

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No.1556 of 2001

....., this the 18th day of January, 2008

CORAM:

HONBLE DR. K B S RAJAN, JUDICIAL MEMBER
HONBLE MR. K S MENON, ADMINISTRATIVE MEMBER

Smt. Karuna Prabha,
W/o. Shri Amod Pratap Tripathi,
Permanent resident of village and
Post Office, Bihar, District Farrukhabad ... Applicant.

(By Advocate Mr. P. Srivastava for Mr. S. Narain)

v e r s u s

1. Union of India through the Secretary,
Ministry of Communications,
Departemnt of Posts, Government of
India, New Delhi.,
2. The Chief Post Master General,
Uttar Pradesh, Lucknow.
3. The Post Master General, Kanpur.
4. The Superintendent of Post Offices,
Fatehgarh Division, District
Farrukhabad : 209 625
5. Sri Pradeep Kumar Saxena,
S/o. Sri Ram Pratap Saxena,
Resident of Village and Post Office,
Bihar, District Farrukhabad. ... Respondents.

(By Advocate Mr. D.K. Dwivedi & Mr. A. Srivastava)

O R D E R
HONBLE DR. K B S RAJAN, JUDICIAL MEMBER

The issue is short, involving one individual (private respondent) who had been issued with the Annexure A-1 Appointment order dated 20-12-2001, appointing him as Gramin Dak Sevak (ED) BPM, Bihar, Dist. Farukkabad and the applicant, who claims that the said appointment should

go to him. The ground for the said claim is that the applicant is meritorious inasmuch as she had secured 62% in the High School Examination, apart from passing the intermediate examination and that she fulfills the other requisite conditions i.e. possession of immovable property/having the requisite premises for running the Post Office.

2. Official respondents have, in their version, stated that the applicant was indeed second in merit, but, the first one having not fulfilled the requirement of owning immovable property, the applicant was taken as the meritorious one. However, though the applicant could furnish the details of possession of immovable property, on verification, it has been found that that the property was encumbered with a mortgage with the Bank of India and hence, it cannot be said that the applicant fulfills the qualification relating to property and it was for this reason, that the next meritorious candidate, who had fulfilled the other qualifications also was issued with the appointment order.

3. Private respondent has stated that when the property is encumbered, then the same cannot be taken into account and in this regard he has relied upon order dated 30-01-1997. It has been contended by the said respondent that the crucial date for establishing possession of unencumbered property was 09-05-2001 whereas, on that date, the property said to have been possessed by the applicant was found mortgaged and the mortgage was released only on 25-06-2001. Sale of the property to the applicant when the property was under mortgage is also not valid. Apart from the same, the requirement of having adequate income was also not

fulfilled by the applicant.

4. The applicant in his rejoinder had reiterated his contentions and averments as contained in the OA. His contention in the rejoinder included that the appointment to the private respondent was dated December, 2001 by which time, the applicant had got the property released from mortgage and as such, as of 25-06-2001 he must be considered to have fulfilled all the qualification, even in respect of property requirement.

5. Counsel for the applicant argued that there is no scope of the appointment of the applicant being ignored by the respondents as he fulfills all the qualifications. He had relied upon the following decisions in support of his case:-

- (a) 2004(12) SCC 58 – Suman Verma vs UOI and others.
- (b) 2004(1) ATJ 1 – Rana Ram vs UOI of India (FB)
- (c) 2006(1)ESC 296 (All)- Shah Alam vs CAT & Ors (High Court, Allahabad)
- (d) 2005(2) ATJ 401 – M. Sudha Rani vs UOI and others (Hyd. Bench)

Counsel for the official respondents submitted that on enquiry as it was found that since the property was found mortgaged when inspection was carried out, the next meritorious candidate was selected. Counsel for the private respondent reiterated the contents of the counter filed by the said private respondent.

