show cause notice dated 17.01.2008 for hearing in person on 04.02.2008. When he was heard, no satisfactory reply was given by him at the time of hearing. Thereafter, the Respondent no.4 was advised to terminate the applicant's service vide letter dated 11.02.2008 of Respondent No. 3. Accordingly, the services of the applicant were terminated by the Respondent no.4 on 12.02.2008 (Annexure CA-5 to the Counter Affidavit) with immediate effect under the provision of Rule 8 of GDS (Conduct and Service) Rules, 2001. It was stated that the applicant refused to receive the termination order dated 12.02.2008 and also refused to hand over the charge. Ram Briksh GTDS MD, Belghat, Gorakhpur joined on the post of GDS MD/MC, Lakhua Paker (Belghat) on 13.02.2008. It is stated in the counter affidavit that the appointment of applicant was found by the authorities to be irregular and against the recruitment rules, as such the same was cancelled.

6. The applicant filed the Rejoinder, denying the contentions in the Counter affidavit filed by the respondents and reiterating the contentions in the OA. It denied the stand that the letter dated 30.10.2007 to Ved Prakash Bhatt was forged, for which it was suggested that the original file pertaining to the said selection be produced (para 13 of the Rejoinder). It

was reiterated that since after refusal of Ved Prakash Bhatt, among physically handicapped candidates, the applicant had highest marks. Hence, it was submitted that the applicant was regularly appointed vide order dated 15.12.2007.

7. In the Supplementary Counter Affidavit filed in objection to an amendment application filed by the applicant, following important additional point was mentioned by the respondents:-

- The then Sub-Divisional Inspector considered the candidates who were physically handicapped, although there were 16 applications received by the department, many of whom were much higher in merit than the applicant. As per the instructions dated 21.04.1994, physically handicapped quota can be allocated only by CPMG/PMG and this particular post was not allocated to be for physically handicapped quota. As such, the decision of SDI to only consider physically handicapped candidates was contrary to the policy of the department.

In reply, to the Suppl. Counter affidavit, the applicant filed a Supplementary Rejoinder, generally denying the contentions, including the contention that the post was not allocated for physically handicapped quota by the CPMG/PMG. It was also pointed out that the respondents on one hand take the plea in para 7 of the Counter that there was one physically handicapped candidate (Ved Prakash Bhatt) who was of higher merit than the applicant and on the other hand they also take the plea in para 5 of the Suppl. Counter that there were 11 more meritorious candidates than the applicant.

8. This Tribunal while hearing the case initially had passed an order dated 28.02.2008 directing the respondents not to appoint any other person in place of the applicant against the said post. The respondents

had filed a Supplementary Affidavit on 15.1.2009 stating that the applicant is continuing in the said post by virtue of the stay order dated 28.2.2008 of this Tribunal. It was also stated that under the rules, the applicant should have approached the PMG for his grievances, but he has approached this Tribunal directly without exhausting the alternative remedy, which is contrary to the section 19(6) of the Administrative Tribunals Act, 1985.

9. On 7.10.2016, a Misc. Impleadment application was filed by one outsider Shri Ranjit Kumar Shukla who wanted to be impleaded in the OA stating that he was an applicant securing higher marks than the applicant for the post which was unreserved. The applicant of the OA was lower in the merit list and was not entitled to any preference for being a physically handicapped candidate. Still he was appointed with a condition that the appointment is liable to be cancelled if a candidate with higher merit challenges it. The said impleadment application was duly considered by this Tribunal and was rejected vide order dated 31.07.2017 due to objections raised by the applicant and due to delay in filing the application for impleadment which was moved after a lapse of 9 years of filing the OA.

10. The case was heard by us on 9.05.2018. Learned counsel for the applicant reiterated the stand in the pleadings and emphasized on the point that the impugned order which is admittedly issued by the appointing authority as per the instructions of his senior officer, is illegal in view of the Full Bench decision of Madras Bench of this Tribunal in the case of R. Jambukeswaran and ors. vs. Union of India and ors. It was also submitted that the applicant was regularly appointed against physically handicapped quota since the candidate with higher merit did not want to join for document verification. Learned counsel for the applicant also submitted copy of the following judgments cited by him in support of his case:-

