

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.1307/1996

Date of order : 8.10.2004.

Present : Hon'ble Mr. Sarweshwar Jha, Administrative Member
Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member

Sukumar Das, son of Late Bhusan Ch.
Das, aged about 42 years, residing
at Vill. Kulup, P.O. Ashutia Barh,
P.S. Chandipur, Dist. Midnapore.

.....Applicant

VS.

1. Union of India, service through the Secretary, Ministry of Communication, Deptt. of Posts, New Delhi
2. The Chief Postmaster General, W.B. Circle, Calcutta
3. The Superintendent of Post Offices, Tamluk Division, P.O. Tamluk, Dist. Midnapore
4. The Sub-Divisional Inspector (Postal), Mahishadal Sub-Division, P.O. Mahishadal, Dist. Midnapore
5. Sub-Postmaster, Tekhali Bazar, P.O. Tekhali Bazar, Dist. Midnapore
6. Smt. Kalpana Giri, wife of Milan Giri, Vill. Kanangochak, P.O. Tekhali Bazar, Dist. Midnapore
7. Miss. Rina Giri, daughter of Kunja Behari Giri, P.O. & Vill. Simulkunda, Dist. Midnapore.

.....Respondents

For the applicant : Mr. A. Banerjee, counsel

For the respondents : Mr. S.P. Kar, counsel

O R D E R

Per Mukesh Kumar Gupta, J.M.

Sri Sukumar Das, in this application, has prayed for the following reliefs:-

"(i) to direct the respondent authorities to cancel, withdraw and/or rescind the purported communication dated 11.10.96 as contained in Annexure-D hereof;

(ii) to direct the respondent authorities to hold interview for the post of EDDA of Tekhali Bazar S.O. strictly in terms of the list of candidates sent by the Employment Exchange, Haldia vide Memo dated 29/30.8.95 as contained in Annexure-A hereof and to issue letter of appointment in terms thereof;

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- (iii) to direct the respondent authorities not to consider the case of the respondents No.6 & 7 hereof for appointment to the said post of EDDA/EDMC, Tekhali Bazar S.O. in terms of the said communication dated 11.10.96 as contained in Annexure-D hereof in any manner whatsoever;
- (iv) to direct the respondent authorities to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue;
- (v) And to pass such further order or orders as to this Hon'ble Tribunal may seem fit and proper."

The facts as stated are that the applicant passed Higher Secondary Examination in the year 1975 and registered himself with the Employment Exchange in the year 1977. Vide Memo dated 29/30th August, 1985 the Employment Officer, P.E.E., Haldia sponsored names of 20 candidates including the applicant for recruitment to the post of Extra Departmental Delivery Agent (EDDA) in Tekhalibazar Sub Post Office. The applicant attended the respondents' office on 15.6.1996 pursuant to call letter dated 31.5.1996, but thereafter received no information whatsoever from the respondents regarding selection to the said post. He came to know from the office of respondent No.3 that the concerned authority is going to recruit in the said posts by reinstating some Safaiwala/Water Carrier of the said Tekhalibazar Sub Office as proposed vide Memo dated 11.10.1996. It is stated that father of respondent Nos.6 and 7 had been working in the post of Night Guard/Water Carrier on regular basis in the Tekhalibazar Sub Office and, therefore, the proposal made to the respondent No.6 and 7 was in breach of the instructions on the subject besides being arbitrary, illegal and malafide and that the said respondents were considered without their name being forwarded by the Employment Exchange.

2. Respondents No.1-5 filed their reply and supported the applicant's claim in the following manner as mentioned in Para 5(iii) of the same:-

"With regard to the statement made in paragraph no.4(h) of the original application this deponent says that Kunja Behari Giri, father of Smt. Kalpana Giri (private respondent No.6) and Miss Rina Giri (private respondent no.7) has been working as contingent paid Water Carrier, Safaiwala, night guard and pankha pullar of Tekhali Bazar S.O. since 1.11.78.

[Signature]

But SPM Takhali Bazar P.O. vide his letter no. contingent paid/Takhali Bazar dated 20.10.1994 furnished particulars of contingent paid staff of his office to SDI(P), Mahisadal and also to the Supdt. of P.O.S. for keeping records their end but being dissatisfied, SDI(P) Mahisadal made enquiry into the aforesaid memo and on the enquiry it revealed that Smt. Kalpana Rani Giri, private respondent no.6 and Rina Giri private Respondent no.7 has not been engaged as contingent paid water carrier and Safaiwala Takhali Bazar P.O. and never they have worked in that post but their father Kunja Behari Giri has been continuing in the Post since 1.11.78 but somehow they managed payment of allowance of water carrier and Safaiwala by both Kalpana Giri and Rina Giri for some time. From records available as far Kalpana Giri is found to have been engaged by the SPM, Takhali Bazar vide his memo no.H1/T.K. Bazar/Pankha Pullar/90-91 dated 16.4.1990 as contingent paid Pankha Pullar/90-91 dated 16.4.1990 as contingent paid Pakha Puller for a period from 16.4.90 to 15.10.1990 which is not regular one as per order issued vide DPS(H) memo no.BPS/SFB/C. Labour/Cen dated 22.1.1990. The qualification of Smt. Kalpana Giri(private Respondent no.6) furnished by SPM as Class VIII passed but on verification of School Leaving certificate, the same found not authenticated as she was a student of Class VII in 1988. Rina Giri(private respondent no.7) also presented that she studied in the School and stayed at School Hostel upto 30.4.1992 and thereafter in a school for 1992-94 of so distant place from which it was not possible to attend her duty at Takhali Bazar S.O. on the date of engagement of private Respondent nos.6 and 7 i.e. on 8.1.1986 as per SPMS report, the age of Kalpana Giri was as 10 years, 2 months and Rina Giri was 8 years only. Their engagement in a Govt: Office in such a tender age is not regular one.

