

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. M.A. 234 of 1997  
Q.A. 1454/1996

Present : Hon'ble Mr. S.K. Ghosal, Administrative Member  
Hon'ble Mr. P.C. Kannan, Judicial Member

NEMAI MAZUMDAR

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. Samir Ghosh, Counsel

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

Heard on : 5.5.2000

Order on : 5.5.2000

O R D E R

S.K. Ghosal, A.M.

The applicant is aggrieved by the cancellation of the order of appointment, which had been issued in his favour by the Office of the Sub-Divisional Inspector of Post Offices, Memari Sub-Division, Memari, Burdwan, dated 20.11.95 for the post of Extra Departmental Mail Carrier(EDMC), Chanchai EDBO (i.e. Extra Departmental Branch Office). The impugned order cancelling that earlier order of appointment is dated 13.1.97 and is found at Annexure-X of the M.A. We observe that the only ground mentioned in that order of cancellation is that the applicant had submitted a false document in connection with his <sup>12</sup> residence for <sup>12</sup> his recruitment to the aforesaid post.

2. The case of the applicant is that he was appointed after following the prescribed procedure and based on his merits, he having secured the highest marks at the Madhyamik Examination, was among the 7 candidates who had been sponsored by the Employment Exchange for appointment <sup>12</sup> to the aforesaid post.

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He has also contended that earlier the Nimo-I Gram Panchyat had certified that he was a permanent resident of the village Rasulpur within the jurisdiction of the post office of Rasulpur Memari and of the Police Station in the district of Burdwan. Further the President of that Gram Panchayat had certified that he had been living there for the last 6 months. The applicant has also produced a Ration Card bearing No. M.R.J. 119400 issued by the Sub-Inspector which evidences the fact that the applicant who is the son of one Sri Sushil Majumdar is a resident of East Rasulpur in the area of Nimo-1 under the Police Station of Memari in the district of Burdwan. The applicant has further alleged that the ground namely that he had submitted a false document or documents in connection with his recruitment to the aforesaid post was thus without any justification and was totally invalid and the action of the respondents in cancelling his earlier order of appointment only on that ground was irregular. He has finally sought the relief of a direction to the respondents ~~not to give effect to~~ the impugned order cancelling his previous order of appointment, which is found at Annexure-X of the M.A. and is dated 13.1.97.

3. On behalf of the respondents no reply statement appears to have been filed before the Bench. But at the time of hearing of this matter, the 1d. counsel for the respondents ~~has~~ produced two copies of the reply statement which he claimed <sup>to</sup> have been filed earlier in this office. However, on query it has been clarified that no such reply statement has been received by the office or the Bench directly.

4. 1d. counsel for the respondents was then permitted <sup>to</sup> argue on the legal aspects of the claim of the applicant for the relief mentioned above. According to the 1d. counsel for the respondents the respondents <sup>have</sup> conducted an enquiry on ~~receipt~~ of a complaint that the certificate of residence produced by the applicant was not genuine and that on verification it was

found that ~~the~~ certificate of residence issued earlier on behalf of the Gram Panchayat of Nimo-1 had been cancelled by the President of the Gram Panchayat subsequently. The 1d. counsel for the respondents has, ~~therefore~~ maintained that in the light of the said enquiry and the finding recorded as a part of that enquiry, the applicant was found to have produced a false certificate of residence and therefore the respondents were justified in cancelling the earlier order of appointment issued in favour of the applicant on the same ground.

5. On 2.5.2000 when the matter was taken up for hearing, we had ordered that the respondents should produce the material namely the report of the enquiry conducted by an officer of the department ~~to~~ ascertain whether the applicant was residing within the delivery jurisdiction and also to keep the relevant papers ready for perusal by the Bench on the next date of hearing which is today.

6. To start with we must observe that ~~was~~ laid down in para 4 of the instructions on Method of Recruitment in Swamy's Compilation of Service Rules for Postal and ED Staff, 1999. at page-76 of the said book. It is laid down in para 4 (ii) on Method of Recruitment that

"ED Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherefrom mails originate/terminate, i.e., they should be permanent residents of the delivery jurisdiction of the post office."

The fact that a certain President of a Gram Panchayat, who issued two certificates of residence in favour of the applicant ~~had turned around subsequently~~ and cancelled the certificates of residence earlier issued by him or under his authority, ~~is 49~~ as evident, is the only basis for the respondents to come to the conclusion that the applicant is guilty of producing a false certificate of residence and ~~for~~ that act on his part his appointment order issued earlier should be cancelled.