- i. **2004 (2) ATJ 1 – R. Jambukeswaran and ors. vs. Union of India & Ors.**

- ii. **9001 (1) ATJ 592 – Sri Bharat Chandra Behera vs. Secretary, Department of Posts, Ministry of Communication, New Delhi and Ors.**
- iii. **2003 (1) ATJ 705 – Jyothiraj Thirakappa Lalege, vs. The Senior Superintendent of Post Offices, Belgaum and Ors.**
- iv. **2006 (111) FLR 707 – Union of India and others vs. Bikash Kuanar**

11. Learned counsel for the respondents submitted that the post was an unreserved post and no reservation was indicated in the notice issue to the Employment Exchange (Annexure CA-1). The then officer who was the appointing authority had to face external pressure as recorded by him in the letter dated 15.12.2007 (Annexure CA-2 at page 22 of the Counter), for which the post was treated to be physically handicapped quota to appoint the applicant. It was further submitted that one physically handicapped candidate with higher merit than the applicant was available and he was never called for document verification, contrary to the applicant's contention.

12. We have considered the submissions as well as the pleadings of the parties and also perused the case laws cited by the applicant's counsel. The issue we need to decide is whether the ratio of the judgments cited by the applicant's counsel is applicable for this case.

13. In Full Bench judgment of Madras Bench of this Tribunal, the facts of the case and the reason for terminating the service of the applicant in that case before the Full Bench are explained in para 2, 3, 4 and 6 of the judgment as under:-

“2. In December 1999, the Assistant Superintendent of Post Offices has issued an advertisement calling for the applications from eligible candidates for the applications from Departmental Delivery Agents, Edumalai. The applicant has also submitted his application and was interviewed alongwith other candidates. On 24.12.1999, he received a letter from the Assistant Superintendent of Post Offices that he had been selected for the abovesaid post. He was asked to join the post of 24.12.1999. The Assistant Superintendent of Post Offices issued a regular appointment order on 9.5.2002 stating that the applicant had been appointed with effect from 24.12.1999.

3. *While he was working as such from 24.12.1999, he received a notice to show cause dated 29.4.2002 wherein it was mentioned that his appointment was erroneous and that the Superintendent of Post Offices, Srirangam Division had reviewed the appointment made by Assistant Superintendent of Post Offices. The applicant had submitted a reply. Vide the impugned order, the said respondent is purported to have held that the appointment had been made erroneously. The appointment as such as such of the applicant had been cancelled.*

4. *By virtue of the present application / applications, it was prayed that the said order should be quashed and the applicant / applicants should be reinstated.*

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6. *The Superintendent of Post Offices had reviewed the matter. The operative part of the said order reads:-*

“Accordingly to the well set rules of the department of meritorious candidate in all respect should alone be selected for the GDS post. But here in this case the selection of Shri R. Jambukeswaran the fourth meritorious candidate by sidelining the first three meritorious candidates by name S/Shri T. Ravi 2) A. Yoganathan 3) D. Renganathan was, as already informed vide SAPOS Turaiyur (E) memo No. DDDA/ Ddumalai dt. 29.04.2002 not in order and reasons enumerated for the selection were in violation of of instructions / rules of the department and hence the selection of Shri R. Jambukeswaran cannot be upheld by any standard and as such his representation is rejected.

In view of the above selection of Shri R. Mambukeswaran, to the post of EDDA, Edumalai is ordered to be cancelled forthwith.”

The question before the Tribunal was whether the instructions contained in the letter dated 13.11.1997 allowing higher authorities to review the appointments made by the appointing authority is valid or not and the ratio that was followed in the said judgment has been explained in para 12 and the findings are in para 13, 29 and 30 stating as under:-

“12. *With this basis principle of mind, we deem it necessary to mention that two earlier Full Bench had gone into this similar controversy though the instructions were issued under the Rules. IN the decision rendered by the Full Bench at Allahabad in the case of Tilak Dhari Yadav v. Union of India, (1997) 36 ATC 539 (FB), the question before the Full Bench was:-*

“Whether Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964, confers A power on the appointing authority or nay authority superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee without giving him an opportunity to show cause?”

The answer given was:-

“Rule 6 of Post and Telegraphs Extra- Departmental Agents (Conduct and Service) Rules, 1964 do not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause.”

Another Full Bench of this Tribunal at Hyderabad in the case of N. Ambujakshi (supra) was also concerned with almost a similar controversy. The two questions posted before the Full Bench were:-

“(i) Whether Rule 16 of EDA Conduct and Service Rule, 1964 confers power upon the higher administrative authority to revise the order of appointment passed lower authority:

(ii) Whether the administrative has power to revise the order of appointment passed by lower administrative authority on the ground that the former is administrative head of the later, i.e. whether the superior administrative authority has inherent power to revise the order of appointment passed by the lower administrative authority, for setting aside the same?”

