

Central Administrative Tribunal
Principal Bench

C.P. No. 72 of 1999
M.A. No. 2009 of 2000
R.A. No. 272 of 2000
M.A. No. 2090 of 2000
in
O.A. No. 722 of 1993

New Delhi, dated this the 19 September, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

C.P. No. 72 of 1999

Prakash Chand
S/o late Shri Misri Lal,
Vill. & P.O. Ladhpur,
Chhata,
Dist. Mathura, U.P. .. Applicant

(By Advocate: Shri R. Doraiswamy with
Shri Sant Singh)

Versus

Shri Bankey Bihari Mittal,
Senior Superintendent of Post Offices,
Mathura Division,
Dist. Mathura, U.P. .. Respondent

(By Advocate: Shri N.S. Mehta)

R.A. No. 272 of 2000

Gian Singh,
S/o Shri Duli Singh,
EDBPM,
Ladpur,
Dist. Mathura, U.P. .. Review Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Union of India through
the Secretary,
Ministry of Communication,
Sanchar Bhawan,
New Delhi.
2. Sr. Superintendent of Post Offices,
Mathura Division,
Mathura, U.P.

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3. Prakash Chand,
S/o Shri Misri Lal,
Vill. & P.O. Ladpur,
Chhata,
Dist. Mathura, U.P. .. Respondents

(By Advocates: Shri N.S.Mehta
Shri R.Doraiswamy with
Shri Sant Singh)

ORDER

S.R. ADIGE, VC (A)

Heard both sides.

2. ^{shortly}~~Shri~~ stated, consequent to a new Post Office being opened in village Ladhpur, Chhata, District Mathura on 17.9.92, the Employment Exchange, Mathura was called upon to send names of suitable candidates i.e. residents from the village, for appointment to the post of EDBPM, Ladhpur. The names of Prakash Chand as well as Gian Singh were received from the Employment Exchange. Applications in the prescribed form were invited from all the candidates. After completion of usual formalities regarding verification of character and antecedents, property and marks secured, by the candidates, Shri Gian Singh was provisionally appointed as EDBPM, Ladhpur Chhata by order dated 23.3.93 (copy on record).

3. Meanwhile Shri Prakash Chand who had learnt about the opening of the P.O. at Ladhpur, Chhata ^{had} separately submitted an application for appointment as EDBPM in that Post Office. His application was forwarded by the local postman one Lakshmi Narain on 16.9.92 with the endorsement that

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if the job of EDBPM, Ladhpur Chhata was given to Prakash Chand and if there was any loss incurred, he (Lakshmi Narain) took responsibility for the same.

4. Pursuant to Prakash Chand's application, he was put to work as EDBPM, Ladhpur Chhata, pending appointment of an EDBPM as per rules and instructions.

5. Upon issue of respondents' order dated 23.3.93 appointing Gian Singh as EDBPM, Ladhpur Chhata, Prakash Chand filed O.A. No. 727/93 impugning that order. In the O.A. Gian Singh was made Respondent No.3. The O.A. was heard and disposed of by order dated 17.9.97. During hearing Respondent No.3 was not represented. By the order dated 17.9.97, the O.A. was allowed, the impugned order dated 23.3.93 was quashed and set aside, on the ground that when Prakash Chand had been provisionally appointed as EDBPM, another person namely Gian Singh could not be provisionally appointed, merely on the ground that Gian Singh possessed better qualifications. Respondents 1 and 2 were directed to make regular appointment of EDBPM, Ladhpur Chhata in accordance with rules and instructions after considering the claims of all eligible candidates, including Prakash Chand and Gian Singh, within four months from the date of receipt of a copy of the order. Till the regular appointment was made Shri Gian Singh was to continue as EDBPM, Ladhpur Chhata.

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6. Thereupon Respondents No.1 and 2 filed M.A. No. 122/98 stating that a typographical mistake in the order dated 17.9.97 had occurred in as much as the date of the impugned order which was actually 23.3.93 had wrongly been shown as 27.3.93. Shri Gian Singh also filed an M.A. bearing No. 467/98 opposing the relief sought for in M.A. No. 122/98 praying that he be heard in the O.A. as it had been disposed of without hearing him. It was further mentioned in this M.A. that he had already filed an R.A. which should be disposed of first.

