

In The Central Administrative Tribunal
Calcutta Bench

TA.40 of 1996

CR 14765-W/83

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Santosh Kr. Sahu & Anr.

... Applicants

- VS -

- 1) Union of India through the secretary,
Ministry of Communication, New Delhi.
- 2) Post Master General, West Bengal
Circle, Calcutta-1.
- 3) Superintendent of Post Office, Contai
Division, P.O. Contai, Dist: Midnapore.
- 4) Inspector of Post Office, Egra 1st Sub-
Division, P.O. & P.S. Egra, District-
Midnapore.
- 5) Employment Exchange Officer, Contai
Circle, P.O. Contai, Dist: Midnapore.

..... Respondents

For the Applicants : Mr. R.K. Chatterjee, Advocate
Mr. L.K. Maity, Advocate

For the Respondents : Ms. U. Bhattacharya, Advocate

Heard on : 9-12-1999

Date of Order : 9-12-1999

O R D E R

D. PURKAYASTHA, JM

In this O.A. the grievance of the applicants, in short, is that there had been an advertisement in the Notice Board of Bhimeswari Bazar Post Office for recruitment of one Extra Departmental Delivery Agent (EDDA) and one Extra Departmental Mail Carrier (EDMC) in the proposed Extra Departmental Branch Office at Nunhanda under the respondents and they were selected for the said posts and they had been

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intimated the matter of selection vide letters dated 30.9.80 (Annexure-A at page 14 of the application) and dated 29.9.80 (Annexure-A at page 15 of the application) where it is mentioned that joining letter would follow in due course. But respondents did not issue the joining letter as assured to them and ultimately they came to know that the respondents were trying to fill up the posts ignoring the selection made earlier by way of fresh recruitment. Immediately they approached the Hon'ble High Court of Calcutta by filing a writ petition bearing No.14765-W/1983 and sought direction upon the respondents for holding no interview nor taking any step to fill up the two posts, namely, EDDA and EDMC in the proposed Extra Departmental Branch Post Office. They also sought for interim-order for restraining the respondents from filling up of the two posts till disposal of the application. The case was admitted and interim order was passed by the High Court vide order dated 5.10.83 which was confirmed by another order dated 23.2.84 where it is directed that interim order in terms of prayer (f) of the petitioner will continue till disposal of the application. But in the meantime respondents appointed applicant No.1 against the post of EDMC at Noonhanda, Egra w.e.f. 30.9.88 on the basis of the sanction order dated 17.3.88 (Annexure R-1 to the reply). But respondents did not appoint the applicant No.2 though he was selected by the authority and obtained stay order from the High Court of Calcutta.

2. Respondents filed written reply denying the allegation of the applicants. In their reply the respondents admitted the fact that applicants were selected for the post as applied for. It is stated that in the meantime the selecting authority of the Extra Departmental Agents has been changed vide Director General of Post & Telegraphs Memo dated 4.11.80 and that has been circulated through Circle Office dated 7.11.80 vesting power of selection to the Inspector of Post Offices for selection of Extra Departmental Delivery Agents and Extra Departmental Mail Carrier and the mode of recruitment for selection in Extra Departmental Posts has also been revised in the Director General of Posts and Telegraph, New Delhi vide letter dated 4.9.82

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and communicated to the appointing authorities vide letter dated 29.9.82. Thereafter, the Sub-Divisional Inspector of Post Offices, Egra 1st Sub-Division was directed to take action for fresh selection for the posts of EDDA and EDMC for Noonhanda Extra Departmental Branch Office according to present mode of recruitment. The Sub-Divisional Inspector (P) accordingly sent requisition to the Employment Exchange Officer, Contai requesting to nominate the suitable candidates for the posts of EDDA and EDMC for Noonhanda Extra Departmental Branch Office vide his letter dated 17.9.83. Applicant No.1 was again selected and appointed against the EDMP post at Noonhanda Branch Post Office w.e.f. 30.3.88 on the basis of the letter dated 17.3.88. But the applicant No.2 did not apply and was not selected. It is also stated that in obedience to the order of the Hon'ble High Court, interview/selection/appointment in the Extra Departmental Branch Office has been postponed and opening of the branch office was suspended till lifting of the interim order of injunction of the Hon'ble High Court.

