CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA.

OA NO. 605/ 1997 & 1290/ 1997

Present : Hon'ble Mr. Mukesh Kumar Gupta ... Judicial Member
Hon'ble Mr. M.K. Mishra ... Admn. Member

SUJAN KUMAR KARMAKAR & ARUP MISTRI

-Vs.

OA 605/ 1997

1. Union of India
Through Secretary
Ministry of Communication
Department of Posts, Dak Bhavan
New Delhi – 110 001.

2. Chief Post Master General
West Bengal Circle
Yogayog Bhavan
Calcutta – 12.

3. Superintendent of Post Offices
Superintendent of Post Offices
South Presidency Division
PO: Baruipore, District: South
24 Parganas.

4. Shri Arup Kumar Mistry.
S/o Shri Sudhir Mistry
R/o Vill. & PO: Dakshin
Jagadishpur, P.S.
Kulpi, District: South 24 Parganas. ... Respondents

For the applicant : Mr. S. Panda, Counsel

For the respondents: Mr. S.P. Kar, Ms. B. Banerjee for Pvt. Respondent, Counsel.

OA 1290/ 1997

1. Union of India
Service through Secretary
Post, Govt. of India, New Delhi-1.

2. Secretary
Ministry of Posts, New Delhi-1.

3. The Chief P.M.G.
W.B. Circle, Yogayog Bhavan
Calcutta – 12.

4. The Supdt. of Post Offices
South Presidency Division
Baruipur, South 24 Parganas. .... Respondents

For the applicant : Mr. B. Banerjee, Counsel

For the respondents : Mr. S.P. Kar, Counsel

Heard On : 01.12.2004 Date of Order : 23.3.2005

ORDER

MR. MUKESH KUMAR GUPTA:

Since the issue raised in the above mentioned OAs are common, besides being overlapping, they are being disposed of by the present common order.

OA No. 605/ 1997

2. The relief claimed in OA No. 605/ 1997 is to quash order dated 5.5.97 terminating appointment of Sujan Kumar Karmakar as EDBPM, D. Jagadishpur BO in account with Dholahat SO besides seeking direction to respondents to treat him on duty from the date of termination of his services with effect from 25.5.97.

3. The facts as stated are that a notification was issued requiring Employment Exchange to sponsor eligible candidates for filling up the vacant post of EDBPM to D. Jagadishpur BO. None of the seven candidates sponsored by the concerned Employment Exchange, were found eligible & in such circumstances cancelling the notice issued earlier, the respondents issued a fresh public notice inviting applications from the general public. In response thereto, the applicant submitted an application and was selected and appointed vide communication dated 15.6.1995. He joined the said post in question on 21.6.95. The Superintendent of Post Offices, South Presidency Division, Baruipur vide Memorandum dated 5.5.97 cancelled his appointment in deference to the direction issued

by the Chief Post Master General letter dated 30.1.97. Pursuant to the above, Sub-Divisional Inspector of Post Offices, Diamond Harbour Division issued memorandum dated 24.5.97 & directed him to hand over the charge of the said post to Shri Ganapathi Mondal, which direction was obeyed on the same date itself. Since neither any prior notice was issued nor the applicant was paid any amount before the said termination as required under Rule 6 of EDA Service & Conduct Rules 1964, he instituted the present OA contending that the said action of the respondents was in violation of the Rules as well as the law on the said subject as the appointment in such circumstances could not have been cancelled based on the direction issued by superior authorities. Reliance was placed on Nand Lal Vs. Union of India & others - 1992 (1) ATJ 611; Gobind Singh Vs. The Superintendent of Post and Telegraph Office, Pithoragarh and others – 1997 (1) ATJ 279; S. Adhiraja Hegde Vs. Senior Superintendent of Post Offices, Puthur, 1989 (2) ATJ 388 and Dr. Smt. Kuntesh Gupta Vs. Management of Kanya Maha Vidyalaya, Sitapur and others – 1988 (2) ATJ 502.

OA No. 1290/ 1997

4. In OA No. 1290/ 1997, Arup Mistri has sought a direction to consider his claim for appointment as EDBPM, Dakshin Jagadishpur Branch Post Office with consequential benefits.

