

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1313/96

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.

Hon'ble B.P. Singh, Administrative Member.

Hare Krishna Naskar

-v e r s u s -

1. Union of India service through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, Parliament Street, New Delhi.
2. Chief Postmaster General, West Bengal Circle, Yoga-yog Bhavan, Calcutta-12.
3. Superintendent of Post Offices, South Presidency Division, P.O. Baruipur, District-South 24 Parganas.
4. Sub Divisional Inspector (Postal), Diamond Harbour Sub Division, Diamond Harbour H.O.
5. Shri Tapas Naskar,
S/O Sri Manik Naskar,
Vill & Post Gumukberia,
Dist.-24 Pgs.(S).

...Respondents.

For the applicant : Mr. S.K. Ghosh, counsel.
Mr. N. Bhattacharjee, counsel.

For the respondents : Mr. B. Mukherjee, ^{counsel} Official respdts.
Mr. R.K. De, counsel, Pvt. respdt. No.5

Heard on 4.5.2000

19.5.2000
Order on

O R D E R

B.P. Singh, AM

This application has been filed by Shri Hare Krishna Naskar against his non-regularisation on the post of EDBPM, Gumukberia. The applicant has prayed for the following reliefs:-

"8.

a) The respondents be directed not to make any regular appointment to the post of Extra Departmental Branch Postmaster, Gumukberia E.D.B.O., until the finalisation of this application.

b) The respondents be directed to consider the candidature of the applicant, if he is otherwise found suitable for appointment to the post of EDBPM, Gumukberia, B.O.

c) The respondents be directed to maintain status quo as on date. "

2. The fact of the case is that the applicant belongs to SC category as per Annexure-A/1. He has been appointed as Extra Departmental Delivery Agent (EDDA) of Gumukberia B.O. and he joined on 7.10.80. The applicant was appointed as EDBPM, Gumukberia in addition to his own duty as EDDA on 19.8.96 on promotion of the regular Branch Post Master as Postman. The applicant has been holding dual charge of both EDDA and EDBPM, Gumukberia since then. The applicant has legitimate expectation that he would be regularised as EDBPM, Gumukberia as he fulfilled the requisite conditions for appointment as EDBPM. The applicant secured 353 marks in Higher Secondary Examination in 1974 and he was expecting to be given priority over all other categories except retrenched E.D. Agents in reference to P.M.G. Kerala Circle letter No. STA/102/6-VI/78 dated 7.11.1978. The applicant made representation to respondent No.3 on 26.9.96 for regularisation of his services as BPM vide Annexure-A/3. The applicant also came to know that respondent No.3 has requested the Employment Exchange to sponsor candidate for appointment to the post of BPM, Gumukberia for which interview of the candidates was to be held on 16.10.96. The applicant became apprehensive that his claim of regularisation of the post will be disregarded because of the above faulty procedure as the name of the applicant will not be sponsored by the Employment Exchange as he is already in service. This anomalous position can only be set right by the Hon'ble Tribunal by issuing suitable direction and orders to the respondents. For this reason, the applicant approached the Tribunal with the prayers stated above.

3. We have heard Id. counsel Shri S.K. Ghosh, leading Mr. N. Bhattacharjee, Shri B. Mukherjee, Id. counsel for the official respondents and Shri R.K. De, Id. counsel appearing for the Pvt. respondent No.5. We have also gone through the reply of the respondents, as well as reply

of the Pvt. respondent. The respondents have also produced the connected departmental records which have also been gone through by us.

4. Shri Ghosh, Id. counsel for the petitioner reiterated the facts of the case as stated above. He has submitted ^{as to} whether a working ED Agent should be given priority over other applicants ^{as the} ~~which~~ issue has already been decided by the Post Master General, Kerala Circle vide his letter dated 7.12.78. The Id. counsel has also challenged the departmental procedures of recruitment to the post of EDBPM mainly through Employment Exchange as this procedure excludes those working as ED agents, as their names would not be sponsored by the Employment Exchange as such candidates are already employed. This procedure is against the provision of Art. 14 of the Constitution. This procedure is further against the spirit of the provision of Art. 38 of the Constitution. The Id. counsel has also drawn our attention to the D.G.,P&T, letter No. 43-246/77-Pen dated 8.3.78 which stipulates that candidates belonging to SC/ST categories with the minimum prescribed educational qualifications should be given preference over the candidates belonging to other categories. The applicant being SC should be considered according to the instructions of this communication. The same principle has been confirmed by the Bombay Bench in the case of Sri Saryeras Akaram Shate -Vs.- Union of India and Others. He has further submitted, that experience of working on a post may not be the sole criteria for selection. But such experience must have weightage for selection. The applicant having experience on the post of EDBPM should be given weightage for such experience at the time of selection. The applicant should be given equality of opportunity for employment and appointment to the post according to the provision of At. 16 of the Constitution. In view of the above submissions the Id. counsel emphatically pleaded that the prayer of the applicant should be granted and his O.A. should be allowed.

