

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 2nd DAY OF JULY, 2001

Original Application No.1781 of 1994

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Kedar Nath Pandey, son of
Shri Ram Ugraha, r/o village Belwaria
Jungle(Gaura RS), Harriya, district
Basti.

... Applicant

(By Adv: ShriManoj Upadhya)

Versus

1. Union of India through Director,
Postal Services, Gorakhpur
Region, Gorakhpur.
2. Superintendent of Post Offices,
Basti.
3. Sub Divisional Inspector(Post Offices)
Basti.
4. Brahmadutt Pandey, son of Shri Ram
Nidhi Pandey, R/o Village Belwaria
Jungle (Gaura RS) Harriya,
District Basti.

... Respondents

(By Advs: S.C.Tripathi,A.Tripathi)

O R D E R (Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA the applicant has prayed for a direction to the respondent no.1 and 2 to cancel the appointment of respondent no.4 and allow the applicant to work on the said post of Extra Departmental Branch Post Master, Belwaria Jungle,(Gaura Railway Station), district Basti. It has also been prayed that the respondent no.1 and 2 may be directed to make appointment on the post of Extra Departmental Branch Post Master Belwaria Jungle in accordance with the provisions of Extra

Departmental Agents (Conduct & Service) Rules 1964.

The facts giving rise to this application are that Ram Kewal Maurya retired from the post of EDBPM Belwaria jungle on 1.10.1991. The applicant was allowed to discharge the duties of EDBPM also though he was Extra Departmental Runner. The vacancy was subsequently notified and a requisition was sent to the Employment Exchange Basti vide letter dated 26.10.1991 to forward suitable names for appointment as EDBPM. In response to the said letter Employment Exchange forwarded 5 names including the name of the applicant and respondent no.4. The Selection Committee selected respondent no.4 for appointment as EDBPM and he was issued appointment order dated 22.11.1991. He joined the post w.e.f. 13.12.1991. Challenging the said appointment of 1991 this application has been filed on 29.11.1994 i.e. after about three years.

Counter affidavit has been filed wherein the claim of the applicant has been denied. It has been stated that names of both applicant and respondent no.4 were considered but as respondent no.4 had served as EDBPM from 18.3.1983 to 5.6.1986 i.e. for three years and 18 days when earlier incumbents Ram kewal Mawurya was put off from duty respondent no.4 was preferred for appointment. In respect of the applicant it has been stated that applicant in his declaration form stated that he is not serving on any government post and thus he could not be considered as E.D.Agent. It has also been stated that on merits the respondent no.4 was found better in every respect.

Shri M.K.Upadhyaya counsel for the applicant has submitted that as applicant was serving as E.D.Runner in the same post office since 1982 he ought to have been appointed as EDBPM for which he had already made application, a copy of which has been filed as Annexure 8. It has also been claimed that as applicant was already discharging duties of EDBPM from 1.10.1991 his claim ought to have been considered by the respondents under rules. The learned counsel has placed reliance on a judgement of this Tribunal dated 23.12.1996 passed in OA 347/95.

The learned counsel for the respondents on the other hand submitted that the applicant did not claim appointment as ED Runner serving in the same post office. It has also been submitted that for invoking the provisions under the rules for preferential appointment as EDBPM applicant ought to have raised the claim but he got his name forwarded through Employment Exchange and participated in selection proceedings and when he was not selected on merits he filed this OA after a long delay of three years. The learned counsel for the respondents has submitted that the OA is liable to be dismissed as time barred. It has also been submitted that the respondent no.4 by now has served for about ten years and it will not be in the interest of justice to unsettle him at this stage.

We have carefully considered the submissions made by the counsel for the parties. The applicant has not denied his ^{own} declaration ^{form} duly signed by him and filed as Annexure II to the counter affidavit in which he ^{is} clearly stated that he is not serving in any government office or post. Thus, this was the indicator that applicant did not claim preferential

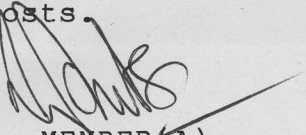
appointment, rather he preferred to compete with the names forwarded by the Employment Exchange. In such circumstances, it cannot be said that respondents committed any mistake in appointing respondent no.4 who was found more suitable and experienced than the applicant. It may be noted that respondent no.4 had already served as EDBPM earlier for over three years. The learned counsel for the applicant has placed much reliance on his application dated 8.10.1991. However, this application does not inspire confidence for the reason that applicant was already permitted to discharge the functions of EDBPM from 1.10.1991, ^{and} there was no occasion for him to make this application. The letter was sent to Employment Exchange for forwarding the names for appointment as EDBPM on 26.10.1991. The applicant approached Employment Exchange and got his name forwarded. The selection took place and respondent no.4 joined on 13.12.1991. The applicant kept quiet for about three years then filed this application. Considering the facts and circumstances mentioned above there was no occasion for the applicant to make this application. It appears that knowing his weakness ^{and} after realising the mistake committed by him in making declaration, he tried to create evidence in his favour that he had claimed preference. In the facts and circumstances of the case this document ^{does not} inspire confidence. The learned counsel has also placed reliance on the judgment of this Tribunal, however as the facts and circumstances ^{were} ~~are~~ different the judgment could not be applied in the present case and is clearly

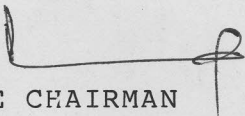
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distinguishable ^{on} facts.

The OA has no merit and accordingly dismissed.

No order as to costs.


MEMBER (A)


VICE CHAIRMAN

Dated: 02.7.2001.

Uv/