The facts as stated are that consequent on promotion of the incumbent holding the said post, he took over the charge of the said post on 17.1.95 as his nominee, which arrangement had approval of the Superintendent of Post Offices, South Presidency Division, Baruipur, South 24 Parganas. Though he has worked on the said post till 2nd March 1995, but he has not received the payment from 26.1.95 to 2nd March 1995. The Superintendent of Post Offices, South Presidency Division sent a requisition to local Employment Exchange requesting nomination of eligible candidates for the said post and a list of 7 candidates including his name was sent to the concerned office. 6

candidates out of 7, appeared on 7.4.95 and he submitted all the required documents including deed of land, possession certificate, income certificate as well as certificate belonging to his SC community. The said selection process was cancelled without assigning any reason and fresh notice dated 18.4.95 was issued calling for fresh applications from general public. This time the applications were not entertained through Employment Exchange. He applied for the said post and appeared for the interview held on 25.5.95. He was shocked to learn that he was not selected but an outside candidate, who was not a permanent resident of the post village and residing 24/ 25 miles away, was appointed to the said post, which was illegal, irregular and unjustified. There was no justification in cancelling the selection process dated 7.4.95 and issuing a fresh public notice. The respondents in their reply to OA 605/ 1997 stated that the post of EDBPM, D. Jagadishpur BO had fallen vacant due to promotion of the incumbent, to the next higher post of Postman. As per prescribed procedure for recruitment, the local Employment Exchange was requested to sponsor the names of suitable candidates. The local Employment Exchange sponsored the names of 7 candidates including Sujan Kumar Karmakar as well as Arup Mistri. All these sponsored candidates were called for verification of their respective bio data on 7.4.95. Only 6 of them appeared on the said date and out of 6, 2 candidates were of compartmental examination having no personal income on their own. Shri Arup Mistri also had no personal income. The Senior Superintendent of Post Offices, South Presidency Division, found that none of the candidates was suitable for selection. As a result thereof a local public notice was issued on 18.4.95 calling fresh applications from general public. In response to the said notice, 7 candidates applied and the date of verification was fixed on 25.5.95. All the candidates appeared & after verification of bio data Sujan Kumar Karmakar was appointed provisionally with a clear stipulation that his services would be terminated without assigning any reason. Since Arup Mistri could not produce the certificate to

establish his independent means of livelihood, which was an important criteria for selection, and therefore he was not selected.

Since complaint was made about the said selection, the same was reviewed by the office of Post Master General, West Bengal Circle and the said selection was cancelled by the Chief Post Master General, vide letter dated 30.1.97. Consequently, the Senior Superintendent of Post Offices, South Presidency Division cancelled the appointment of Sujan Kumar Karmakar vide memorandum dated 5.5.97.

In reply to OA No. 1290/ 1997, the respondents stated that Arup Mistry was not entitled to any benefit for unauthorized engagement during the period 17.1.95 to 2.3.95 as he was engaged without obtaining any prior permission from any of the appropriate authorities. Since Arup Mistri could not produce certificate to establish independent means of livelihood, vital criteria for such selection as required under the Directorate of Post letter dated 6.12.93, he was not found suitable and the vacancy was notified on 18.4.95. He cannot claim any preference on account of his belonging to SC community particularly when the said post was not reserved for the said community nor any preference was notified for such category.

Rejoinder was filed by Sujan Kumar Karmakar disputing the contentions raised by the official respondents, while reiterating submissions made in the OA.

6. We heard learned counsel for the parties and perused the pleadings including the original records produced in relation to said selection process.

We may note that on an earlier occasion, the OA No. 605/ 1997 was dismissed by this Tribunal vide Order dated 7.9.2000 holding that the applicant's appointment being only provisional was rightly cancelled for purely on "administrative reasons not connected with conduct of the applicant and that being as such there was no requirement

of issuing a show cause notice prior to terminating his service". Similarly, the Bench also rejected the contention that the reviewing authority had no right to supersede the earlier decision taken by the appointing authority for the reason that: "the selection process be fair and a suitable candidate is selected".

