

OA 655/02

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

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original Application No. 483 of 2002

this the 30th day of May 2003.

HON'BLE MR. S.K. AGRAWAL, MEMBER (A)

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Satish Chandra, S/o Sri Raj Nath, R/o Village & post
Rasulpur, Varanasi.

Applicant.

By Advocate : Sri P.K. Singh.

Versus.

1. Union of India through Secretary, Ministry of Communication, Department of posts, New Delhi.
2. The Director, Indian postal services, Postmaster General office, Allahabad.
3. Supdt of post office, Varanasi Western Zone, Varanasi.
4. Nand Lal Ram, Sakha Dak Pal, Rasulpur, Varanasi.

Respondents.

By Advocate : S/Sri G.R. Gupta and S. Singh.

With

✓ original Application No. 655 of 2002.

Nand Lal Ram, S/o late Shambhu Ram, R/o Village & Post Rasulpur, Tehsil Pindra, District Varanasi.

Applicant.

By Advocate : Sri S. Singh

Versus.

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Director, Postal Service, PMG, Allahabad.
3. Supdt. of post offices, Varanasi Division, Varanasi.
4. Sub-Divisional Inspector of post offices, Barragan District Varanasi.



5. Sri Satish Chandra, S/o Sri Rajnath, R/o Village & Post Rasoolpur, Tehsil Pindra, District Varanasi.

Respondents.

By Advocate : Sri G.R. Gupta & Sri P.K. Singh.

O R D E R

BY MRS. MEERA CHHIBBER, MEMBER(J)

Both these O.A.s are connected matters as they relate to the same post, therefore, we are disposing off both these O.A.s by passing a common order.

2. Sri Satish Chandra-applicant in O.A. no. 482/02 has challenged the order dated 12.4.2002 passed by the respondent no.2 whereby appointment given to him was cancelled and a direction was given to appoint Sri Nand Lal Ram as Shakha Dak Pal, Rasoolpur, Varanasi (page 13). The applicant has further sought a direction to the respondents to reinstate him with full back wages on the post i.e. Shakha Dak Pal, Rasoolpur, Varanasi and pay salary from month to month.

3. It is submitted by the applicant in this case that he had applied for the post of Sakha Dak Pal pursuant to the advertisement issued by the respondent no.3. He was duly selected and was given appointment letter on 19.7.2001 (Annexure A-1). The applicant took-over charge on 20.7.2001. On July 23.7.2001 & 24.7.2001, he was sent for practical Training at Sub post office, Badagaon. He had been performing his duties regularly and sincerely, but since one Nand Lal Ram gave a complaint to the respondent no.3 that the applicant ~~has~~ ^{2 does 2 have 2} not handed property in his name, therefore, show-cause notice dated 24.1.2002 was served on the applicant, to which he immediately replied vide his letter dated 15.2.2002 (Annexure A-5). It is submitted by the applicant that there is/ ^{no} such restriction



imposed that the applicant can not own joint immovable property (landed) and even though he clarified that he had movable and immovable properties including land and shop both and one share amongst the share of father in landed property being ancestral ~~order~~ ^{property} therefore, infact the applicant ~~was~~ share in the landed property could not be ~~denied~~ ^{doubted} as per Hindu Succession Act. The respondent no. 2 however, without considering this aspect of the matter terminated the services~~s~~ of the applicant vide order dated 12.4.2002 (Annexure A-8). It is this order which has been challenged by the applicant in the present O.A.

4. O.A. no. 655 of 2002 has been filed by Sri Nand Lal Ram, who was complainant initially and had been allowed to be appointed on the said post by order dated 12.4.2002. He was, thereafter, appointed on the said post as stop gap arrangement on a contract vide letter dated 19.4.2002 and it was specifically stated therein that he can be terminated at any time by the undersigned (page 32).

5. It is submitted by Sri Nand Lal Ram that he had joined the post on 24.4.2002, which is apparent from page 33, but Sri Satish Chandra by concealing this fact from the Court, obtained stay ~~order~~ of the order dated 12.4.2002 on 2.5.2002 (page 38). Pursuant to the said order dated 2.5.2002, the respondents issued an order dated 9.5.2002 whereby order dated 19.4.2002 was cancelled by which applicant was appointed and a direction was given to continue Sri Satish Chandra on the post of Sakha Dak Pal, Rasoolpur, Varanasi (page 20). It is this order which has been challenged by Sri Nand Lal Ram in the present O.A. He has further sought a direction to the respondents to reinstate him on the post Sakha Dak Pal, Rasoolpur, Varanasi within the specified period and to pay him regular monthly salary on the said post including arrears of salary from 24.4.2002 till date.



6. We have heard counsel for both the applicants as well as respondents and have also perused the pleadings as well.

7. The point in issue is rather interesting. It is seen that an advertisement was issued on 15.2.2001 (page 22 in O.A. no. 655/02) whereby applications were called for from the eligible candidates in the category of Scheduled Caste as this post was reserved. The applicant was required to be minimum High School or equivalent from a recognised institute, his age should have been minimum 18 years and not more than 65 years as on 15.2.2001. It was essential that the applicant should have sufficient source of livelihood from his own source. However, preference will be given to those candidates who have landed property or additional income from some other source of ^{clear B} property. It was also made ~~known~~ that the applicant should be having his permanent or temporary arrangement for house and he should also be able to provide space in village for the post office where telephone facility is available.

