

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA NO. 560 OF 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman

Hon'ble Mr. M. S. Mukherjee, Member (A)

Rama Chakraborty,
8/1 Banakpara Road,
PO Hazinagar, North 24 Pgs.

VS

1. Union of India through the Secretary, Deptt. of Post New Delhi
2. The Chief Post Master General, W.B. Circle, Yogayog Bhavan, C.R.Avenue, Calcutta-12
3. Sr. Superintendent of Post Office North presidency Division, Barrackpore
4. Asst. Supdt. of Post offices, Kanchrapara Subdivision, Kanchrapara, North 24 Pgs.
5. Sri Arabinda Mahato, 410, R.B.C.Road, P.O. Garifa, North 24 Parganas,

..... Respondents

For the petitioner : Mr. S.K.Dutta, Counsel
Mr. T.K.Biswas, Counsel

For the respondents : Ms. B.Roy, Counsel

Heard on : 25.7.97 : Order on : 25.8.97

O R D E R

M.S.Mukherjee, A.M.:

This is a petition u/s 19 of the Administrative Tribunals Act, 1985 in which the petitioner is aggrieved that despite her being duly selected and offered appointment for the post of Extra Departmental Mail Carrier (EDMC) for Malancha EDBPO, she has not been allowed to join and instead one Shri Arabinda Mahato (respondent No. 5) has been allowed to join.

2. The facts of the case as revealed from the records are as follows. The petitioner is a graduate and on her being duly sponsored by the employment exchange along with others.



she was asked by the Assistant Superintendent of Post Offices, Kancharapara Sub-division (respondent No. 4) through a formal letter dt. 3.12.95, to appear before him on 16.12.95 along with specified documents and testimonials for the aforesaid post (vide Annexure-A1 to the petition). The petitioner adds that subsequently the said respondent No. 4 by his letter dt. 16.12.95 (Annexure-A2) formally conveyed to her that she had been selected for the post of EDMC, Malancha BPO and through an endorsement of the said letter made to her, respondent No. 4 directed her to join the post without delay. Respondent 4 also through another letter dt. 16.12.95 (Annexure-A3) formally offered the petitioner appointment stating that she had been provisionally appointed as EDMC, Malancha SDBPO in account with Hazinagar SO under Barrackpore HO. A copy of this letter was also endorsed to her with the direction to furnish requisite security bond etc. in connection with the joining. 3. The petitioner is aggrieved that despite such clear order of appointment, she was not allowed to join the post on 17.12.95 due to intimidation by some miscreants and that private respondent No. 5 with the help of some miscreants applied pressure on Shri B.K.Chowdhury (respondent No. 4) to issue a backdated new appointment letter for the said post of EDMC, Malancha BPO in favour of Shri Arbinda Mahato, respondent No. 5. Accordingly, private respondent No. 5 has been allowed to join the said post. The petitioner submits that she immediately lodged a diary with the Bijpur Ps on 19.1.96 and also submitted representation before the authorities without, however, any result. Moreover, Shri B.K.Chowdhury, who was earlier working as Asst. Supdt. of Post Offices, Kancharapara Subdivision, but has since been transferred in the same capacity in the headquarters office of North Presidency Division, Barrackpore, issued a letter on 17.1.96 (Annexure-A4) clearly stating that on 17.1.96 some ill

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motivated persons accompanied with a group of miscreants had compelled him (Shri B.K.Chowdhury) to issue illegally a back dated appointment letter showing the date as 16.12.95 in his capacity as Asst. Supdt. of Post Office, Kanchrapara Subdivision, for the post of EDMC, Malancha BPO. Through the said letter dt. 17.1.96, Shri Chowdhury further added that his previous illegal appointment letter issued in favour Shri Arabinda Mahato (respondent NO. 5) had no validity at all and therefore should automatically be treated as cancelled with immediate effect.