Further, In an application dated 6.11.89, Kunja Behari Giri claimed for payment of arrear allowance of contingent paid water carrier, Safaiwala, Night Guard and Pankha Puller and the then SPM certified him to have been working in the said Post. so, if Kunja Behari Giri worked in all contingent paid posts at Takhali Bazar P.O. on 6.1.1989 then how his two daughters can be engaged from 8.11.1996."

In continuation of the above, the respondents No.1-5 also stated that engagement of Kalpana Giri and Rina Giri being respondents No.6 and 7 respectively are not at all genuine and proper from their ~~view~~ ^{consideration} of all facts and figures and the private respondent Nos. 6 and 7 are not eligible for appointment to any post.

3. Respondent No.6 also filed separate reply and opposed the claim laid by the applicant. It was stated that recruitment/appointment at the age of minority was not a bar for recruitment and there was no procedure for appointment of contingent paid staff through Employment Exchange at the time when the respondent

No.6 was appointed as contingent paid staff on 8.1.1986.

The respondent No.7 also filed the same and identical reply as filed by Respondent No.6.

4. We heard ld. counsel for the parties and perused the pleadings carefully.

5. Ld. counsel for the applicant, Mr. A. Banerjee contended that Superintendent of Post Offices, Tamluk Division, Tamluk vide communication dated 11.10.1996 directed the GDI(P), Mahishadal Sub Division as follows:-

"It is noticed by the undersigned on the verification of the contingent paid vouchers of 1/94 available in his office relating to T.K. Bazar the amount were paid to the following staff Kalpana Rani Giri and Rina Rani Giri therefore you are hereby directed to reinstate them and appoint either Kalpana Giri or Rina Giri who worked as contingent paid water carrier/safaiwala in the vacant post either EDDA or EDMC T.K. Bazar S.O. immediately observing the appointing conditions and report compliance by wire."

6. We may note that the respondent No.1-5 have filed a reply under the signature of one S. Kandasamy, Superintendent of Post Offices, Tamluk Postal Division, Tamluk and taken completely opposite stand in their reply to the stand taken in their memorandum dated 11.10.1996, reproduced herein above. In other words, the respondents 1-5 have supported the applicant's claim in specific by stating that the respondent No.6 and 7 were not eligible to the said post. It is matter of concern particularly when the same authority expressed dramatically apposite view on the same subject and such stand is taken before the legal forum. On a pointed query raised by the Bench as to whether any order was passed rescinding/amending/withdrawing the memorandum dated 11.10.1996 and why no action has been taken to stay an irregularity committed by the then incumbent of the office by issuing the memorandum dated 11.10.1996, no satisfactory reply was coming forth.

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7. We may further note none appeared for the respondent No.6-7 and, therefore, we had no benefit of hearing the said respondents.

8. A perusal of the reply filed by respondents No.1-5 as extracted in detail herein above would show that the respondent No.6 and 7 were minor and were of the age of 10 and 8 years respectively at the time of their engagement in the year 1986 and the documents seem to have been cooked up by someone and certainly for extraneous consideration, which in our considered view needs to be investigated and for this purpose we direct the Chief Post Master General, West Bengal Circle, Calcutta to cause an enquiry by a senior officer into the matter and fix the responsibility for issuing such a communication dated 11.10.1996 and also for preparing some documents to support the claim that the respondent No.6 and 7 were engaged as contingent paid staff in the year 1986 when they were of 10 and 8 years of age respectively. After carrying out such investigation, a stringent action be taken against the concerned officer. It goes without saying that while taking recourse to such enquiry, the principles of natural justice need to be observed.

9. On merits we find that it is an admitted case of the parties that the names of 20 candidates were sponsored by the Employment Exchange vide Memo dated 29/30.8.1995 and Superintendent of Post Offices, Tamluk vide Memo dated 30.8.1995 directed the concerned officer to stop recruitment to the said post, which was reiterated on 31.5.1996 and 11.6.1996 to postpone the recruitment to the said post. Further that interim order was passed on 18.10.1996 to the effect that no appointment shall be given to respondents Nos.6 & 7 till the next date in terms of Annexure 'D'. We, in the given circumstances, are of the concerned view that the respondents 1-5 shall finalise the recruitment to the said post based on rules, instructions and law on the subject at the earliest. If the applicant is found suitable and meritorious in terms of the rules and law, he may be so appointed.

