

**CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR**

Original Application No. 297/2006

Date of order: 24.09.2008

HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN.

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Paras Mal S/o Shri Ramdev, by caste Prajapat, aged 19 years, resident of Gram Seva Sehkari Samiti Nagar Nawa, Tehsil Gudamalani, District Barmer.

...Applicant.

Mr. B. Khan, counsel for applicant.

VERSUS

1. Union of India, through its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Superintendent of Post Office, Head Post Office, Barmer.

The Inspector, Sub Division Post Office Nagar Nawa, District Barmer.

...Respondents.



Mr. M. Godara, proxy counsel for Mr. Vinit Mathur, counsel for respondents.

ORDER (Oral)

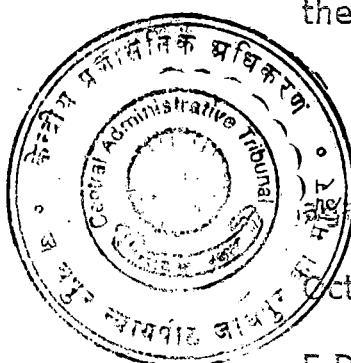
PER MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

The brief facts of the case are that the respondent department invited the applications for filling up the post of E.D.B.P.M. at Nagar Nawa vide Notification dated 03rd August, 2005. In pursuant to the said notification, the applicant having fulfilled the requisite qualifications, applied within the stipulated time period in the prescribed proforma. After completion of the selection procedure, the respondents selected the applicant for the post of E.D.B.P.M. at Nagar Nawa, District Barmer. Thereafter, vide order dated 17th February, 2006 (Annex. A/3),

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applicant was given training by the respondents from 20.02.2006 to 23.02.2006. The applicant also was asked to submit a certificate regarding availability of accommodation which was also submitted in time by him.

In the meantime, before the applicant could be appointed by the respondents, one of the candidate named Shri Khushal Singh, who also participated in the same selection, filed an O.A. No. 312/2005 (Khushal Singh vs. Union of India & Ors.) before this Tribunal challenging the selection of the applicant, however, this Tribunal vide order dated 07th September, 2005 dismissed the said O.A.



On receipt of the said order of the Tribunal, the applicant again approached the respondents vide his application dated 30th October, 2006 to allow him to join the duties on the post of E.D.B.P.M. as he was a meritorious candidate.

The post of E.D.B.P.M., Nagar Nawa was fallen vacant on 15th October, 2003 due to retirement of the incumbent working on that post and thereafter, it was being managed through the GDSMC, Ratanpura till date.

The said notification for filling up the post of E.D.B.P.M. at Nagar Nawa was issued fully knowing well that there is a permanent vacancy of E.D.B.P.M. at Nagar Nawa and the selection procedure had been completed and only after the dismissal of the said O.A. of Khushal Singh, the applicant became eligible for appointment to the said post but it was not done.

(3) On receipt of the said application dated 30th October, 2006, the respondent-department communicated the applicant vide impugned order dated 31st October, 2006 (Annex. A/1) that the selection procedure has been cancelled and the post is being managed by a surplus employee.

Being aggrieved by cancelling the said selection procedure and by not providing appointment on the post of E.D.B.P.M., Nagar Nawa, the applicant has filed this O.A. praying for the following relief:

"(A) by an order or direction in the appropriate nature, the order under challenge dated 31st Oct., 2006 (Annex. A/1) passed by the respondents may kindly be quashed and set-aside and the respondents may kindly be directed to allow the humble applicant to join the duty on the post of Extra Departmental Branch Post Master, Nagar Nawa, District Barmer with all consequential benefits.

(B) That any other order or direction which this Hon'ble Tribunal deems fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(C). That the cost of the original application may kindly be awarded in favour of the applicant."



The respondents filed a detailed reply to the Original Application. It is submitted by the respondents that in pursuance of the notification dated 03.08.2008, 9 applications were received and out of them, the applicant was selected being higher in the merit on the basis of percentage of marks obtained in matriculation itself and he was issued a selection letter and was also called for appearing in the training of two days.

During the course of verification of documents submitted by the applicant and before issuing the appointment order in his favour, the directions from the higher authorities were received

to manage B.O. by deploying the surplus employees, therefore, instead of giving appointment order in favour of the applicant, one of the acting BPM namely Shri Jiya Ram was appointed as GDSBPM Nagarnava. Therefore, the post is not available now as the same has been filled up from the surplus acting BPM. It is also an admitted position that the selection procedure in which the applicant was selected has also been challenged by one of the candidates named Khushal Singh by way of filing an O.A. which was ultimately dismissed on 07.09.2006.

It is further submitted by the respondents that merely fulfilling the requisite qualification required for the post of GDSBPM does not make him eligible for getting appointment because the recruitment process was under progress. The applicant was not given any training by the respondents but, only orders to this effect vide order dated 17.02.2006 was issued.

