

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 22TH DAY OF MAY 2009)

PRESENT

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MR S. N. SHUKLA, MEMBER- A

ORIGINAL APPLICATION NO. 1494 OF 2002
(Under Section 19, Administrative Tribunal Act, 1985)

Yogendra Nath Sonkar, S/o Shri Chhotai Sonkar, R/o Village
Phaguiya (Kakarahi), Post Khagwal, District Chandauli.

.....Applicant

By Advocate: Shri Anand Kumar

Versus.

1. Union of India through Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices, East Division, Varanasi.
4. Sant Ram 'Razak' S/o Shri Banarasi Ram 'Razak' R/o Village Sogai, Post and District Chandauli.
5. Shri Jiyut Ram, Senior Superintendent of Post Offices, East Division, Varanasi.

.....Respondents

By Advocate: Shri S. Srivastava

O R D E R

(DELIVERED BY JUSTICE A.K. YOG, MEMBER JUDICIAL)

Heard Shri S.K. Kushwaha, Advocate holding brief of
Shri Anand Kumar, Advocate appearing for the applicant and
Shri Dharmendra Tiwari, Advocate holding brief of Shri S.

[Signature]

Srivastava, Advocate appearing for the respondents. Perused the pleadings and documents on record.

2. Applicant/Yogendra Nath Sonkar and some other persons applied for the post of E.D.B.P.M. Applicant was not selected. Being aggrieved, he filed present O.A. making allegation of malafide against Respondent NO. 5 vide para 4.10 of the O.A., which reads:-

"4.10 That the respondent No. 5 i.e. Jiyut Ram, S.S.P.O East Division Varanasi demanded Rs. One Lakh from the applicant for the appointment on the aforesaid post of E.D. Naib Post Master, Bisauri. Although the applicant belongs to a poor Scheduled Caste Community, he failed to manage the aforesaid money even then the respondent No. 5 gave assurance to the applicant that he will be appointed on the aforesaid post because the respondent NO. 4 was not suitable and his marks in the High School examination was less than the applicant but when the appointment on the aforesaid post was not made in favour of applicant but it was made in favour of respondent no.4 i.e. Sant Ram and he was also issued the appointment letter dated 21.8.2003 and when the applicant came to know about the appointment of the respondent NO. 4 on the post of E.D. Naib Post Master General, Bisauri, he approached the respondent No. 5 and asked him about the appointment of the respondent No. 4, the respondent No. 5 told the applicant that he (applicant) will also be given appointment within 2 months. The respondent No. 5 further advised the applicant not to whisper any where about the aforesaid appointment. The applicant returned and kept silent for about two months but even thereafter, when he was not given appointment anywhere, he again approached the respondent NO. 5 but nothing was done till date".

See

3. Applicant alleges that he had secured more marks in High School than Sant Ram 'Razak'/Respondent No. 4 and that he also possessed 'landed property' bearing income. According to the applicant, his candidature was ignored on extraneous consideration. At this stage, we wish to deal with the issue bias/malafide on the part of respondent vide aforequoted para 4.10 of the O.A.

4. Notice was issued and sent by Registered post to JIYUT RAM- by name impleaded as respondent NO. 5 holding office Senior Superintendent of Post Offices (impleaded as Respondent No. 3). He has not cared to rebut the averment/s made in the O.A. Interestingly, Sant Ram 'Razak'/Respondent No. 4 also did not care to file counter in spite of notice sent to him by Registered Post.

4. Respondents No. 1 to 3 have filed counter affidavit. Paras 12 and 13 of it reads:-

"12. That according to the instructions issued by the Director General posts dated 26.5.1995 the candidate should be preferred having source of income from the immovable properties. Since the applicant had landed property 0.008 bccatares hence the District Magistrate Chandauli was against requested if there is any income from the landed property but the District Magistrate

informed vide his letter dated 18.5.2003 that Shri Yogendra Nath Sonkar has no income from the landed property because the land held by him is not adequate for cultivation.