The answer provided was almost the same that a higher administrative authority has no power inherent or otherwise to revise the order of appointment passed by a lower administrative authority. The same reads:-

“(i) Rule 16 of the Posts and Telegraphs Extra-Departmental Agents (Conduct and 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 or to set aside the same.”

(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.”

- 13. Once the question had been answered and there are no judicial pronouncement in this regard, normally fresh instructions which are presently under the gaze of this Tribunal should not have been issued. The same, as we have reproduced above, are totally contrary to the pronouncement of the two Full Benches.**

- 29. In fact, it appears that the mistake has now been rectified because the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2001 have come into force. They have replaced the earlier Rules of 1964, In the year 2003, the rules of the year 2001 had been amended giving superior authority the power to act. The amendment reads:-**

“The following rules are issued under the authority of Government of India to amend the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001, except as respects things done or omitted to be done before such amendment, manly:-

- 1. (i) These rules may be called the Department of Posts Gramin Dak Sevaks (Conduct and Employment) Amendment Rules, 2003**

(ii) They shall come into force from the date of their circulation.

- 2. In the Department of Posts, Gramin Dak Sevaks (Conduct and Employment) Rules, 2001, in Rule 4, after sub-rule (2), the following Sub-rule shall be inserted, namely:**

“(3) Notwithstanding anything contained in these rules, any authority superior to the Appointment Authority as shown in the Schedule, may, at any time, either on its own motion or otherwise call for the records relating to the appointment of Gramin Dak Sevaks made by the Appointing Authority, and if such Appointing Authority appears-

- (a) to have exercised a jurisdiction not vested in it by any law or rules time being in force; or**

- (b) *to have failed to exercise of its jurisdiction so vested; or*
- (c) *to have acted in the exercise of its jurisdiction illegally or with material irregularity; Such Superior Authority may, after giving an opportunity of being heard makes such order as it thinks fit".*
This obviously shows that presently to mistake has been corrected. So far as the instructions of 1997 are concerned, the same must be held to be unreasonable and arbitrary.

30. *For these reasons, we allow the present application and order:-*
- (a) *The instructions under question dated 13.11.1997 are quashed;*
 - (b) *The impugned orders terminating the services of the different applicants are quashed; and*
 - (c) *The said applicants are entitled to re-instatement forthwith with all consequential benefits*
No costs."

14. In the case of Union of India and others vs. Bikash Kuanar decided by Hon'ble Apex Court, the respondent, Bikash Kuanar was appointed as Extra Development Delivery Agent on 02.07.1998 and then his services were cancelled on 2.1.1999 on the ground that two other applicants with higher merit were ignored while selecting Bikash Kuanar, who took the matter to Cuttack Bench of this Tribunal and lost. The matter was then agitated before Hon'ble High Court, which decided the case in favour of Bikash Kuanar. In appeal against this order by Union of India, Hon'ble Apex Court held as under:-

- "6. *The Division Bench after hearing the counsel for the parties observed that the power of review is conferred by the statute. In case of an appointment made under the Rules framed for the purpose of appointment, such appointment could not be cancelled either by the same authority or higher authorities in exercise of power of administrative exigency.*
7. *The High Court in the impugned judgement also stated that the civil rights had already accrued to the respondent who rendered one and a half years of service. Once such civil rights had accrued, the authorities exercising their executive power cannot review the appointment.*

13. *The Division Bench of the High Court, in our considered view, correctly applied the law, which has been crystallized in a number of decisions of this Court. Indisputably, the respondent has fulfilled all the essential terms and conditions for the appointment to the said post. The respondent alone had submitted all necessary and required documents before the date prescribed by the appellants. It may also be pertinent to mention that at the time of selection the respondent was the only one who had the experience of working continuously on the said post for a period of one and a half years. Perhaps, all these factors cumulatively persuaded the concerned authorities to select the respondent to the said post.*

14. *In our considered view, no interference is called for in the impugned judgment. The appeal, being devoid of any merit, is accordingly dismissed.*

15. In the case of Jyothiraj Thirakappa Lalege (supra), CAT Bangalore Bench in a similar case where the applicant in that case after being selected provisionally as ED BPM on 25.5.2000 was issued a show cause notice on 4.10.2001 and his services were terminated under the rule 8(2) as per the order dated 28.12.2001. In this case also, the Tribunal vide order dated 11.3.2003 also came to conclusion that the higher authority cannot review the appointment and the said OA was allowed. Similarly, in the case of Sri Bharat Chandra Behera (supra) decided by Cuttack Bench of this Tribunal on 27.2.2001, It was held as under:-