During the recruitment process, the selection was challenged in O.A. No. 312/2005 wherein an interim order was passed vide order dated 20.10.2005, which is as follows:

"I have considered the submission put forth on behalf of the applicant and I am of considered opinion that the selection / appointment made in favour of the respondent no. 4 to the post of EDBPM shall be subject to the result of this CA and factum of filing of this OA should be annotated on each communicated thereof, ordered accordingly."

During the pendency of Kushal Singh's OA, the respondent-department had made its own arrangement and filled up the post of GDSBPM, Nagarnawa on regular basis by transferring a surplus candidate. The recruitment process and selection of Shri Parasmal/applicant was cancelled before completion of

recruitment process and applicant was only a selected candidate and not an appointee. Therefore, it is contended in the reply statement that considering the aforesaid facts, the applicant is not entitled for any relief as prayed for in this O.A.

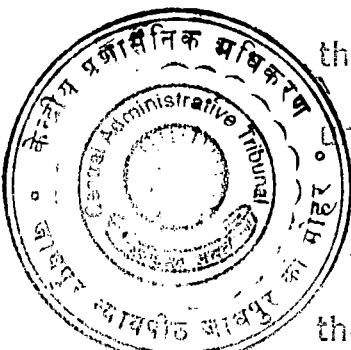
We have heard Mr. B. Khan, learned counsel for the applicant as well as Mr. M. Godara, learned proxy counsel for Mr. Vinit Kumar Mathur, learned counsel for the respondents and gone through the pleadings, documents and material placed on record.

Learned counsel for the applicant argued that since the applicant is not only a meritorious candidate but, this Tribunal had also dismissed the O.A. No. 312/2005 which was filed challenging the very selection wherein applicant had appeared, therefore, he becomes fully entitled to be posted as EDBPM under the respondents.

Learned counsel for the respondents strenuously argued that since the post of GDSBPM, Nagarnava had already been filled up by transferring a surplus candidate available with them and now no post of GDSBPM, Nagarnava is available, in view of this applicant cannot be offered appointment.

We have given due consideration on the pleadings, documents and material placed on record.

It is an admitted fact that the applicant had come up as a meritorious candidate having higher percentage of marks obtained in Matriculation Examination and he is top on the merit



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list. This position has also been confirmed from the order of the Tribunal passed in O.A. No. 312/2005.

The impugned order dated 31st October, 2006 (Annex. A/1) passed by the respondent-department is reproduced as under: -

"भारतीय डाक विभाग

सेवामें

श्री पारसमल पुत्र श्री रामदेव कुमायत
वी/पी नंगर—नवा (गुड़मालानी)

क्रम संख्या:—अ७/५८-८/पीएफ १५/०६ दिनांक बाढ़मेर/दिनांक ३१.१०.०६

विषय:— शाखा डाकपाल नगर नवा (गुड़मालानी) के पद पर चयन का सामला।

संदर्भ:— आपका प्रार्थना पत्र दिनांक ३०.१०.०६

उपरोक्त संदर्भित आपके प्रार्थना पत्र के क्रम में लेख है कि शाखा डाकपाल नगर नवा पद की भर्ती प्रक्रिया प्रशासनिक कारणों से रद्द कर दी गयी है एवं विभाग में कार्यरत सरप्लस कर्मचारी से पद भर दिया गया है।
इसलिए आपका चयन रद्द सनझा जावे।

सही/—

अधीक्षक डाकघर

बाढ़मेर खण्ड, बाढ़मेर—३४४००१



On going through the said order, it reveals that the selection in question has been cancelled on the administrative reasons.

It reveals from the order dated 17.02.2006 (Annexure A/3) that after the selection of the applicant, he was directed to impart in the training from 20.02.2006 to 23.02.2006. The order dated 17.02.2006 (Annex. A/3) is reproduced as follows:

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"भारतीय डाक विभाग

सेवामें

श्री पारस्परल पुत्र श्री रामदेव कुमावत

वी/पी नगर-नवा वाया—गुड़मालानी

प्रक्रमांक : अ९/५८-८/पीएफ/०५-०६ बाड़मेर दिनांक 17.2.2006

विषय : शाखा डाकपाल के पद पर नियुक्ति बाबत :—

आपका चयन शाखा डाकपाल नगर नवा (गुड़मालानी) के पद पर किया गया है, जिसकी सूचना आपको पूर्व में भेजी जा चुकी है। अब आप उक्त पद पर नियुक्ति से पूर्व वांछित निम्न स्थानों पर ट्रेनिंग हेतु उपस्थित होवें, जिसका कोई भल्ता देय नहीं होगा। आपकी नियुक्ति सी. ए. टी. जोधपुर में लम्बित ३०० ए० नं. ३१२/०५ के निर्णय/निवेशानुसार नियमित/प्रभावी होगी। ट्रेनिंग के दौरान दसवीं उत्तीर्ण की मूल अंक तालिका लेकर आवें।

कार्यालय का नामदिनांक

1. कार्यालय निरीक्षक डाकघर मध्य बाड़मेर

20.2.06 से 21.2.06

2. उप डाकघर गुड़मालानी

22.2.06 से 23.2.06

सही/—

अधीक्षक डाकघर

बाड़मेर मंडल, बाड़मेर-344001

प्रतिलिपि:

