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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 65 OF 1998
Cuttack this the 22nd day of September/2000

Pabitra Kumar Kandi ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 75.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.9.2000

22.9.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 65 OF 1998
Cuttack this the 22nd day of September 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

Sri Pabitra Kumar Kandi,
aged about 20 years,
S/o. Sri Gobardhan Kandi
Vill/PO: Sana Hantuad
Via - Banpur, Dist : Puri

...

Applicant

By the Advocates

M/s. P.V.Ramdas,
P.V.B.Rao

-VERSUS-

1. Union of India represented through the
Chief Post Master General
Bhubaneswar-751001, Dist - Khurda
2. Senior Superintendent of Post Offices,
Puri Division, Puri - 752 001
3. Sub-Divisional Inspector (Postal)
Balugaon Sub-Division, Balugaon-752030
Dist - Puri
4. Sri Purushottam Kandi
Branch Post Master
At/PO: Sana Hantuad, Via- Banpur
Dist - Puri, PIN - 752 031

...

Respondents

By the Advocates

Mr.A.K.Bose
Sr.Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Respondent No.4
and twelve others were candidates for selection to the post of
Extra Departmental Branch Post Master, Sanahantuad Branch Office
in account with Banpur S.O. which became vacant on 8.7.1997 due
to promotion of the incumbent to the cadre of Postal Assistant.
Among them, the applicant secured the highest percentage of pass
marks in the H.S.C. Examination fulfilling one of the eligibility
criteria for the post in question. However, he was not selected

as he did not own any landed property exclusively in his name by 31.7.1997, i.e. the last date fixed for receipt of applications for the post which according to the Department is another criterion for the eligibility. Accordingly Respondent No. 4 who secured ^{second} the highest percentage of marks in the H.S.C.Examination and possessed landed property was selected and appointed.

2. In this Application for quashing the appointment of Respondent No.4 and consequently for his selection and appointment, the case of the applicant is that he had submitted income certificate (Annexure-4) along with the application to fulfill the eligibility criterion of 'adequate means of livelihood', and as such he should not have been disqualified on the ground of non-possession of landed property in his name.

3. Respondent No.4 though duly noticed neither appeared nor contested the case. The Department in their counter take the stand that as per rules the candidate to be selected must have lands in his own name to come under the eligibility criterion of "adequate means of livelihood".

4. No rejoinder has been filed.

5. We have heard Shri P.V.Ramdas, the learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel for the respondents. Also perused the record.

6. The main point for determination is whether for selection and appointment to a post of E.D.B.P.M., a candidate must also own landed property in his own name and that too on or before the last date fixed for receipt of applications. Before discussing this point two factual aspects not in controversy need be mentioned. The first one is that the income certificate (Annexure-4) was issued by the Addl.Tahasildar, Banpur in Misc.

Case No.1698/97 in favour of the applicant certifying his annual income from agricultural lands as Rs.8000/- and this certificate was submitted along with the application before the last date of receipt of applications. The other one is that after the last date the applicant submitted Registered Sale Deed (Annexure-R/5) executed in his favour on 15.9.1997 for a consideration of Rs.15, 450/- in respect of A.R.1.287 decimal of land.

7. Qualifications for appointment to the post of E.D.B.P.M. are dealt ^{under} Chapter 'Method of Recruitment' in Swamy's Compilation of Service Rules for E.D.Staff in Postal Department. Three essential qualifications at present are as follows :-

- a) The minimum age limit is 18 years and the maximum 65 years upto which he can be retained in service;
- b) He must be a Matriculate. Selection should be on the basis of the marks secured in Matriculation or equivalent examinations;
- c) He must have adequate means of livelihood

Another qualification that he must be a permanent resident of the village where the Post Office is located is no longer insisted in view of various judicial pronouncements condemning the same.

8. The applicant whose date of birth is 9.5.1978 passed the H.S.C. Examination in 2nd Division in 1995(Annexure-3). He secured 425 marks out of 750, i.e. 56.66% (Annexure-2). Selection check sheet (Annexure-R/2) of the fourteen candidates reveals that among these candidates the applicant secured the highest percentage of marks in the H.S.C. Examination and next to him is Respondent No.4. Under normal circumstances the applicant should have been selected for the post. But as averred in the pleadings he being not a man having adequate means of livelihood in the sense that he had no landed property

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exclusively in his name even by the last date of receipt of applications, was disqualified.