The aforesaid order was challenged before the High Court of Calcutta in WP CT No. 889 of 2009 on various grounds. Placing reliance on 1977 (3) SCC 94, The Superintendent of Post Offices and others Vs. P.K: Rajamma and 1979 (1) SCC 477 – The Manager, Government Branch Press & Anr. Vs. D.B. Belliappa, the Hon'ble High Court quashed and set aside the cancellation of the said applicant's appointment, without any notice, as arbitrary and unsustainable. However, as it was pointed out that Arup Mistri had been appointed to the said post after cancellation of the appointment of the said petitioner therein who was not made a party either before this Tribunal or in the said writ petition, the liberty was granted to the petitioner to implead Arup Mistri as a party to the proceedings before this Tribunal and the Tribunal was required to "decide the matter afresh".

Pursuant to the above said directions, we have proceeded with the hearing of the OA No. 605/ 1997, after impleading Shri Arup Mistri as respondent No.4 in OA No. 605/ 1997.

Shri S. Panda, learned counsel appearing for the applicant in OA No. 605/ 1997 placed strong reliance on the judgement dated 12.10.2001 of Calcutta High Court in WPCT No. 889/ 2000 and contended that a positive finding in his favour has already been recorded holding that the cancellation of his appointment without any notice was arbitrary and not sustainable. It was further contended that the matter was remanded merely because Arup Mistri, who was appointed on the post in question in the meantime, was not made a party either before this Tribunal or before the High Court as he was a necessary party in terms of law laid down in Udit Narain Singh Malpaharia Vs.

Additional Member, Board of Revenue, Bihar, AIR 1963 SC 786.

Shri S.P. Kar, learned counsel for the respondents on the other hand, contended that the respondents' action was just and tenable as the appointing authority's decision to ignore the claim of Arup Mistri, who was the best among the candidates in all respects was not justified and such decision was taken based on cogent reasons. The learned counsel also invited our attention to reply filed by them in MA 406/ 2002 to suggest that Arup Mistri had obtained highest marks in Madhyamik examination amongst the candidates who appeared on the date of verifications besides the fact that he was holding landed property in his own name at the material time of selection & also receipt of personal income from the said property as well as from some other sources and thus satisfied all requisite qualification for selection to the said post.

Shri B. Banerjee appearing for Arup Mistri, the applicant in OA No. 1290/ 1997 as well as respondent No.4 in OA No. 605/ 1997 strongly contended that as the said Arup Mistri had already been appointed and rendered more than 3 years of service, he is entitled to the benefit of DG P&T letter No. 43-4/ 77, Pen, dated 18th May, 1979 and Circular No. 19 – 34/99 – ED & Trg, dated 30th December, 1999. Para 2 of the same, printed under decision No.15 on the subject of "Provisional appointment of ED Agents", at page 100 – 101, of Swamy's Compilation of Service Rules for Postal Gramin Dak Sevak, 2004 Edu, requires that efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than 3 years continuous approved service.

On perusal of the original records produced by the official respondents, we find that Sujan Kumar Karmakar, the applicant in OA No. 605/ 1997 was not sponsored by the Employment Exchange and the appointing authority took a decision that out of the 7 candidates nominated by the Employment Exchange on 23.3.95, 6 candidates who

appeared for verification etc. on 7.4.95, 2 were compartmental candidates having no personal income or landed property. Another 2 though were in receipt of income from other sources but had no property in their own names. Another one, though had no personal income, but was holding landed property registered on 24.3.95, i.e. after receipt of application/ nomination by the Employment Exchange and Arup Mistri had no personal income . It was also stated in his application that he was van rickshaw puller. Therefore, the appointing authority considered him not fit for appointment to the said post of BPM. In these circumstances, the notice was issued on 18.4.95 inviting applications from general public. Since the complaint was registered with the office of Chief Post Master General, alleging irregularities committed in the said selection process, the matter was examined and vide letter dated 30.1.97, the office of CPMG, West Bengal Circle took a view that Arup Mistri was having income from the landed property besides the fact that he was involved in potato business and pulling rickshaw, which was not a bar for appointment to the said post and therefore it was concluded that rejection of his candidature on the said ground was irregular.

