

Central Administrative Tribunal
Calcutta Bench

OA/61/1996

Date of Order: 23-7-03

Present:

Hon'ble Mr.B.P.Singh, Administrative Member
Hon'ble Mr.Nityananda Prusty, Judicial Member

Dharikshan Yadav

Petitioner

-Vs.-

Union of India (Posts) & 3 ors.

Respondents

For the petitioner : Ms.S.Dasgupta, Counsel

For the respondents : Mr.B.Mukherjee, Counsel

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B.P.Singh, AM

This application has been filed by the applicant against the cancellation of the provisional selection of the applicant on the post of Sorting Assistant by the Order dated 26-9-95. The applicant has prayed for the following reliefs :-

In the facts and circumstances of the case, the impugned order dated the 26th September, 1995 issued by the respondent no.4 should be declared invalid, wrong, illegal, improper and unconstitutional, the same be set aside and/or quashed, the petitioner should be posted to his job and the petitioner should be given all his remunerations from the date of issuing letter of Selection benefits of his employment and seniority in post from the date of issuing letter dated the 12th September, 1994.

Subsistance allowance to be paid to the petitioner during the pendency of the

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application and the vacancy at least for one post should not be filled in.

2. The fact of the case of the applicant, in short, is that the respondent authorities issued advertisement in The Ananda Bazar Patrika on 2-4-1994 inviting application from eligible candidates to fill up the vacancy of Sorting Assistants in the Railway Mail Service SB Division, Howrah. The applicant fulfilled all the prescribed conditions and applied for the post with copies of certificates, marks sheet, employment exchange registration number and other relevant papers and documents. The applicant was provisionally selected for one of such post by the respondent no.4.

2.1 The respondent no.4 vide its communication dt.12-9-94, enclosed as Annexure A to the OA, intimated the applicant about the provisional selection for recruitment to the post of Sorting Assistant in the Howrah Division and he was asked to appear before the respondent no.4 with the Original Marks Sheet, Employment Exchange Registration Card and all other documents within 10 days. The applicant accordingly appeared before the respondent no.4 on 21-9-94 and submitted necessary original certificates. The respondent no.4 found the same in order and accepted the original documents and in acknowledgment thereof granted a receipt on 12-9-94 which is enclosed as Annexure B. The applicant was waiting for his appointment order but, suddenly he received a communication dt.26-9-95, enclosed as Annexure C, by which the applicant was intimated that the provisional selection for the post has been cancelled.

2.2 The applicant made representation to the respondent no.4 through his Id.Counsel on 2-12-95, enclosed as Annexure D. But, he did not receive any reply to the said

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representation. Therefore, aggrieved with the inaction on the part of the respondents, the applicant has filed this OA and prayed for the reliefs stated above.

3. Earlier Dr.R.G.Ram was appearing as 1d.Counsel for the applicant but, to-day Ms.S. Dasgupta appeared in place of Dr.Ram after submitting no objection from him. 1d.Counsel Mr.B. Mukherjee appears for the respondents. Reply and further affidavit has been filed by the 1d.Counsel for the respondents. Rejoinder to the reply has also been filed by the 1d.Counsel for the applicant. We have heard both the 1d.Counsels and gone through the records.

4. 1d.Counsel for the applicant submits that the applicant was provisionally selected by the respondent no.4 and he was intimated about the same by the Order dt.12/13-9-94 enclosed as Annexure A. The applicant also produced all the original documents required for the purpose on 21-9-94 and a certificate to that effect was issued by the respondent's office on 21-9-94, a copy of which has been enclosed as Annexure B. Those are found genuine and accepted by the Office of the respondent no.4. The applicant was expecting necessary appointment order as a result of the selection. But, he did not receive any appointment order. However, he received order dt.26-9-95 (Annexure C) from the respondent no.4 by which he was intimated that selection has been cancelled.

4.1 1d.Counsel further submits that no reason for cancellation has been given in the said notice. Once the applicant was found suitable for selection on the post and he was actually selected, there was no question of cancellation of selection without intimating the reason ~~because~~ for the same. Therefore, the action of the respondent authorities in

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canceling the selection is not justified and against the rules as well as unconstitutional and, therefore, the same requires to be quashed.

4.2 Ld.Counsel for the applicant has referred to two unreported decisions of this Tribunal one dt.1-9-97 passed in OA/352/1996 and the other dt.29-3-2000 passed in OA/311/1996. In both the OAs the respondents are the same and the applicants in both the OAs have applied for the post of Sorting Assistant in reference to the same notification in the newspaper and ~~had~~ ^{were} provisionally selected and later on produced their original certificates. The certificates were found genuine but, instead of getting their appointment order and posting order, they received order of cancellation of their selection. They approached the Tribunal and in both the cases the Tribunal granted them reliefs which will be clear from paragraphs 11 and 12 of the Order dt.1-9-97 in OA/352/1996 and paragraph 9 of the Order dt.29-3-2000 in OA/311/1996. Ld.Counsel submits that the present applicant is also similarly placed person and, therefore, similar reliefs should be granted to him as well.