5. Id. counsel Mr. Mukherjee, appearing for the official respondents submitted that on promotion of regular incumbent, the post of EDBPM, Gumukberia B.O. fell vacant and the work of the vacant post was assigned

to the applicant in addition to his own duty of EDDA on payment of allowance of Rs.50/- p.m. After making this interim arrangement the regular process of appointment on the post of EDBPM was set in motion. According to the respondents the local Employment Exchange was requested to sponsor suitable candidates on 28.8.96. A list of 12 candidates was received from the Employment Exchange on 26.9.96. All the candidates were called for verification of their bio-data on 16.10.96. From among those candidates, the Pvt. respondent No.5 was found most suitable ~~for~~ the post and was selected. The Id. counsel further submitted that the applicant while holding additional charge of the EDBPM applied for the post. His application was received by the respondents on 26.9.96. Since the application of the applicant was received long after the process of recruitment was started, the application was not brought into consideration. He, however, further submits the rule position about the recruitment of the EDBPM. ~~that~~ There is no provision for regularisation of the appointment on the post of EDBPM which the applicant was holding in addition to his own charge of EDDA. The arrangement of the applicant was a stop-gap arrangement and he was not entitled for regular absorption in the post. The Id. counsel further submits that the rule of recruitment on the post of EDBPM do not provide for any preference of EDDA in appointment on the post of EDBPM. The rules provide that an EDDA can directly apply for the post of EDBPM without his name being sponsored through Employment Exchange. Only ~~that~~ this relaxation has been given to the serving EDDAs who apply for the post of EDBPM. The authorities are supposed to consider the candidature of the EDDA alongwith other candidates and make selection of the best suitable and qualified candidate. The rules also do not provide for any weightage of experience on the post. In view of the above submissions Id. counsel has submitted that the application is baseless and devoid of merit. It is, therefore, not maintainable at all and the application should be dismissed with cost.

6. The Id. counsel Mr. De, appearing for the Pvt. respondent No.5 has submitted that a notice dated 5.9.96 was posted in the office of

The Employment Exchange inviting applications for selection for the post of EDBPM, Gumukberia on regular measure. In the said notice the last date of filing/submitting application was 20.9.96. The Pvt. respondent applied accordingly and after screening of the application, he was called for verification of the bio-data. On 16.10.96 he was selected for the post of EDBPM vide communication dated 10.4.97 as per Annexure-C/2 issued by the respondent No.3 after being found most suitable and eligible candidate. The Pvt. respondent No.5 has been selected in accordance with the proper selection process and offered appointment according to the rules after fulfilling all the prescribed conditions of the post of EDBPM, Gumukberia. In view of this, the application of the applicant is frivolous and liable to be dismissed. The Pvt. respondent No.5 was duly selected by way of proper process of law and appointed. He has been working without any blemish since the date of his appointment at Gumukberia B.O. In view of this, the Pvt. respondent has submitted that the application of the applicant should be dismissed as the same does not have any merit.

7. We have gone through the relevant records produced by the official respondents. From the comparative chart, it is clear that in all 12 candidates were considered and within the 12 candidates 11 were ^{from} SC communities and 1 was from other community. The name of the applicant does not appear in the list of 12 candidates who were considered in the comparative chart for selection on the post of EDBPM, Gumukberia. Out of these candidates, the Pvt. respondent No.5 was selected as he was found most suitable amongst all the eligible candidates. The Pvt. respondent No.5 fulfilled all the conditions prescribed for the post and secured 479 marks in Madyhamik Examination. Amongst all the SC candidates he secured the highest marks and, therefore, among the 12 candidates the selection of the Pvt. respondent No.5 was according to the rules.

8. From the above details, it is evident that the post of EDBPM, Gumukberia fell vacant on promotion of regular incumbent and the

applicant was appointed against stop-gap measure to hold the additional charge of the post in addition to his own charge of EDDA. After the stop gap arrangement, ~~on~~ regular process of recruitment on the post of EDBPM, Gumukberia started. The applicant also submitted his application for regularisation on the post on 26.9.96. The Employment Exchange also sent the list of 12 candidates which was received on 26.9.96. Though the list from the Employment Exchange as well as the application from the applicant ^{were} ~~was~~ received on the same date in the office of respondent No.3 yet the application of the applicant was not brought into consideration treating the same to have been received long after the process of the recruitment started. This submission and argument does not appeal to reason. One set of applications received on the same date ~~on~~ the one hand, on the other, the application received from the applicant on the same date has not been considered. This was unfair and unjust on the part of the official respondents. The application should have been considered alongwith those received from Employment Exchange on the same date. This fact ~~which~~ has been admitted by the Id. counsel for the respondents in his reply as well as confirmed from the official records produced by the respondents. No doubt, in principle, the applicant has been denied the opportunity of being considered alongwith other candidates. Sometimes such non-consideration may lead to injustice and cause irreparable damage to the person concerned. We would like to see in the present case whether the non-consideration of the applicant alongwith other candidates caused any injustice and irreparable loss in effect. The applicant vide Annexure-A/3, & A/2 has submitted his application and marksheet respectively. He has secured 353 marks in Madhyamik Examination. The Pvt. respondent No.5 who was considered, selected and appointed, secured 479 marks. Thus it is clear that in merit the Pvt. respondent No.5 was better than the applicant. The Pvt. respondent No.5 was the best candidate amongst all the SC communities. ~~communities~~ ^{candidates} We have also checked up marks obtained by the other ~~communities~~ in the comparative chart. We find therefrom that there is only one candidate who has secured 353 marks which is equal to the marks obtained by the applicant. All other ~~communities~~ ^{candidates} have secured more than 353

marks. We have also found that all the candidates except one belonged to the SC category. The applicant also belonged to the SC category. The selected candidate viz. Pvt. respondent No.5 also belonged to SC category. In addition to these facts, we have also seen the recruitment rules of the post of EDBPM. The rules do not provide ^{for} any preference to working EDDA for the appointment on the post of EDBPM except that such EDDA can apply directly without going through the Employment Exchange and after receipt of all the applications, both from Employment Exchange as well as direct, the best eligible candidate is required to be selected and appointed on the post. In view of the above facts and rule position, we find that in effect, no injustice has been done to the applicant even though his candidature was not considered alongwith other candidates and, therefore, no irreparable harm has been done. We, therefore, find no merit in the case and the same is rejected without awarding any cost.

B.P. Singh
(B.P. Singh)
Member (A)

a.k.c.


(S.N. Mallick)
Vice-Chairman.