7. In response to our directions, the 1d. counsel for the respondents has produced the relevant file pertaining

to the cancellation of the earlier order of appointment. The concerned file bears No. PMG(SB)/SF/2-68/95. We find that a detailed note dated 1.10.96 was recorded by one Sri T.C. Roy, ADPS-I, S.B. Region in the context of a complaint, which was lodged by the Circle Secretary, AIPEU-Postman, Class-IV EDA dated 28.11.95 to the effect that the applicant was not a resident of the place. In the same note, it was observed that the applicant had indeed produced two certificates in support of the fact that he was a resident of the village Chanchai; one was dated 21.9.95 and the other one was dated 26.10.95. The note further records that in course of verification the President(Pradhan) Nime-I, Gram Panchayat(GP) stated that Sri Nemai Mazumdar did not reside in Baidyadanga, Rasulpur Post Office. It is also mentioned in the note that the applicant had furnished false declaration and documents in support of the fact that he was a resident of the concerned area. The note significantly states as follows:-

"In this connection it is intimated that Sri Nemai Mazumdar(applicant) subsequently has produced the xerox copy of the Ration Card No. 119400 dated 21.4.96 and xerox copy of the deed No. 940 dated 29.3.96 shewing his residential address at village and post Rasulpur, Dt. Burdwan."

In the same file there is a report i.e. 5(c) on the correspondence side. We find that a report of enquiry was submitted by the Assistant Superintendent of Post Offices(Investigation), Memari Sub-Division dated 27.5.96 to the effect that when the said officer undertook a verification as to whether the applicant was a resident of the village Baidyadanga coming under the jurisdiction of GP(Gram Panchayat) Nime-I, he had met the Pradhan of Nime-I GP, who admitted that he had issued a certificate earlier to the effect that the applicant was a resident of the village Baidyadanga, P.O. Rasulpur, but subsequently he had cancelled that certificate issued in favour of the applicant and issued the second certificate cancelling the first one.

8. We have already pointed out that the only basis for the impugned order cancelling the previous order of appointment issued in favour of the applicant is the alleged production of a false residential certificate by him. What clearly emerges from a perusal of the concerned file submitted by the department is that the certificate of residence issued earlier by the learned Pradhan, and produced by the applicant before the respondents in connection with his appointment, has not been proved to be a false certificate. On the contrary, the report of enquiry, mentioned above by us, specifically says that the learned Pradhan admitted that he had issued the first certificate in favour of the applicant to the effect that the applicant was a resident of that village. However, for the reasons best known to the learned Pradhan he chose to cancel that certificate after a considerable period of time. In this context, the ld. counsel for the applicant submits before us another certificate which was evidently issued after the said cancellation by the same Pradhan in 1999, once again certifying that the applicant was a resident of the village under his jurisdiction. Obviously, the authenticity of the certificates issued by the learned Pradhan about the residence of the applicant has undergone a very swift and dramatic metamorphosis. It appears that the learned Pradhan of the concerned jurisdiction has acted on the basis of certain transient impressions in his mind about whether at a particular point of time the applicant was living in that area or not. All that we have to say in the face of such extreme flexibility on the part of the learned Pradhan is that it was not appropriate for the respondents to have depended entirely on the certificates of such a person, irrespective of the great esteem in which all elected representatives are required to be held in a democracy. The department in the light of the swift changes on the part of the ld. Pradhan

*S.J.*

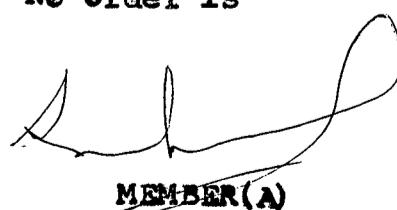
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and the production of a copy of the Ration Card by the applicant, even before the termination order, should have made an independent enquiry to avoid arbitrariness in decision-making. The only evidence of such an independent enquiry is the fact recorded in the report of enquiry mentioned above which ~~it~~ merely says that at the particular point of time when the Assistant Superintendent of Post Offices visited that particular village, he did not find the applicant. It cannot be the case of the respondents that a resident of a village must be available 24 hours in that village and should have no need to go out of his village even for genuine purposes. Besides that evidence, the respondents have failed to produce any other material to support the only ground based on which the impugned order of cancellation of the earlier order of appointment was issued in respect of the applicant.

9. We observe that no other ground has been urged by the respondents for cancelling the earlier order of appointment issued in favour of the applicant. We, therefore, find it difficult to sustain the impugned order dated 13.1.97 issued by the Sub-Divisional Inspector of Post Offices, Memari Sub-Division, Memari seen at Annexure 'X' of the M.A. We have no hesitation in quashing that order. The respondents are directed to implement the earlier order of appointment dated 20.11.1995 seen at Annexure 'C' of the O.A. under which the applicant was appointed as Extra Departmental Mail Carrier of Chanchai Branch Office. The aforesaid direction shall be carried out by the respondents within a period of 4 weeks from the date of receipt of a copy of this order. Thus, both the O.A. and the M.A. are disposed of. No order is passed as to costs.

Dharmendra  
MEMBER(J)

S.M.

  
MEMBER(A)