13. That in view of the above reports of the District Magistrate as well as he could not propose the suitable place for keeping the post office hence he was not considered fit for appointment.

The true copies of the instructions dated 26.5.1995 and the letter of the District Magistrate dated 18.5.2003 are attached as Annexure CA 2 and CA-3 to this petition for convenient perusal of this Hon'ble Tribunal".

Aforesaid para 12 and 13 have been replied vide para 5 and 6 of the rejoinder which read:-

- "5. That the contents of para 8,9,10,11 and 12 of the Counter Affidavit need no reply being a matter of record.
6. That the contents of para 13 of the counter affidavit are admitted only to the extent that the department of posts New Delhi had issued letter dated 25.8.1995 as well as 6.12.1995 regarding income property and qualification prescribed for appointment to various categories of E.D. Agents and rest contents are denied. In this connection, it is relevant to mention that the applicant/deponent submitted the map of the room situated on the main road alongwith the consent of the owner. The aforesaid room was having all the facilities and was most suitable for the purpose of opening the sub-post office, Bisauri. The aforesaid consent alongwith the map was asked by respondent No. 3 from the applicant vide letter dated

JP✓

31.3.2003. Thus the statement of the answering respondent that the applicant could not propose the suitable accommodation for keeping the post Office, is wholly false and misleading".

5. In view of aforesaid state of pleadings and unrebutted facts stated by the applicant, selection of respondent No.4 cannot be sustained. According to the applicant, he is deprived of copy of appointment order issued in favour of respondent No. 4. We find that Respondents No. 1 to 3 have also withheld said order (while filing the counter affidavit), which supports the case of 'Bias' and 'Malafide' against Respondent Nos. 4 and 5.

6. In this context, reference may be made to para 1.1 of the O.A., which reads:-

"1.1 Letter No. A/59/2002 dated 21.8.2003 issued by S.S.P.O. East Division, Varanasi (Respondent No.3) by which the respondent NO. 4 i.e. Shri Sant Ram has been appointed on the post of Extra Departmental Naib, Post Master Bisauri at E.D. Sub-Post Office Bisauri. District Chandauli illegally and arbitrarily as well as due to malafide reason. It is further submitted that the copy of the aforesaid appointment letter is not available hence it may be summoned by the Hon'ble Tribunal for its perusal".

Respondents have replied aforesaid para 1.1 vide para 15 of the counter affidavit, which reads:-

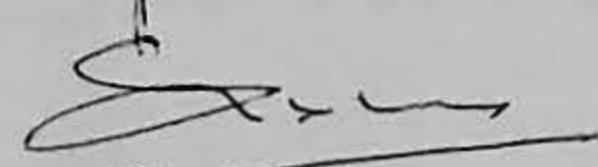
(Signature)

"15. That the contents of paragraph 1 of the petition are matters of record. However, it is stated that there is no illegality in giving the appointment to the Respondent NO. 4 as he was the only candidate who was fulfilling all the requirements for the appointment on the post".

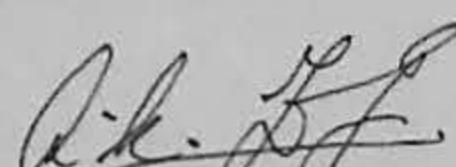
(Underlined to lay emphasis)

7. In view of the above, a direction is issued to the respondents to ignore appointment letter No. 459/2002 dated 21.8.2003 issued in favour of respondent NO. 4, which shall be deemed to be revoked/cancelled since passed in violation of principles of natural justice and issue a mandamus to the respondents to make fresh selection/appointment in accordance with law.

8. O.A. stands allowed subject to payment of cost of Rs. 5000/- to be paid to the applicant by Respondent No. 3 within 1 month of receipt of certified copy of the order. No costs.



Member (A)



Member (J)

Manish/-