“10. *In the result, we hold that cancellation of selection of the applicant at the behest of the reviewing authority cannot be sustained under law, and consequently his appointment cannot be terminated. If in case the applicant is already served with the termination notice and / or services of the applicant have been terminated, he should be reinstated in the post of E.D.B.P.M., Lendura – Bhagabanpur B.O. forthwith.*

16. It is noticed that in all four cases cited by the learned counsel for the applicant, the orders for termination of services were issued prior to the amendment to the GDS (Conduct and Employment) Rules, 2001, which was undertaken in 2003 to meet the deficiency in the rules which gave rise to a number of judgments including four judgments cited in this case. As noted in para 29 of the Full Bench judgment in the case of R. Jambukeswaran (supra), this amendment was to insert the sub-rule (3) in the rule 4 of the GDS (Conduct and Employment) Rules, 2001, under which any authority superior to the appointing authority can review the appointments made under the said rules by following the procedure specified there under. Coming to the present OA before us, the facts in this OA are similar to the case before the Full Bench judgment in the case of R. Jambukeswaran (supra), which was decided on 08.01.2004 as well as all other cases cited by the applicant's counsel, except for the fact that

in this OA, the impugned order was dated 12.2.2008, when the sub-rule 4(3) was already incorporated in the GDS (Conduct and Employment) Rules, 2001. The respondents in their pleadings have defended their action to terminate the services of the applicant under the rule 8 (2) of the GDS (Conduct and Employment) Rules, 2001 since as per the departmental instructions, an authority who is superior to the appointing authority can review the appointment made by the appointing authority and can direct to terminate the services of a GDS. In view of the case laws, cited by the applicant's counsel, this is not permissible for termination under the rule 8 (2) which does not have such provision.

17. It is noted that the Respondent No. 3 being the authority superior to the appointing authority in this case i.e. Respondent No. 4, did not act under the rule 4(3) of the GDS (Conduct and Employment) Rules, 2001, which was very much in force when the applicant was appointed on 15.12.2007. Instead, action under the rule 8 was taken by the appointing authority as per the direction of his higher authority, to terminate the services of the applicant on the ground of irregularity in appointment of the applicant. It is noted that inspite of the fact that the circular dated 13.11.1997, which authorized the higher authorities to review the appointment made by the appointing authority, was set aside by the Full Bench judgment in the case of R. Jambukeswaran (supra), the respondents in para 16 of the counter affidavit in this OA have referred to departmental instructions authorizing next higher authority to review the appointment order. Why the Respondent no. 3 failed to act under the rule 4(3) of the GDS (Conduct and Employment) Rules, 2001 after detecting irregularity in appointment of the applicant, has not been explained in the pleadings of the respondents. The respondents have justified their action with the help of the contentions in the pleadings, which have been consistently rejected by this Tribunal and by Hon'ble Apex Court. Hence,

we are of the view that the ratio of the judgments cited by the applicant's counsel are also applicable to this OA. The issue framed at para 12 is answered accordingly.

18. In view of the above discussions, we set aside and quash the impugned order dated 12.2.2008 (Annexure A-1), following the judgment dated 8.1.2004 of Full Bench of this Tribunal in the case of R. Jambukeswaran (supra) and the judgment of Hon'ble Apex Court in the case of Bikash Kuanar (supra) and direct the respondents to allow all consequential service benefits to the applicant as per the rules. The interim order dated 28.02.2008 in this case stands vacated. It is clarified that we have not examined or adjudicated in this OA on the issue as to whether the appointment of the applicant is irregular or not.

19. Before we part with the case, we would like to draw the attention of the Respondent no. 1 to the facts discussed in para 16 and 17 of this order to examine the reasons for failure of the Respondent No. 4 to initiate action under the rule 4(3) of the GDS (Conduct and Employment) Rules, 2001 after detection of irregularity in the appointment process and to take necessary corrective action in the matter as deemed appropriate. The Registry is directed to send a copy of this order to the Respondent no.1 for this purpose.

20. Accordingly, the OA is allowed in terms of the directions in paragraph Nos. 18 and 19 above. No costs.

(Gokul Chandra Pati)
Member (A)

(Dr. Murtaza Ali)
Member (J)

/pc/