3. Id. Advocate for the applicant wanted to assert that the said interim order passed by the High Court is still in operation. Therefore, two posts were ordered to be kept vacant till disposal of the said application. The respondents did not apply for vacation of the said interim order passed by the Hon'ble High Court in this case. Therefore, applicant is entitled to be considered for appointment to the post of EDMC on the basis of the earlier selection which took place in the year 1980¹⁰ before the date of change of the selection authority of the Extra Departmental Agents made vide letter dated 4.11.80 which had been circulated on 7.11.80. Admittedly the applicant was selected on 29.9.80 before making amendment of the procedure of selection as stated by the respondents in their reply. Therefore, the vested right for appointment on the basis of the selection can be denied. Therefore, applicant No.2 ought to have been appointed by the respondents against the post for which he was selected earlier. *Hence* ~~Therefore~~ ^{that} respondents acted arbitrarily by denying the appointment of the applicant No.2 despite the fact that interim order is still in operation.

4. Ld. Advocate Ms. Bhattacharya on behalf of the respondents contended that opening of new Branch Office at Noonhanda has been kept abandoned in 1981 till disposal of the case. Therefore, applicants could not be appointed. But in the year 1988 two posts, namely, one post of EDBMP in the scale of Rs.275/- and another post EDMP in the scale of Rs.270/- have been created by notification dated 17.3.88 (Annexure-R1) and for recruitment to the said two posts, namely, EDBPM and EDMP as per sanction letter dated 17.3.88, a fresh requisition had been sent to the Employment Exchange for suitable candidates. Employment Exchange recommended the name of the applicant No.1; but did not recommend the name of Sudarsan Gigi, applicant No.2. Accordingly, the applicant No.1 was selected by the competent authority for the post of EDMP, Noonhanda and he was appointed as such w.e.f. 30.3.88. Since the name of the applicant No.2 was not forwarded and sponsored by the Employment Exchange nor the applicant No.2 did apply for the post on the basis of the sanctioned order dated 17.3.88, the case of the applicant No.2 was not considered. Therefore, he cannot be appointed to the post as prayed for in the application. So, application is devoid of merit and is liable to be dismissed.

5. We have considered the submissions of Ld. Advocates of both the parties and we have gone through the records. It remains admitted fact from the side of the respondents that applicant No.1 Shri S.K. Sahu was selected for the post of EDDA and applicant No.2 Shri S. Giri was selected for the post of EDMC in the year of 1980 respectively. We find that respondents did not produce any record to show that the scheme for opening of Noonhanda Extra Departmental Branch Office has been abolished or abandoned permanently. It is admitted by the respondents in the reply to the OA that the posts were kept abandoned till disposal of the case as per order passed by the High Court. But it is found that in the year 1988 a fresh sanction letter has been issued by the authority by creating two posts (Annexure-R.1) i.e. one post of EDBPM in the scale of Rs.275/-

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plus other allowances and one post of EDMP in the scale of Rs.270/- plus other allowances without having reference to the earlier order. But facts remain that the Hon'ble High Court vide order dated 5.10.83 granted interim order in terms of the prayer(F) of the application in respect of injunction as prayed for and that order was confirmed by another order dated 23.2.84 holding that interim order will continue till disposal of the application. But respondents also could not produce any record to show that the interim order has been vacated by the Hon'ble High Court. Obviously, the interim orders passed by the Hon'ble High Court dated 5.10.93 and 23.2.84 are still in operation. We find that respondents could not produce any record to show that opening of proposed Noonhanda Extra Departmental Branch Office has been abolished ^{& permanently}. But facts remain that the applicant No.1 had already been appointed as EDMP vide letter dated 3.5.88 (Annexure-R2) on the basis of the sanctioned letter dated 17.3.88 and Ld.Advocate for the applicant does not press for any relief in respect of the applicant No.1 Shri S.K. Sahu. So, we are not concerned with the claim of the applicant No.2 of this application. We also note that the change in respect of selection authority for the post as stated in their reply has come into effect long after the selection of the applicant in this case. So, the said so-called change or amendment in the matter of selection does not effect the selection of the applicants. Moreover, we find that the respondents kept two posts vacant till disposal of the application in pursuance of the order of the Hon'ble High Court. We find that applicant was rightly selected by the competent authority in the year of 1980. Thereby, the case of the applicant cannot be ignored for the purpose of consideration for the post of EDMC for which he was selected. In view of the aforesaid circumstances, such denial of appointment in respect of the applicant No.2 amounts to discrimination and arbitrary. Under such circumstances, we find that it would be appropriate on our part to direct the respondents to consider the case of the applicant No.2 for appointment to the post of EDMC for which he was selected as per

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letter dated 30.9.1980. Applicant would be entitled to get pay and allowances from the date of appointment to the post only.

With this observation, we direct the respondents to consider the case of the applicant No.2 for appointment to the said post within two months from the date of communication of this order without fail. In view of the observation made over, application is allowed awarding no costs.

G.S. Maingi
9.12.88
(G.S. Maingi)
Member(A)

H. Purkayastha
9.12.88
(L. Purkayastha)
Member(J)

DKN