4. The petitioner's grievance is that despite all these tales of sordid happenings which have prevented her from taking over the charge of the post of EDMC, Malancha for which she had been duly selected and appointed, she could not join as yet. She has, therefore, prayed for a direction on the official respondents to allow her to join as EDMC, Malancha BPO or to any other equivalent post with effect from 17.12.95, with further direction to pay her all salaries from the said date.

5. The respondents have contested the case by filing a written reply. They concede that the petitioner was amongst the 47 candidates sponsored by the employment exchange for the aforesaid post and that respondent No. 4 had fixed 16.12.95 as the date for verification of bio data and testimonials and amongst the candidates who had appeared on the said date, were the petitioner as well as private respondent No. 5. The official respondents add that the petitioner had been selected for the said post of EDMC and the appointment letter had been issued by respondent No. 4 in favour of the petitioner vide the aforesaid memo dt. 16.12.95 (Annexure-A3 to the petition) and the same was posted under registered post on 3.1.96 under Ghoshpara post office. However, on 8.1.96 one of the Divisional Service Union gave a letter addressed to the Sr.

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Supdt. of Post Offices, North Presidency Division, Barrackpore, demanding issue of appointment letter in favour of respondent No. 5 against the said vacant post of EDMC, Malancha BPO on the ground that the respondent No. 5 had previously worked as contingent paid staff at Naihati sub post office for some time. A copy of the said letter dt. 8.1.96 issued by the Union and signed by two secretaries is added to the reply as Annexure-R1. The official respondents then add that on receipt of the said letter dt. 8.1.96 from the Union, the SSPO, North presidency Division, (respondent No. 3) issued a formal letter on the same date (Annexure-R3 to the reply) directing the Post Master of Hazipur PO not to deliver the registered letter meant for the petitioner regarding her appointment. The respondents further add that respondent No. 4 issued a fresh appointment letter dt. 16.12.95 in favour of respondent No. 5 appointing him as EDMC, Malancha BPO, a copy of which has been added as Annexure-R2 to the reply. This letter had been received by private respondent No. 5 on 17.1.96 and by virtue of this letter, the official respondents allowed him to join as EDMC with effect from 18.1.96. Since then the said respondent No. 5 has been functioning as such. The respondents add further that private respondent No. 5 had earlier acted as contingency staff at Naihati post office and that his name was also formally sponsored by the local employment exchange along with the petitioner.

6. This is not the end of the story of the respondents. They have thereafter alluded to the letter dt. 17.1.95 (Annexure-A4 to the petition) written by Shri B.K.Chowdhury, the then Asst. Supdt. of Post Offices, Kanchrapara subdivision, now transferred in the same capacity to the headquarter at Barrackpore, which cancels the appointment order issued by the same B.K.Chowdhury in favour of respondent No. 5 as EDMC, Malancha BPO dt. 16.12.95. The official



respondents add that this letter of cancellation had been issued by Shri Chowdhury when he was no longer the ASPO, Kancharapara and thus he had ceased to have any jurisdiction over the matter. Hence, this letter dt. 17.1.96 of Shri Chowdhury is to be ignored.

7. The official respondents have, therefore, urged for the rejection of the petition.

8. The petitioner has filed a written rejoinder to the reply filed by the respondents. The private respondent No. 5 despite service (as is evident from the A/D card produced before us by the ld. counsel for the petitioner which shows that the respondent No. 5 had himself signed it in proof of the receipt of the registered notice), has not entered any appearance nor has he filed any reply. On the other hand, on our direction, the official respondents had produced before us the original office file of the Deptt. bearing No. PF/EDMC/Malancha 80 regarding Selection in the post of EDMC, Malancha 80- and the appointment orders issued to various candidates as discussed above.

9. We have heard the learned counsel for the parties and have gone through the documents produced including the office file. Prima facie it appears that the entire matter represents a murky manner in which the Deptt. functioned or allowed to function in this very matter.

