

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

(1) O.A. 950 of 1995 with
M.A. 268 of 1996

MD. ABDUL ROUF MOLLA

-vs-

UNION OF INDIA & ORS.

For applicant : Mr. N. Bhattacharjee, counsel

For official
respondents : Ms. B. Ray, counsel

For private
respondents : Mr. M.K. Bandopadhyay, counsel

AND

(2) O.A. 1042 of 1996

BISWAJIT MAITY

-vs-

UNION OF INDIA & ORS.

For applicant : Ms. Uma Sanyal, counsel
Mr. M.K. Bandopadhyay, counsel
Ms. B. Banerjee, counsel

For respondents : Mr. S.K. Dutta, counsel

Heard on : 17.9.96 & 18.9.96 - Order on : 3.10.1996

15.11.1996

Q R D E R

A.K. Chatterjee, VC

These matters are taken up together for disposal by a common order as they relate to the same selection process for appointment to the post of E.D.D.A., Kalikatala Branch Office in the circumstances as under.

2. Md. Abdul Rouf Molla, petitioner of O.A.950/95, Sri Biswajit Maity, petitioner of O.A.1042/96 and some others responded to an advertisement inviting applications to fill up the

said post and the latter was selected and given the offer of appointment by a Memo. dt.10.4.95 and he took over charge on 18.4.95. Md. Abdul Rouf Molla filed O.A.950/95 challenging the selection and appointment of Biswajit Maity on the ground that according to the recruitment rules, the marks obtained in the prescribed examination should be the basis for selection and alleging that Biswajit has been wrongly selected as he had scored 394 marks as against 398 marks obtained by Md. Abdul Rouf Molla. He had also impleaded Biswajit as a party respondent in this O.A. In the meantime, on complaints of irregularities, the appointment of Biswajit was terminated by an order dt.12.8.96 and he was relieved on the following date. The respondents also initiated action for making a fresh selection to fill up the post. Biswajit then filed O.A.1042/96 on 26.8.96 to quash the order terminating his appointment on the ground that it was made arbitrarily as his marks in the Madhyamik Examination were higher than other candidates. The order of termination was said to be bad even otherwise as he did not comply with the provision of Rule 6 of EDA(Conduct & Service) Rules as neither any notice contemplated by this rule was given nor was he paid one month's salary in lieu thereof. Md. Abdul Rouf Molla also filed an M.A. on 28.8.96 seeking an interim order so as to restrain the respondents from making any fresh selection on the ground that as the appointment of Biswajit was terminated, he himself should be appointed to the post of EDDA in the post office in question.

3. The respondents have taken up position that percentage of marks rather than the actual marks scored by the candidates should be the criterian ^{but} and some irregularities were discovered in the selection as it was found that one Sri Dilip Kr. Mondal, who had ^{second highest} ~~scored higher~~ percentage among candidates, ^{the} had

respondent to the advertisement was not considered solely on the ground that he had no income and did not possess any immovable property, which, according to the respondents, cannot be a valid ground for rejection of candidature. In such circumstances, the respondents justified the note for making a fresh selection. Regarding the contention of Biswajit that termination of his appointment did not comply with the provision of Rule 6 of EDA(Conduct & Service) Rules, it was urged that payment of a month's salary in lieu of notice need not be contemporaneous with the termination of appointment and can be made at any subsequent time.

4. We have heard the Ld. Counsel for all the parties and perused the records before us. We find no substance in the contention on behalf of Md. Abdul Rouf Molla that actual marks and not percentage of marks should form the basis for selection because the whole intention of the rule is that candidates with better performance in the examination should be selected. Therefore, there is no escape from the conclusion that it is the percentage of marks and not the actual marks in the prescribed or the preferred examination which should determine the selection of a candidate. By this test, the performance of Biswajit, who had scored 394 marks out of 900 must be held to be better than that of Abdul Rouf Molla, who had scored 398 marks out of 1000. Thus, even though Biswajit had actually scored 4 marks less than Abdul Rouf Molla, still percentagewise, performance of the former was considerably better than the latter. If any contrary view is taken, an absurd result will follow as candidates with poor performance in the examination will have an edge over candidates with better performance, which certainly could not be the intention of the rule. Thus, as between Biswajit and Md. Abdul Rouf Molla, the

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performance of the former must be held to be better and if there was no other candidate, there could be no objection ~~for~~ ^{to his} selection on the basis of examination result.

5. However, according to the respondents, one Dilip Kr. Mondal, who had scored even higher percentage of marks than Biswajit was left out of consideration erroneously by the Selection Committee on the ground that he had no income or did not possess any immovable property. It was urged on behalf of the respondents that the candidature cannot be rejected upon such ground. The Ld. Counsel appearing for ~~the~~ Biswajit has, however, pointed out that under the rules, a candidate after an appointment is required to furnish security, which necessarily implies that he must be possessed of some income or property. We are unable to share this contention because it is quite possible to furnish security, say by borrowing by a selected candidate even though he may not have sufficient means of his own. Thus, the capacity to furnish security may not go hand in hand with possession of property and so the rule requiring furnishing of security cannot be interpreted to imply that the selected candidate should be in possession of means to enable him to furnish security.

6. The Ld. Counsel for the respondents appearing in O.A.1042/1996 has clarified that what the authorities proposed to do is to make a fresh selection ^{among} ~~committee~~ of the candidates, who have already responded and not to invite any fresh candidate. In other words, the respondents proposed to make a review of the selection ~~member~~ among the candidates, who have already applied for the post in question. We see no objection in such process even though Dilip Kr. Mondal may not be before us.

7. As according to records, this Dilip Kr. Mondal had scored higher percentage than Biswajit, the action of the respondents in initiating a review of the selection cannot be assailed. It is pertinent to note that Biswajit was appointed on a purely

provisional basis and it was specifically stated in the memo offering appointment to him that it was liable to be cancelled at any time without assignment of reason. However, he should be paid a month's salary in lieu of the notice under Rule 6 of the EDA(Conduct & Service) Rules and such payment will fully regularise his termination.

8. The O.A. filed by Md. Abdul Rouf Molla being O.A. 950/1995 has become infructuous to the extent that it made a prayer relating to the appointment of Biswajit Maity, but for reasons indicated above, he cannot be considered to be a better candidate than Biswajit and, therefore, the relief prayed for by him directing the respondents to reconsider the case of his own appointment cannot be granted and this O.A. is accordingly disposed of.

9. M.A. 268/96 filed by Md. Abdul Rouf Molla for an interim order directing the respondents not to proceed with fresh selection till disposal of O.A. 950/95 does not call for any order as the said O.A. itself has been disposed of.

10. O.A. 1042 of 1996 filed by Biswajit Maity is disposed of only with the order upon the respondents to pay to him within 8(eight) weeks from the date of communication of this order a sum equivalent to the amount of his basic allowances plus D.A. at the same rate at which he was drawing immediately before termination of his service for one month in accordance with the proviso to Rule 6(b) of the EDA(Conduct & Service) Rules. Any other relief prayed for by this petitioner in this O.A. is refused.

11. We direct the respondents to review the selection process for appointment to the post of EDDA of Kalikatala Branch Post Office from among the candidates, who had previously applied for the post and to appoint the selected candidate within a period of 8(eight) weeks from the date of communication of this order.

12. Parties to bear their own costs.

Mukherjee
(M.S. Mukherjee) 15/11/96
Member (A)

A.K. Chatterjee
(A.K. Chatterjee)
Vice-Chairman