

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 462 of 96 with M.A. 155/98

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

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

Anirban Chowdhury

- v e r s u s -

1. Union of India, service through the Secretary, Ministry of Communication, Department of Post, Sanchar Bhawan, New Delhi-110 001.
2. Chief Postmaster General, W.B. Circle, Yogayog Bhawan, C.R. Avenue, Calcutta-700 012.
3. Sr. Superintendent of Post Offices, Bankura, Divn., Dist. Bankura.
4. Sr. Postmaster, Bankura H.O. Dist. Bankura.
5. Asstt. Superintendent of Post Offices, Bankura Central Sub. Divn. Bankura.
6. Branch Postmaster, Bankati EDBC, Bankura 722 102.

...Respondents.

For the applicant : Mr. Samir Ghosh, counsel.

For the respondents. : Mr. S.N. Das, counsel.

Heard on 22.12.99

Order on 31-1-2000.

O R D E R

B.P. Singh, AM

The instant M.A. being No.155/98 arising out of the O.A. 462/96 has been filed by the applicants who are respondents in the O.A. No.462/96. This M.A. has been filed for vacating the interim order granted by the Tribunal by its order dated 8.4.96 in O.A. No. 462/96 which is quoted below:-

" On hearing the Id. counsel for the petitioner, we direct by way of an interim measure that till further orders or till regular appointment is made to the post of EDDA (I) of Bankati EDBPO, whichever is earlier, the impugned order dated 3.4.96 from the Asstt. Superintendent of POs, Bankura Central Sub-Division, Bankura vide Annexure-A/4 to the petition be stayed."

2. It was decided by the Tribunal on 22.5.98 that M.A. and O.A. should be considered together after receipt of reply, rejoinder etc. to the M.A. Both the M.A. and O.A. were heard together on 22.12.99.
3. The applicant of the O.A. No. 462/96 has prayed for the following reliefs:-

"8.

- i) To cancel, withdraw and/or rescind the impugned order dated 3.4.96, being Annexure-A/4 hereof;
- ii ) To direct the respondents to allow the applicant to discharge the duties and functions, attached to the said post of EDDA-I at Bankati EDBO, Bankura, as usual as before; and to pay the salary regularly.
- iii ) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue;"

4. The fact of the case is that the applicant applied for the post of EDDA (I) of Bankati in reference to notice dated 6.6.95 issued by the respondent No.5 vide Annexure-A. The applicant applied within the prescribed time. He appeared for interview/screening test on 27.7.95 and came out successful. The applicant was directed to join the said post vide order dated 31.7.95 issued by the respondent No.5 vide Annexure-A/1. The applicant assumed charge as EDDA-I Bankati on 3.8.95 vide Annexure-A/2. The formal order of appointment on provisional basis w.e.f. 3.8.95 was issued by respondent No.5 on 17.8.95 vide Annexure-A/3. The order provided that the appointment is provisional, would be terminated when regular appointment is made, applicant shall have no claim for appointment to any post etc. The applicant continued to work as such when suddenly on 3.4.96 (Annexure-A/4) he received a communication from respondent No.5 that the selection of EDDA-I Bankati EDBPO is cancelled with immediate effect. This order was issued in reference to

direction of the Senior Officers of the department who are respondents in the O.A. It was mentioned in Annexure-A/4 that the selection of EDDA-I Bankati was reviewed by the Chief Post Master General and found irregular and, therefore, the same was ordered to be cancelled. The applicant submits that the order dated 3.4.96 is bad in law and without jurisdiction besides being violative of the principles of natural and procedural justice and provisions of Arts. 14, 21 and 300A of the Constitution of India. Therefore, the applicant filed this O.A. with the reliefs prayed for as stated above.

5. We have heard Id. counsel Mr. S.K. Ghosh appearing for the applicant and Mr. S.N. Das, Id. counsel for the respondents. We have gone through the reply to the O.A. We have also gone through the M.A. though no reply has been filed to the M.A. by the applicants (respondents in the O.A.).