10. It is admitted by all the parties that the petitioner as well as respondent No. 5 were amongst the candidates sponsored by the employment exchange, who appeared before respondent No. 4 on 16.12.95 in connection with selection for the post of EDMC, Malancha BPO. Through a call letter dt. 3.12.95, the candidates were asked to bring with them a number of specific documents which included certificate and mark sheet of SF/Madhyamik/Matriculation etc. examination, Admit card showing the date of birth, residential



certificate from the local Anchal Pradhan, SC/St certificate from competent authority, 2 character certificates from 2 gazetted officers, etc. etc. It is also admitted by the official respondents that the petitioner had been selected from amongst the persons appeared for selection on the basis of scrutiny of the documents and that offer of appointment dt. 16.12.95 had been issued in favour of the petitioner accordingly. But thereafter the story differs. The official respondents contend that the said letter dt. 16.12.95 had actually been booked by registered post on 3.1.96 under Ghoshpara PO. There is not even an attempt to explain by the respondents as to why there should have been so much delay in posting the appointment letter by more than 18 days when the matter pertains to filling up of a post in the postal deptt. towards improving the efficiency of that Deptt. itself.

11. Then even after the registered letter had been booked on 3.1.96, it had not been delivered at least upto 8.1.96 i.e. for 5 days thereafter and according to the respondents, on 8.1.96, the Sr. Supdt. of Post Offices, respondent No. 3, issued a direction on the Sub Post Master of Hazinagar BPO not to deliver the registered letter to the petitioner till further orders. If the facts as claimed by the respondents in the reply, are genuine, it betrays the type of efficiency that a sub post office had not delivered to its branch post office a registered letter even after 5 days and kept the same in its custody without delivering the same. If this is the speed with which the postal Deptt.'s own communications to their own employees are handled by the Deptt. it is not know how much time would it take for a common man's communication to reach its destination.

12. The respondents' story further is that Shri B.K.Chowdhury, while functioning as ASPO, Kancharapara had issued a new appointment letter dt. 16.12.96 offering

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appointment to the post of EDMC, Malancha BPO to private respondent No. 5 and a copy of this letter has been annexed as Annexure-R2 to the reply. According to the respondents, the said letter had been received by the private respondent No. 5 on 17.1.96 and he was allowed to join as EDMC with effect from the next date i.e. 18.1.96. But it is not explained by the respondents as to why the said letter at Annexure-R2, shown to be dated 16.12.95, had this been genuine one, took also so much time to travel upto 17.1.96 and when was this actually posted. Moreover, it is already admitted by the respondents, the said B.K.Chowdhury, the then ASPO, Kancharapara, had already issued another letter dt. 16.12.95 in favour also of the petitioner offering her appointment to the same post of EDMC, Malancha BPO. Therefore, by annexure-R2, the same ASPO had issued another letter on the same date offering appointment to the same post to respondent No. 5. But strangely the said letter does not even allude to the appointment already separately issued to the petitioner and nor does the latter letter show any attempt to cancel the same. The respondents who filed the affidavit in reply are not bothered that such apparent discrepancy or anomaly would require to be explained satisfactorily. The contention of the learned counsel for the respondents that the appointment meant for the petitioner was not actually delivered to her does not cut any ice, because the petitioner has produced a copy of the letter which was admittedly issued by the Deptt. and because the respondents admit through the reply that the petitioner had initially been selected for the post.

13. The respondents of course are very articulate through their counter that the letter of termination issued by the said Shri B.K.Chowdhury in his capacity as ASPO, Headquarters, on 17.1.96 is without any competence, since this was irregularly issued by him, when he was no longer the ASPO,



Kanchrapara subdivision. Secondly, the respondents' objection is as to how the petitioner got hold of the said letter specially when no copy of the same had been endorsed to her. But in our opinion these are besides the point. The issue is whether the facts stated in the said letter are genuine or not. The said letter of termination indicates that Shri B.K.Chowdhury had been forced to sign a back dated letter of appointment on 16.12.95 in favour of respondent No. 5 due to actions of some ill motivated persons accompanied with some miscreants. The respondents are silent about this particular allegation. This along with our aforesaid analysis lead us rather to conclude that the letter dt. 17.1.96 (Annexure-A4 to the petition) issued by ASPO (Hqs.) represented the true facts as to what actually happened. Since by this letter the appointment given to private respondent No. 5 has been terminated, we are of the view that the appointment letter dt. 16.12.95 (Annexure-R2 to the reply) appointing respondent No. 5 as EDMC, Malancha BPO had been irregularly signed as a back dated letter without any authority.