8. It is seen that under the rules, educational qualification for the post of EDBPM & ~~EDBP~~ is matriculation and selection is required to be made on the marks secured in the matriculation or equivalent examinations. No weightage need be given for any qualification higher than matriculation. As far as income and ownership of property is concerned, it is laid down that the person who takes over the agency (EDBPM) must be one who has adequate means of livelihood. He must be able to offer space to serve the agency premises for postal operations. Premises must be such that it will serve as a small postal office with provisions for installation of even a PCO. Business premises such as shop etc. may be preferred. He must be a permanent resident of the village where post office is located so that he is able to attend to post



office work as required of him. Adequate means of livelihood has further been explained by saying that EDBPM must be just supplementary to his main income. In the rules, it is nowhere stated that candidates must necessarily have landed property. The idea of introducing this rule of having adequate means of livelihood is that candidates must be able to survive otherwise and should be dependable as various M.Os come in the post office and he should not be a person who can dis-appear with post office's money.

9. In the instant case, the only ground taken by the higher authorities for cancelling his appointment vide order dated 12.4.2002 was that ~~because of shop as from the shop~~ personal income is not acceptable in view of D.G's order dated 26.5.95. Admittedly, applicant in O.A. no. 483/02 Sri Satish Chandra had scored 67.16% marks in High School Examination, while Sri Nand Lal Ram had secured only 48.7% marks, so definitely Sri Satish Chandra was having higher marks than Sri Nand Lal Ram, which is ^{the} main criteria for selection. On the question of income and ownership of property, the rule reads as under :

"The person who takes over the agency (EDSPM/EDBPM) must be one who has an adequate means of livelihood. The person selected for the post of EDSBPM/EDBPM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business premises such as shops, etc. may be preferred.)"

The rule nowhere requires that income should be from the landed property. The only requirement is the candidate should have adequate means of livelihood. Only preference is to be given to candidates ^{whose} ~~do~~ adequate means of livelihood as derived from landed property.

10. Preference does not mean that appointment has necessarily to be given to only such candidates ~~xx~~ who has landed property. Preference according to us can be given only when all other things are equal, whereas in the instant case admittedly the marks obtained by Sri Satish

Chandra were much more than Sri Nand Lal Ram and Nand Lal Ram had also shown that he was running a shop (General Store) after taking licence from Zila Panchayat even before 16.3.2001. More-over he also has a share in ancestral property measuring good area. He gets income from his ancestral property as well, therefore, it is clear that Sri Satish Chandra was having sufficient means of livelihood, therefore, termination of his appointment only on this ground that He did not have any landed property while Sri Nand Lal Ram had landed property of 0.52 decimal and was having Rs.700/- income from the said land is not sustainable, therefore, D.G.'s stand that Nand Lal Ram should be appointed as EDPPM seems to be neither in accordance with rules, nor justified. After all Sri Satish Chandra had scored 67.16% marks and also had means of livelihood from his shop, therefore, in our considered view, termination of Sri Satish Chandra is not sustainable in law. The order dated 12.4.2002 is accordingly quashed and set-aside.

11. As far as Nand Lal Ram is concerned, he came to be appointed only after the appointment of Sri Satish Chandra was quashed, but since we are quashing the main order dated 12.4.2002 itself, Nand Lal Ram's appointment automatically gets quashed and set-aside. Even otherwise, it would be relevant to quote the stand taken by the respondents themselves in O.A. no. 655/02 e.g. In para 9 of the Counter which for ready reference reads as under:

"9. That after verification a comparative chart was drawn and Sri Satish Chandra, respondent no. 5 was found suitable candidate having secured highest merit and was selected and appointed on the post vide memo dated 19.7.2001 and he joined the post on 24.7.2001!"

Similarly in paras 23, 24, 25 and 42 respondents have stated as follows:

"23. ---It is stated that the respondent no.5 was granted appointment on the basis of higher marks obtained by him in High School Examination and also fulfilled all other conditions.

24. --- However it is stated that the provisions that the candidate selected must be a resident of the same village where the post office is

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located has been amended and it has been provided that the candidate must have his resident in that village and may provide the place to run the post office. This condition has been specifically mentioned in the advertisement.

25.----The petitioner has made the averments on his imagination. Since the respondent no.4 was fulfilled all the conditions, hence ~~was~~ he was rightly appointed.

42. That on the facts and circumstances mentioned above, the petitioner is neither entitled to any relief sought for by him in paragraph 8 nor he is entitled to the interim relief prayed for by him in paragraph 9 of the petition and the petition is liable to be dismissed.

This clearly shows that even according to the respondents Sri Satish Chandra was selected after he was found suitable with highest marks. Respondents have also submitted that Sri Satish Chandra fulfilled all other conditions. According to the respondents' counter all that required of candidate was that he should be able to provide place for post office and should reside in the village. Since Sri Satish Chandra fulfilled all ^{these} ~~other~~ conditions his appointment cannot be said to be irregular. Since Sri Satish Chandra is found to be most meritorious candidate, we find no justification in appointment Sri Nand Lal Ram as admittedly had only 48.7% marks in High School which was not the highest, therefore, he has no right to be appointed on the post of EDBPM, Rasoolpur, District Varanasi.

12. In view of the above discussions, the order dated 12.4.2002 is quashed and set-aside. Accordingly O.A. no. 659/2002 is dismissed, while O.A. no. 483/02 is allowed. We are informed that pursuant to the interim order dated 2.5.2002 passed in O.A. no. 483/02 Sri Satish Chandra was allowed to join the post vide order dated 9.5.2002 and he is still working. Interim orders are made absolute. Therefore, we only have to say that the applicant in O.A. no. 483/02 should be allowed to continue on the post of Sakha Dak Pal, post Rasoolpur, Varanasi with consequential benefits including counting of service. No costs.

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