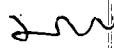
5. Ld.Counsel for the respondents referred to the reply as well as supplementary affidavit by the respondents and submitted that the applicant was selected on provisional basis as he fulfilled the prescribed conditions for the post. Copy of the certificates were verified from the original certificates and nothing adverse was noticed at the time of verification. However, subsequently a complaint was made by the Secretary of a Service Union regarding irregularities in selection on the post of Sorting Assistant. Thereafter, the Post Master General directed review of the previous selection and accordingly constituted Committee consisting of 3 members on 31-st cases of the

Committee did not consider the name of the applicant as no response regarding Registration Card of the applicant issued by the Employment Exchange came from the concerned Employment Exchange till the date of review committee meeting. Id.Counsel submits that this was the reason why selection of the applicant was cancelled.

5.1 Id.Counsel for the respondents has also submitted that the applicant was selected on provisional basis and the respondent authorities has right to reconsider such selection and to cancel the same at any time. The provisional selection does not give any right to the applicant for appointment and posting on the post and, therefore, no illegality has been committed by the respondent authorities in cancelling the provisional selection of the applicant.

5.2 Id.Counsel for the respondents has also reiterated the same fact in his supplementary affidavit filed on 12-12-02. In the said supplementary affidavit in reply it has also been submitted that no response was received from the concerned employment exchange in respect of the registration card of the applicant till the date of Review Committee meeting and, therefore, his selection was cancelled. In view of the above Id.Counsel for the respondents submits that action has been taken by the respondents according to rules and no illegality has been committed. Therefore, the application of the applicant requires to be dismissed.

6. In view of the above submissions of the Id.Counsels it is clear that the applicant was selected provisionally on the post of Sorting Assistant in Howrah Division by the respondent no.4. The applicant produced the original certificates as demanded by the respondent no.4 and the same was accepted as such without any doubt about their genuineness. But, in spite of verification of the original



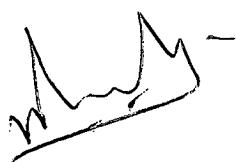
documents, the applicant was not given offer of appointment on the post instead his selection was cancelled subsequently, on the sole ground that the reference made to the local Employment Exchange relating to registration card of the applicant was not replied to till the date of the meeting of the Review Committee.

7. It is thus clear to us that the provisional selection of the applicant was cancelled for no fault on the part of the applicant. But, the same was done because the reply from the local Employment Exchange was not received by the respondent authorities. When no reply was coming forward from the local Employment Exchange on the reference, the respondent no.4 was free to inform the applicant as well about such non-reply so that he could have made efforts to have necessary reply. It has also been found that no extra genuine effort was made by the respondent authorities to get reply from the local Employment Exchange by deputing somebody to contact the Employment Officer and obtain the reply to such reference. Without the reply in reference the respondents have come to the conclusion that the case of the applicant should be cancelled does not appeal to reason. It is unreasonable and illegal order. No reply cannot be adverse reply always and, therefore, the respondents were duty bound to make all efforts within their power and command to obtain proper and suitable reply from the Employment Exchange by deputing some officer to the office of Employment Exchange. We have also noticed that it is a single line order without stating the cause of cancellation. The applicant should have been informed about the actual cause for cancellation of the order.

8. In view of the above facts and circumstances and materials on record we are of the view that the impugned order

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dt.26-9-95 (Annexure C) should not be allowed to stand. Accordingly, the OA is allowed. The impugned order dt.26-9-95 is set aside. However, the respondents are directed to pass appropriate orders in pursuance of the provisional selection of the petitioner on the post of Sorting Assistant as per Order dt.12/13-9-94 (Annexure A) after verifying the certificates produced by the petitioner within a period of 8 (eight) weeks from the date of communication of this order. We make it further clear that the respondent authorities will not re-open the question of genuineness of the Employment Exchange Card on the ground that they have not received any reply from the Employment Exchange concerned. We also direct the respondent authorities to offer appointment to the applicant to the post of Sorting Assistant on the basis of his earlier selection within the abovesaid period of 8 (eight) weeks from the date of communication of this order. We also note that the impugned communication since quashed had been issued to the petitioner after more than a year after the offer of provisional appointment dt.12-9-94. The petitioner, therefore, on his joining in the cadre should be allowed appropriate seniority on the basis of his position in the original panel and he would be treated to have notionally joined the post on the date the candidate next junior to him in the original panel had joined and his pay be fixed accordingly on his actual joining. The OA is accordingly allowed with no order as to costs.



Nityananda Prusty,
Judiciaial Member.



B.P.Singh,
Administrative Member.

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