9. Thus, the issue boils down to this : whether "adequate means of livelihood" would only mean that the selected candidate must have landed property exclusively in his name ?

10. The criterion "adequate means of livelihood" is dealt under instruction No.3 in Chapter "METHOD OF RECRUITMENT" Swamy's Compilation of Service Rules for Postal E.D. Staff. This instruction No.3 runs as follows :

"3. Income and ownership of property:

The person who takes over the agency (ED SPM/ED BPM) must be one who has an adequate means of livelihood. The person selected for the post of E.D. SPM/ED BPM 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)

This instruction does not lay down that the person to be selected as E.D.B.P.M. must own landed property exclusively in his own name. Even a person having fat bank balance or other assets, like building, vehicles and so on, can come under the category of person having adequate means of livelihood. In fact in Para-6 at Page-76 of Swamy's Compilation of Service Rules for Postal E.D. Staff (99th Edn.) the criterion to judge adequate means of livelihood has been indicated as follows :

"... The criterion to judge "adequate means of livelihood" should be that, in case he loses his main source of income, he should be adjudged as incurring a disqualification to continue as ED SPM/ED BPM. In other words, there must be absolute insistence of the adequate source of income of ED SPM/BPM and the allowances for his work as EDSPM/BPM must be just supplementary to his income. To ensure this condition, the candidate must be able to offer office space to

serve as the agency premises for postal operations as well as public call office and as such, business premises such as shops, etc., must be preferred regardless of the various categories of preferences mentioned above.

(D.G. P & T, Letter No. 43-84/80-Pen., dated the 30th January, 1981 and corrigendum, dated the 29th March, 1981, D.G. Posts Letter No. 41-301/87-II (ED & Trg.), dated the 6th June, 1988 and No. 17-366/91-ED & Trg., dated the 12th March, 1993)

Thus the aforesaid instruction is clear as to what the Department originally meant by adequate means of livelihood is that the person selected as E.D.B.P.M. must have the means to offer office space to serve for the agency premises for postal operations as well as public call office. It is not the case of the Department that the applicant has no such means.

ii. The Department relied on Annexure-R/4, which is a copy of D.T.E. letter dated 18.9.1995 clarifying some points in their earlier letters dated 6.12.1993 and 26.5.1995 to the effect that a candidate for appointment to the post of E.D.B.P.M., if acquired landed property in his name subsequent to his name being sponsored by the employment exchange or subsequent to sending of application, the same can be considered if the document concerning the acquisition of such land reaches the authority calling for applications within the last date stipulated for receipt of applications, and in case the same is received after that date, his candidature cannot be considered. In other words, this letter indirectly means to say that candidate for the post of E.D.B.P.M. must have landed property in his name. This letter, as already stated, has been issued by way of clarification to earlier letters dated 6.12.1993 and 26.5.1995, though the contents

of the earlier letter dated 6.12.1993 has been annexed as Annexure-R/3, the other letter dated 26.5.1995 has not been brought to our notice. Letter dated 6.12.1993 (Annexure-R/3) does not say that such candidate must have landed property in his own name. All that it says that it is not necessary to quantify the adequate means of livelihood and preference should be given to those candidates whose adequate means of livelihood is derived from landed property or immovable assets if they are otherwise eligible for the appointment and income of property in the name of the candidate's guardian will not make him eligible for consideration for appointment. Thus the letter dated 18.9.1995 under Annexure-R/4 insisting the selected candidate must have landed property in his name appears to be in conflict with the earlier instructions in letter dated 6.12.1993 under Annexure-R/3. Further, instructions in these two letters under Annexures-R/3 and R/4 do not appear to have been issued in supersession of the earlier instructions of the D.G.Posts, as quoted above. *See also para 10 - 12.*

