

CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA.

ORIGINAL APPLICATION NO.1364/1996.

Dated : 05.05.2005.

Hon'ble Shri J.K.Kaushik, Judicial Member,
Hon'ble Shri Anand Kumar Bhatt, Administrative Member.

Basudeb Sardar, Son of Sri Nirmal
Chandra Sardar, resident
Of Village - Hatchapri,
P.O. Khaizamara,
P.S.Joynagar,
District - Sout 24 Paraganas.Applicant.

v.

1. Union of India service through the
Secretary, Ministry of Communications,
Department of Posts,
Dak Bhavan,
New Delhi - 110 001.
2. Chief Postmaster-General,
West Bengal Circle,
Yoga-Yog Bhavan,
Calcutta - 700 012.
3. Superintendent of Post Offices,
South Presidency Division,
P.O. Baruipur,
Dist. South 24 Paraganas.
4. Abdul Jali Molla.Respondents
(By Advocate Shri M.S.Banerjee for
Respondents No.1 to 3 and
Shri A.Ganguly for Respondent No.4).

Dr

: ORDER (ORAL) :

{J.K.Kaushik, Judicial Member}

The matter was heard yesterday the 4th of May, 2005 at a considerable length. Incidentally, the learned counsel for the Private Respondent viz. R-4 was available all the day yesterday, but at the time of hearing he was not available. Hence, we heard the other side. The learned counsel for the applicant also has not been appearing in this case for quite some time. Keeping in view, the interest of justice, the case was posted for today under the heading for dictation of orders for ~~two~~^{two} the ~~plain~~ purpose i.e. for giving them an opportunity, as well as, for deciding the matter.

2. The brief facts of this case are that the applicant has inter alia assailed the order dt. 30.10.1996 (Annexure – A-11) and has sought for a direction not to select the Private Respondent i.e. R-4 and also for a mandate to the official respondents to appoint the applicant. As per Annexure – A-11, the candidature of the applicant was cancelled for the reason that there was failure on his part to take up a residence and to provide suitable accommodation for functioning and carrying out the postal operations on the post of EDBPM, Khaijamara B.O. The O.A. has been filed on multiple grounds which has been elaborated in para 5 and its sub-paras.



3. A detailed and exhaustive reply has been filed to controvert the facts and grounds based in the O.A. on behalf of the official respondents, as well as, on behalf of the private respondent (R-4). We have considered the pleadings and records of this case. The learned counsel for the official respondents, as well as, the private respondent have reiterated the facts and grounds placed in their respective pleadings. The learned counsel for the official respondents has been fair enough to produce before us the selection proceedings, as well as, the comparative statements whereby the ^{merits} ~~marks~~ of the candidates have been prepared. The learned counsel for the private respondent has contended that as a matter of fact, in the first instance, it is the applicant who was given the offer of appointment with a reasonable time to provide the accommodation, but the applicant could not provide the requisite accommodation and therefore R-4 being high in merit was offered the appointment, whereby is working ever since 1996 and by now 9 years have elapsed. He has submitted further that working for a long time by R-4, he has attained the prescriptive right to hold the post. The learned counsel for the official respondents was confronted with a query as to how and on what basis the selection was conducted. The learned counsel submitted that the complete proof is being made available before this bench of the Tribunal and from the very record which is produced, we find that the respondents have taken into

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consideration certain factors like the proof of landed property, possession of the immovable property and verification of income etc. We find that the very selection panel has not been prepared strictly as per the marks obtained in the Matriculation Examination. A perusal of the result indicates that there were number of persons had got more marks in the Matriculation Examination than the applicant, as well as, the Private Respondent (R-4). One Shri Abdul Wahab Gorsu who is at Sl.No.5 secured 55.33% of marks, whereas the applicant has secured only 47.11% of marks and the Private Respondent (R-4) has obtained 45.8% of marks. There is yet another person at Sl.No.13 who has secured 49.77% of marks. In view of the aforesaid factual position, we find that the very selection has not been made as per the rules in force. In this view of the matter, neither the applicant can get any relief ^{sadistic} except the statistic pleasure that the Respondent No.4 shall have to be ousted. The law position on this issue is by now fully amplified and is very clear by this very Bench of the Tribunal wherein similar question arose in OA No. 951/2003 – Shri Tapan Kumar Guli decided on 17.3.2005 whereby reliance was placed on another judgment of this very Bench of the Tribunal in O.A. No.1381/96 decided on 7.3.2005. Thus, the issue is no more res-integra. We have absolutely no hesitation to follow the aforesaid decisions and decide this matter on the



similar lines. A copy of the aforesaid orders is directed to be placed on record of this file.

4. In view of the aforesaid discussion, we reach to a conclusion that the appointment of Private Respondent (R-4) cannot be sustained and the same is hereby set aside. The O.A. stands allowed to that extent. The official respondents are directed to give offer of appointment to Shri Abdul Wahab Gorsu who has secured 55.93% of marks and is at the top of the merit list to the post of EDBPM, Khaijamara B.O. within a period of one month from the date of receipt of copy of this order and he shall be given one months time for fulfillment of the requirement viz. take up a residence and to provide suitable accommodation for functioning and carrying out the postal operations on the post of EDBPM, Khaijamara B.O. In case, he is not able to provide the same within the specified time, the next person in the merit list shall be given the offer of such appointment. No costs.


(ANAND KUMAR BHATT)
ADMINISTRATIVE MEMBER


(J.K. KAUSHIK)
JUDICIAL MEMBER

B.