- (पंजीकृत) डाकपाल/उप डाकपाल गुड़मालानी — ट्रेनिंग पूर्ण होने की सूचना निरीक्षक डाकघर/मंडल कार्यालय को देवें।
- (पंजीकृत) निरीक्षक डाकघर मध्य, बाड़मेर — ट्रेनिंग पूर्ण होने पर उक्त पद पर चार्ज दिलाकर चार्ज रिपोर्ट भेजें साथ ही नियुक्ति संबंधी निम्न कागजात पूर्ण करवाकर भेजें। I) स्थान्य प्रमाण—पत्र II) वर्णनात्मक विवरण मय फोटो III) आचरण नियमावली संबंधी घोषणा IV) अटेस्टेशन फार्म V) नोमीनेशन फार्म।

From the said order dated 17.02.2006 (Annex. A/3), we find that the applicant has been selected on the post of E.D.B.P.M. at Nagar Nawa and he sent for training before appointment on the said post.



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In furtherance of the above said order, the respondents had also issued an order dated 27.04.2006 (Annex. A/4) to the applicant stating that he is to submit a certificate regarding availability of accommodation. The order dated 27.04.2006 (Annex. A/4) is reproduced as follows:

“भारतीय डाक विभाग

सेवामें,

श्री पारसमल पुनर श्री रामदेव कुमारवत

दी/पी नगर—नवा(गुड़ामालानी)

क्रम संख्या:—अ७/५८—८/पीएफ ।।/०६ दिनांक बाड़मेर/दिनांक 27.04.06

विषय:— शास्त्रा डाकपाल नगर नवा (गुड़ामालानी) के पद पर चयन बाबत ।

संदर्भ:— आपका प्रार्थना पत्र दिनांक 17.04.06 ।

उपरोक्त संदर्भित एवं विषयान्तर्गत इस पत्र के जरिये आपको सूचित किया जाता है कि आप नगर नवा डाकघर आम मुख्य गांव में शास्त्रा डाकघर चलाने हेतु भवन/मकान लेवें तथा मकान मालिक से इस बाबत घोषणा पत्र लेकर भेजें कि उसने शास्त्रा डाकपाल नगर नवा वास्ते अपना भवन/ कन्या किराये पर दिया है मकान मालिक का घोषणा पत्र तुरन्त इस कार्यालय को भेजना सुनिश्चित करें ।

सही/—

अधीक्षक डाकघर

बाड़मेर खण्ड, बाड़मेर— 344001”



Subsequently, the respondent-department had cancelled the selection procedure for the post in question on the administrative reasons vide order dated 31.10.2006 (Annex. A/1).

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The Hon'ble Supreme Court has made it clear that even if the administrative reasons are given, it must be in judicious mind and there must be a transparency.

On going through the pleadings, documents and material placed on record, we find that the notification dated 03rd August, 2005 (Annex. A/2) for filling up the post of E.D.B.P.M. at Nagar Nawa was issued by the respondent-department on a vacant post which fact is also clear from the notification itself that a clear vacancy of E.D.B.P.M. at village Nagar Nawa was available when the said notification was published.

If the respondent-department was intended to fill up the said vacant post of EDBPM at village Nagar Nawa by adjusting a surplus employee, they would have indicated this fact when the said notification was published but they have not done so indicating that as there was no such intention of the department and they wanted to fill up the said vacancy from the open market and that is why the selection procedure was started to fill up the post from open market and the applicant was declared selected out of 9 candidates as he was a meritorious candidate being higher in the merit on the basis of percentage of marks obtained in Matriculation Examination.

It is the time when the unemployed youth are waiting for selection and appointment, and after the selection, if the department denies the appointment to a person who has been selected being a meritorious person, it is a very strange and sad for the unemployed millions.



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It is most unfortunate that the respondent-department is now denying the appointment to the applicant after his selection and calling for participating in the training and contending that due to administrative reasons the selection has been cancelled. Therefore, we cannot appreciate the said reasoning given in the impugned order cancelling the selection. Hence, we have no hesitation to declare that the impugned order is not justified and therefore, we quash and set aside the order dated 31st October, 2006 (Annex. A/1) holding that applicant is entitled to be posted as EDBPM, village Nagar Nawa, in Barmer District. It is made clear that if the vacancy of EDBPM at village Nagar Nawa, is not available, the respondent-department shall accommodate the applicant on the similar grade/post in the same Division in the next available vacancy and pass appropriate appointment order, in any case, within a period of two weeks from the date of receipt of a copy of this order.

In view of the above observations and directions, the Original Application is allowed with no order as to costs.



Tarseem Lal

(Tarseem Lal)

Administrative Member

(K.V. Sachidanandan)

Vice Chairman (J)

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Part II and III destroyed
in my presence on 19/11/2011
under the supervision of
section officer () as per
order dated 19/11/2011

W Section officer (Record)

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