It is no doubt true that the appointment issued to Sujan Kumar Karmakar on 15.6.95 was provisional in nature, which was cancelled vide order dated 5.5.97 issued by the Superintendent of Post Offices, South Presidency, did not precede any notice nor he was afforded an opportunity of hearing. Similarly, no notice as prescribed under Rule 6 of EDA (Conduct & Service) Rules, 1964 was complied with. As noticed hereinabove, the High Court of Calcutta in WPCT No. 889/ 2000 has clearly recorded a specific finding that the cancellation of the appointment of the petitioner (Sujan Kumar Karmakar) without any prior notice or any proceedings against him, particularly after 2 years of his appointment, was arbitrary and cannot be sustained. We may also note that Sujan Kumar Karmakar had secured 644 marks in comparison to Arup Mistri who had secured only 423 out of 900.

A Full Bench of this Tribunal in 2003 (1) ATJ 277 - H. Lakshmana and Others Versus the Superintendent of Post Offices, Bellary and others considered the validity of Directorate of Posts circular dated 6.12.93 on the subject of "possessing of adequate means of livelihood" and after noticing various judgements including the Hon'ble Supreme Court of India decision in Indira Sawhney and others Vs. Union of India and others – 1992 Supp 3 SCC 217 held that: "Possessing of adequate means of livelihood in terms of Circular dated 6.12.93 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the above said post".

7. On bestowing our careful consideration to the entire matter, we are of the considered view that the Memorandum dated 5.5.97 as well as 24.5.97 issued by the Superintendent of Post Offices, South Presidency Division and Sub Divisional Inspector (Postal), Diamond Harbour Sub-division respectively, are liable to be held to be violative of the law noticed hereinabove and as recorded by the High Court of Calcutta in WPCT No. 889/ 2000. We may note that the matter was remanded for the simple reason that Arup Mistri was not a party in the said proceedings either before this Tribunal or before the High Court. Therefore, no discretion is left except to reiterate the findings recorded on 12.10.2001 while disposing of the aforesaid WPCT, which reads as under:

> "In view of our above findings we set aside the order passed by the Tribunal and allow the present Writ Application. Liberty is given to the petitioner to add Arup Mistry as a party to the proceedings before the Tribunal within a fortnight from the date of the communication of this order and following such addition the Tribunal shall decide the matter afresh as expeditiously as possible."

8. The only issue left for consideration before us is whether Arup Mistri is entitled to any relief or not. We have already noticed that Arup Mistri was appointed after termination of the services of Sujan Kumar Karmakar with effect from 25.5.97 and continued to hold the said post till date without any interruption. We have also noticed

that as per DG P&T Circular dated 18.5.79 as well as 30.12.99, an official appointed on provisional basis and discharged from service for administrative reasons after serving for not less than 3 years of continuous approved service is also entitled for alternative employment. As such, we are required to strike a balance between two competing interest between Sujan Kumar Karmakar and Arup Mistri.

As we have already noticed that Sujan Kumar Karmakar was not sponsored by Employment Exchange, though had better merits, but could not have been selected in the initial stages. Unless and until the selection process carried and the appointment made at the initial stage is held to be illegal, arbitrary and unjustified, the question of issuing public notice dated 18.4.95 would not have arisen. The candidature of Arup Mistri was rejected without any just and tenable reason as noticed vide communication dated 30.1.97. Since Arup Mistri continued to occupy the post in question since 1997 and almost 8 years have passed since then, we direct that Arup Mistri be not disturbed at this stage and Sujan Kumar Karmakar, whose termination order is held to be illegal and void, be adjusted in the same or equivalent post against any existing vacancy and if such vacancy is not available, then, he should be adjusted against a vacancy in the same division to arise immediately hereinafter. Though he will be entitled to continuity of service with all consequential benefits except backwages for the reasons that the public exchequer cannot be saddle any further liability and also for the reasons that he has not discharged duties and functions to the said post.

9. The applications are disposed of in terms of above order. No costs.

(M.K. Mishra)
Admn. Member

(Mukesh Kumar Gupta)
Judicial Member

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