6. Id. counsel Mr. Ghosh appearing for the applicant has reiterated the facts stated above and concentrated his attack on order dated 3.4.96 (Annexure-A/4) issued by the respondent No.5. He submitted that the said order was bad in law and without jurisdiction. The applicant was selected to the said post of EDDA-I Bankati and has been discharging the duties and responsibilities of the post since his appointment. He was regularly selected after following prescribed procedures and, therefore, his selection could not be cancelled and he should not have been debarred from discharging due duties and functions. The applicant was never made aware about the grounds for cancellation. He was not given any opportunity to be heard before the order of cancellation was issued. On the basis of the order dated 12.8.95 (Annexure-A/3) the appointment of the applicant could not be terminated in the facts and circumstances of the case. There is no justification for the purported order and, therefore, the same is nullity in the eyes of law. The malafide is the foundation of the purported order dated 3.4.96 cancelling the selection of EDDA-I Bankati. The respondents have flagrantly violated not only the principles of natural and procedural justice but also principles enshrined under Arts. 14, 21 and 300A of the Constitution. The action of the respondents appears to be based on consideration of some extraneous

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factors. In view of these submissions, the Id. counsel submitted that the order dated 3.4.96 (Annexure-A/4) requires to be quashed and the applicant is entitled in the circumstances to the reliefs prayed for in the O.A.

6. The Id. counsel Mr. Das for the respondents submitted that the selection on the post of EDDA-I, Bankati was not according to the departmental rules on the subject. Prescribed procedures as provided in the rules were not followed. Serious complaints were made about the selection to the higher authorities including the Hon'ble Communication Minister, Govt. of India. The complaint was enquired into in great detail by the Vigilance Branch of the Department as public interest was involved. On the basis of the report, respondent No.2 found the selection on the post of EDDA-I Bankati irregular and, therefore, ordered the cancellation of the selection. The Id. counsel has summarily submitted the points of reply to the O.A. in the M.A. which has been filed by the respondents applicant. It has been submitted in the reply as well as in the M.A. that the selection committee was not properly constituted and the same was not authorised to make any selection as would be clear from Annexure-R/3 of the reply. He further submitted that the applicant has not secured the highest marks in the Madhyamik Examination. He secured 3rd Division whereas there were other candidates who had secured much higher marks in 2nd Division and 1st Division in Madhyamik Examination. Thus the applicant was not the best candidate and the same is disclosed vide Annexure-R/4 collectively to the reply. The applicant secured less percentage of marks in Madhyamik Examination. The Id. counsel further submitted that there were other procedural irregularities in the process of selection right from the stage of advertisement which has been discussed in detail (Annexure-R/2) and which are bases for taking decision to cancel the selection by the respondents. In view of these facts and submissions, the Id. counsel submitted emphatically that there was nothing against the respondent (applicant) as such. But there was definitely procedural lapses and irregularities in the process of selection right from the stage of advertisement of the vacancy. This being the position, there was hardly any justification to give any chance of hearing to the applicant to explain the procedural lapses/irregularities for which he was not responsible.

It was the appointing authority who was responsible for all these things. Therefore, the selection as such has been cancelled by the higher authorities after receipt of the report submitted after enquiry by the Vigilance Branch of the Department. The Id. counsel further submitted that there has not been any violation of principles of natural justice or procedural justice in the case. There is no question of any violation of the provisions of Arts. 14, 21 and 300A of the Constitution of India. The order of cancellation of the selection was issued on the basis of the facts which emerged after detailed enquiry and, therefore, the allegation of bias against the authorities in cancelling the selection is baseless. The decision of the respondents has been taken in the larger interest of the Department and public at large. In view of these submissions, the Id. counsel submitted that the application of the applicant is without any base and should be disallowed alongwith the reliefs. The interim order dated 8.4.96 passed by this Bench should be vacated and respondents should be allowed to make fresh recruitment on the post of EDDA-I Bankati after following the prescribed procedures and rules of the Department. When further advertisement of vacancy is issued the applicant may apply like any other candidate for due consideration by the authorities according to the departmental rules.

7. In view of the above submissions, we find that order dated 3.4.96 (Annexure-A/4 to the O.A.) has been issued by the respondents after detailed enquiry conducted by the Vigilance Branch of the Department of Post. This order is based on the findings of the enquiry which is based on detailed examination of the facts and circumstances of the process of selection on the post of EDDA-I Bankati from the stage of notification of vacancy. The respondents found the process of selection irregular and, therefore, they ordered cancellation of the selection in reference to their order dated 3.4.96 (Annexure-A/4 to the O.A.). We do not find any defect in this order. We, therefore, vacate the interim order dated 8.4.96 passed by an earlier bench of this Tribunal and order the respondents

to make fresh recruitment on the post of EDDA-I Bankati strictly following the departmental instructions and procedures. We further direct the respondents to consider the candidature of the applicant, if he further applies as a candidate for the said post on issue of notice by the respondents and take decision according to the departmental rules and instructions. On the basis of the above, we hereby disallow the O.A. No. 462/96 and allow the prayer of M.A. as stated above.

8. No order is passed as to costs.

B.P. Singh

( B.P. Singh )

Member (A)

S.N. Mallick

( S.N. Mallick )

Vice-Chairman.

a.k.c.