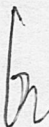
6. Arguments were heard and documents perused. First, the contention of the private respondent that the applicant has no adequate income has to be summarily rejected in view of the the Full Bench judgment in OA No. 297/2000 of Jodhpur Bench (Rana Ram vs U.O.I

and others) relied upon by the counsel, wherein vide para 19 thereof it has been held, "*Possessing of adequate means of livelihood in terms of circular dated 06-12-1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the abovesaid post.*" Now, as regards the other aspects as to merit and possession of immovable property, admittedly, the applicant is more meritorious in academic qualifications. In so far possession of property is concerned, the purpose, no doubt, is with a view to ensuring adequate solvency of the appointee to make good any possible loss by the appointee. No doubt, the property was in the name of the applicant but at a particular time, it was encumbered by a mortgage. The order dated 30-01-1997 states, "*... the title to the landed property should be unencumbered and undisputed so that in case it becomes unavoidable to effect recoveries of loss etc, caused to the Department, the same can be effected without any legal hitch.*" The one who was the most meritorious, was given an opportunity vide para 3(b) of the official respondents' counter, to ensure fulfillment of the property possession requirement, but the said individual did not respond to the same. This was as of 18-05-2001. It was thereafter that the applicant's case was considered and it was by 13th June, 2001 that on enquiry it was found by the department that the property was encumbered. It was, at that time, expected of the respondents to give an opportunity to the applicant to have the encumbrance cleared so that he could be in a position to be appointed. This was obviously not done. In fact, by the time the private respondent has been issued with the appointment order, the property of the applicant stood released from mortgage as is evidenced from Annexure A-12. This is the admitted position. The contention of the private respondent that as of 09-05-2001 the applicant was to possess unencumbered title to the property

cannot be accepted as the relevant rules on the material point of time, do not stipulate that at the time of application itself there should be the fulfillment of the property requirement. It could be at the time just before issue of the appointment order or at the time of taking over the appointment. The property requirement is for the specific purpose as contained in order dated 30-01-1997 that in case it becomes unavoidable to effect recoveries of loss etc, caused to the Department, the same can be effected without any legal hitch. The applicant thus fulfills all the requirements and hence, he ought to have been appointed to the post of EDBPM, Bihar, District Farukkabad.

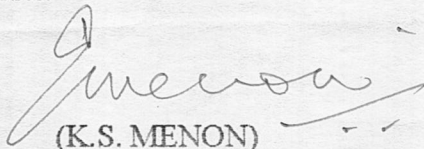
7. The OA thus, succeeds. Appointment order dated 20-12-2001 is quashed and set aside. Respondents are directed to pass suitable orders for appointment of the applicant to the post of GDSBPM, Bihar, Dist. Farukkabad. This be done within a period of two months from the date of communication of this order.

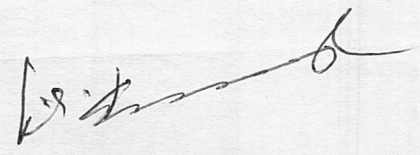
8. The private respondent has by now completed as many as six years of service and though his appointment is subject to the final outcome of this OA vide order dated 27-12-2001 of this Tribunal, the fact remains that the said private respondent continued in the post. He would not have tried elsewhere for appointment on the ground of his continuing as such in the post. As such, he must at least be treated to have been appointed on provisional basis and all the concessions and benefits available to the provisional appointees of over three years should be extended to the private respondent. One such benefit is to regularize the services of the provisional appointee and if there be any vacancy to the post of GDS in any of the



Division concerned, the same shall first be offered to the said private respondent subject only to the condition that there is no one waiting for such regularization ~~be~~ with the service more than that of the private respondent. Till such time he is so appointed, he shall be kept in the waiting list and in case meanwhile any short time vacancy arises, he may be considered for the same too. This order is in tune with the decision of the Apex Court in the case of Suman Verma vs Unjion of India and others reported in (2004) 12 SCC 58, which though relied upon by the applicant's counsel in support of his case, is conveniently used in support of the private respondent in respect of the above concession.

9. No costs.


(K.S. MENON)
ADMINISTRATIVE MEMBER


(K B S RAJAN)
JUDICIAL MEMBER