14. To scrutinise the facts a little more searchingly, we have consulted also the original records of selection produced by the official respondents. We have also examined the original documents submitted by the candidates including the petitioner and the respondent No. 5 on 16.12.95 for the selection. From the scrutiny sheet prepared by the selection authority, it is found that against the name of private respondent No. 5, whose name was considered as Sl. No. 1 in the verification sheet, he did not produce any birth certificate regarding his date of birth, nor had he produced any educational certificate and it was noted that his application was incomplete one. Whereas in the case of the petitioner, in the scrutiny sheet at serial No. 36 i.e. the petitioner, it was noted that all the documents had been



produced and she had been shown as selected for the post of EDMC, Malancha BPO. We have seen also the original documents submitted by the candidates including the petitioner and the private respondent No. 5 before the authorities and against these, we are satisfied about these observations of the selection authority as reasonable.

15. Under the circumstances, it is very clear that it was the petitioner who had been duly selected and clearly private respondent No. 5 had not been selected on 16.12.956. From the official respondents' averment also certain other story emerges. Earlier the official respondents had filled up a different post of ED Telegraph Messenger at Naihati and one Basist Kr. Thakur was appointed on 18.2.91 ignoring the claim of the private respondent No. 5 herein who at that time was working as contingency paid Night Guard at Naihati PO since 1982 and who had also applied for the said post of ED Telegraph Messenger. Being aggrieved, private respondent No. 5 had moved this Tribunal through OA 192/1992 which had been decided by the sister Bench of this Tribunal on 17.5.92 with the direction that the impugned order of appointment in favour of private respondent No. 6 (i.e. Basist Kumar Thakur) dt. 18.2.96 be thereby quashed. It was further ordered by the Tribunal that if the official respondents wished to fill up the said vacancy, the candidature of the applicant (present respondent No. 5) should also be considered along with others on a preferential basis as had been laid down in the departmental circular dt. 6.6.88 and in case the petitioner was selected for such appointment, necessary age relaxation should be given in his favour.

16. Therefore, in that case, the private respondent No. 5 got some relief from the Tribunal regarding consideration of his candidature for the post of ED Telegraph Messenger. But the official respondents have not done anything in

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implementation of that order of the Tribunal which had quashed the appointment of Basist Kr. Thakur. On the other hand, they offered the present appointment of EDMC, Malancha SPO to private respondent No. 5, although for this the said private respondent No. 5 was not even adjudged eligible and somebody else was found as most suitable i.e. the petitioner had already been selected and had also been offered appointment. This appointment in favour of the petitioner had been illegally interfered with by the official respondents, who also tried to suppress facts while filing the affidavit in counter to this petition and they have clearly manipulated the records.

17. Under the circumstances, we quash forthwith the so called appointment order to private respondent No. 5 as EDMC, Malancha SPO and direct the official respondents to give the petitioner appointment to the said post immediately. Since she has been illegally prevented from taking over on 17.12.95 her pay should be notionally fixed from 17.12.95 and her seniority should be reckoned with effect from that date irrespective of the date of her actual joining now.

18. In the context of the circumstances of the case, we award also a cost of Rs. 2000/- in favour of the petitioner which has to be paid by the official respondents to her within one month from the date of communication of this order. We are also unhappy about the way the entire thing has been conducted and we direct the Registry to send a copy of this order direct to respondent Nos 1 and 2 drawing their attention to our observations in this judgement for taking appropriate action as may be deemed fit against the erring officials concerned.

M.S. Mukherjee
(M.S.MUKHRJEE)
MEMBER (A)

25/8/1997

A.K. Chatterjee
(A.K.CHATTERJEE)
VICE CHAIRMAN
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