7. M.A. No. 467/98 and No. 122/98 were disposed of by order dated 6.11.98. By that order, M.A. No. 467/98 was dismissed as being hit by limitation, while M.A. No. 122/98 for making the typographical correction was allowed. In that order it was inter alia noticed that Shri Gian Singh's R.A. was dated 22.1.98.

8. Now Prakash Chand has filed C.P. No. 72/99 alleging contumacious non-compliance of the Tribunal's order dated 17.9.97. On the other hand Gian Singh has filed R.A. No. 272/2000 for recall of the order dated 17.9.97, & M.A. No. 2090/2000 for condonation of delay. In this connection it bears notice that Gian Singh had filed a writ petition in the Delhi High Court against the order dated 17.9.97. Subsequently he also filed CMP No. 6384/99 in the Delhi High Court on which the Delhi High Court directed maintenance of status quo. Subsequently upon his apprising the Delhi High Court that he had

filed the R.A., his CMP was dismissed as withdrawn by Delhi High Court vide order dated 21.7.2000. Meanwhile he has also filed M.A. No. 2009/2000 for stay of the order dated 17.9.97 till the disposal of the R.A.

9. We have considered the rival contentions carefully.

10. During the course of hearing the departmental representative who was present in Court stated that while no doubt the appointment order dated 23.3.93 in respect of Gian Singh stated that he had been appointed on provisional basis, in actual fact the full procedure for regular appointment had been followed, in as much as names were called for from the Employment Exchange and the relative merits of the candidates who had been sponsored were evaluated in accordance with the prescribed guidelines and it is because Gian Singh had secured higher marks in High School Examination that he was selected. We have perused the relevant file No. B-4/Ladhpur Chhata and find that this indeed so. From that file it is clear that names of suitable candidates were called for from the Employment Exchange for appointment as EDBPM, Ladhpur Chhata. On receipt of names, a tabular chart was prepared which contains Prakash Chand's name as well as that of Gian Singh (Page 113/C of that file), while Gian Singh had obtained 53.3% marks in High School Examination, Prakash Chand had obtained only 39.4% marks. It is for this reason that the absolutely

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temporary arrangement by which Prakash Chand was looking after the work of EDBPM, Ladhpur Chhata was terminated and by order dated 23.3.93 Gian Singh was appointed as EDBPM, Ladhpur Chhata. Even the form used for the issue of Shri Gian Singh's appointment was the form for regular appointment. Under the circumstances, merely because the word 'provisional' was used in the aforesaid appointment order, does not detract from the fact that the entire procedure for making a regular appointment was followed in this case.

11. Further more even if a regular appointment were held now, the claim of Shri Prakash Chand to the post EDBPM, Ladhpur, Chhata would be inferior to that of Shri Gian Singh, the former having secured far less marks in High School Examination.

12. It is not denied that Shri Gian Singh has been continuing as EDBPM, Ladhpur, Chhata ever since 1993 and it would certainly be unfair and unequitable to compel him to participate in another selection, even when he was regularly selected and appointed in 1993, merely because in the appointment order of 27.3.93 respondents used the word 'provisional' while appointing him.

13. It is clear that these facts were not placed before the Tribunal when it passed its order in O.A. No. 722/93 on 17.9.97, as a result of which

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it proceeded on the basis that Shri Gian Singh's appointment as EDBPM was provisional when it was actually a regular appointment. This constitutes an error apparent on the face of the record, as a result of which the R.A. comes within the scope and ambit of Section 22(3) A.T. Act read with Order 47 Rule 1 C.P.C.

14. As regards the slight delay in filing the R.A. the same is condoned and M.A. No. 2090/2000 is allowed in the light of the circumstances explained.

15. In the result M.A. No. 2090/2000 and R.A. No. 272/2000 are allowed. The Tribunal's order dated 17.9.97 is recalled, and O.A. No. 722/93 is disposed of holding that impugned order dated 27.3.93 warrants no judicial interference.

16. In the light of the above C.P. No. 72/99 is also dismissed and notices are discharged.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

(S.R. Adige)
Vice Chairman (A)

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