At this stage it is profitable to quote the following observations of the Division Bench of C.A.T., Jaipur in the case of Kailash Chandra Sharma v. Union of India reported in (1996) 32 A.T. Cases 35 (At Pages 37 & 38):

*The learned counsel for the respondents argued that the requirement of adequate means of livelihood implies that the applicant should himself have sufficient property in the village concerned before his appointment. Then only can he be said to have adequate means of livelihood. In our view this is stretching the matter too far. We have first to look at what is contained in the above provision and what are the reasons given in the order which is the foundation or the basis for termination of the applicant's service. All that is mentioned in the order Annex.R/1, which is the basis for ordering termination is that the applicant did not own immovable property in his own name and that he had been studying at Niwai, which

is another place. Studying at another place is not a disqualification for appointment as EDBPM. There is no specific, clear and categorical requirement in the provisions reproduced above that the applicant must necessarily possess property in his own name. We cannot link the means of livelihood with possession of property when no such linkage has been established in the Rules and perhaps cannot be established even otherwise, because a person may possess means of livelihood without owning any property".

13. As per the instructions for the recruitment to the post of E.D.B.P.M., a candidate can be between 18 years to 65 years of age. In other words a person just attaining the age of majority on completion of 18 years is also eligible to apply for the post, if he is a Matriculate. But in Hindu society, ^{and in these parts} where joint family system is widely prevalent, it is improbable, if not impossible, that a minor just attaining majority would be having landed property exclusively in his own name. Cases of persons just attaining 18 years having the landed properties exclusively in their own name, are very rare. Hence it would be quite unreasonable to disqualify such a person like the present applicant who is hardly 20 years of age for not having landed property exclusively in his name, because, under law presumption is in favour of the joint family and where the family is joint, a son being the ~~coperson~~ ¹⁹ has got his share and also sellable interest in the joint family property. This Bench recently held so in Original Application No.126/99 disposed of on 24.4.2000 in the matter of selection to the post of E.D.B.P.M. Even the Hyderabad Bench ^{held in} of the C.A.T. in O.A. No.428/93, disposed of on 29.11.1995 (K.Nageswar Rao v. Superintendent of Post Offices, Gudivada) as reported at Sl. 247, Swamy's C.L. Digest, 1996/1 took this view.

14. Applicant in this case sent income certificate issued

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by the competent Revenue Officer in Misc. Case No. 1698/92 along with his application. It is not the case of the Department that this Application is a fake one. This certificate reveals that the applicant is having annual income of Rs.8000/- from agricultural lands. This would follow that out of joint family's agricultural lands his share of annual income is determined to the tune of Rs.8000/-. Hence it cannot be said that he had no adequate means of livelihood by the time he applied for the post.

14. There is yet another circumstance which cannot be overlooked in judging the means of the applicant. The fact remains that just after the last date of receipt of applications he had purchased lands Ac. 1.287 dc. by paying consideration of Rs.15,450/- through a Registered Sale Deed (Annexure-R/5). It is true that this recital reveals that these lands which were self-acquired property of his father in the year 1996, were purchased from his father. This would not necessarily mean that the sale transaction is a sham one. In fact this is not the case of the Department in their counter. It comes to this that the applicant was solvent at least upto Rs.15,450/- by that time, which fact cannot be overlooked in determining the adequate means of livelihood of the applicant.

15. For the reasons discussed above, we do not agree with the Department that adequate means of livelihood would only mean that the selected candidate must have landed property exclusively in his name ^{we hold} and that the applicant was having adequate means of livelihood by the time he applied for this post of E.D.B.P.M. Since he secured the highest percentage of marks in the H.S.C. Examination than the selected candidate (Res.4), the appointment of Respondent No.4 to this post of E.D.B.P.M. cannot be sustained under law.

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17. In the result, appointment of Respondent No.4, Purusottam Kandi to the post of Extra Departmental Branch Post Master, Sanahantuad B.O. in account with Banapur S.O. is hereby quashed. Respondent Nos. 1 and 2 are directed to terminate the appointment of Respondent No.4 forthwith and appoint the applicant in that post within a period of 30(Thirty) days from the date of receipt of this order.

18. Original Application is accordingly allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 2100

22-9-2004
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//