

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Original Application No.940/97

Date of decision: 08.06.2004

The Hon'ble Mr. R.K. Upadhyaya, Administrative Member.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

Gorachand Naskar, S/o Kanaidas Naskar, aged about 25 years residing at Village Pripuranagar, PO Ramgopalpur, Via, Piyali Town, P.S. Baruipur, Dist. 24 Parganas (S)

: Applicant.

rep. by Mr. A.K. Banerjee: Counsel for the applicant.

versus

1. Union of India, service through the Secretary, Ministry of Communication, Deptt. of Post, Sanchar Bhawan New Delhi.
2. The Chief Post Master General, W.B. Circle, Yogayog Bhawan Calcutta 12.
3. The Supdt of Post Offices, South Presidency Division Baruipur, Dist. 24 Pgs.(S).
4. Pran Naskar, son of late Hiralal Naskar, residing at Vill. Tripura Nagar, PO Ramgopalpur, Via Piyali Town, P.S. Baruipur, Dist. 24 Pgs (S)

: Respondents.

Mr. B.K. Chatterjee : Counsel for the respondents.

ORDER

Mr. J.K. Kaushik, Judicial Member.

Shri Gorachand Naskar has inter alia challenged the selection and appointment of R.4 to the post of EDBPM Ramgopalpur Post Office and has sought a direction to the official

respondents to give him offer of appointment for the said post amongst other reliefs.

2. The material facts of this case as may be succinctly put in are that the applicant has passed the Madhyamik examination in first division in the year 1989 and got himself registered in the employment exchange Rajpur-Sonarpur. He also belongs to SC community. He has landed property of 28 decimals and has also owning orchard and his monthly income is Rs.500/-. He is paying the panchyat tax and other statutory dues^{relating} to the said landed property. A notice came to be issued for filling up the post of EDBPM, Ramgopalpur Post Office and the name of the applicant was sponsored by the employment exchange. A selection was conducted and the applicant and other candidates took part in the selection. The further case of the applicant is that the respondent No. 4 has passed the Madhyamik examination in 3rd division and in the said interview 5 persons appeared including the applicant. The applicant was the best candidate in the selection. Respondent No. 4 also did not produce any proof relating to the landed properties. Still respondent No. 4 was appointed to the post of EDBPM, Ramgopalpur and he joined the said post on 04.08.97. A reference has been to a decision of this Bench of the Tribunal in ^{a similar} O.A. No. 165/95, dated 14.11.95. In that case the applicant therein was placed in a similar situation. Certain other provisions have been narrated. The Original Application has been filed on numerous grounds enunciated in para 5 and its sub-paras, but we shall deal only the grounds which have been stressed during the arguments made on behalf of the applicant in the later part of this order.

3. The official respondents have contested the case and have filed a counter reply to the O.A. It has been averred that except Respondent No. 4 no other candidate has filed documents in support of their eligibility and as such the candidature of other three candidates were rejected. It is stated that even the applicant also could not produce any document in support of independent and income at the time of verification of documents, as per the letter dated 06.12.93, adequate means of livelihood or income or property in their name was essential requirement. It is also stated that though the applicant has secured more marks than respondent No. 4 in the Madhyamik examination he could not be selected because of the aforesaid reasons. The judgement relied upon by the applicant does not support his case. The grounds raised in the O.A have been generally denied.

4. A short rejoinder has been filed almost reiterating the facts and grounds raised in the O.A and also controverting the averments made in the reply.

5. We have heard the elaborate arguments advanced on behalf of both the parties and have carefully perused the pleading and records of this case. Learned counsel for the applicant has submitted that the applicant has secured highest percentage of marks in the Madhyamik examination and he was supposed to be placed at Sl. No. 1 in the merit list. He has also submitted that the applicant had submitted all papers to the respondents relating to the income as well as property but the respondents have intended to show special favour to respondent No. 4 by not taking into consideration of the documents which were submitted by the applicant.

6. Per contra, the learned counsel for the official respondents has vehemently opposed the submissions made on behalf of the applicant and has tried to persuade us by stating that no doubt the selection is to be based on merits, but simultaneously it is also necessary that the other requirements relating to income/property should also be filled at the time of selection. But in the instant case, the applicant did not submit any document in support of his income. He has also submitted that the judgement of the full Bench in the cases of *Ranaram vs. Union of India* (2004 (1) ATJ. FB-1 Jodhpur) and *Lakshmana and others vs. Superintendent Post offices Bellari* (2003 (1) ATJ 277 FB - Bangalore) do not apply to the instant case. He has contended that the judgement is always prospective and these orders have been passed later to the selection which was held in the year 1997. Therefore the same cannot be applied to the facts of this case. He has placed reliance on three judgements which we shall deal with in the succeeding paragraphs. He has conducted that the selection was conducted strictly in accordance with the instructions and rules in force and subsequent judgements cannot be applied to the instant case. Thus no judicial review is warranted in this case.

7. We have considered the rival contentions raised on behalf of both the parties. As far as the factual aspect of the matter is concerned, it is admitted that the applicant has secured highest marks in Madhyamik examination amongst all the candidates who undergone the selection for the post of EDBPM, Ramgopalpur. It is also admitted position that in the cases of *Ranaram* and *Lakshmana* (supra), it has been settled by the Full Bench of this

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Tribunal that selection should be based on the marks obtained in the matriculation examination and other conditions are subsequent after the selection and the condition precedent is that a person has to secure highest marks among the contesting candidates and person so selected should be given some reasonable time to fulfil other conditions relating to income/property etc and in case he fails to do so, the next person in the merit shall be given such opportunity. Now the question for our determination remains is as to whether a judgement shall have prospective effect or retrospective effect.

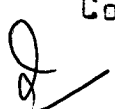
8. At the very outset, we would like to submit that in the case of Lakshmana and others (supra), the Full Bench has held as under:

" Possessing of adequate means of livelihood in the circular dated 06.12.93 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the aforesaid post. "

In the case of Ranaram (Supra)

" Selection/appointment has to be made on the basis of marks obtained in the matriculation examination and thereafter the person selected can be given a reasonable time to submit proof of income/property as per rules/instructions on the subject and in case he fails to submit the same within reasonable time, the offer can be given to the next eligible/selected candidate. "

9. A perusal of the above would reveal that certain portions of instructions 06.12.93 has been impliedly struckdown in as much as the requirement of having property or income has been held as not mandatory and the same is violative of Art. 16 of the Constitution of India.



10. The very Rule of recruitment also stipulates as under as regards the income, ownership of property:

" The person who takes over the agency (EDSM/EDBFM) must be one who has and adequate means of livelihood. The Person selected for the post of EDSM/ EDBFM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO(Business premises, such as shops, etc., may be preferred).

A mere perusal of the above said rule shows that a person will be selected first and then only the other requirements are to be fulfilled.

11. Now we would like to examine the judgements which have been relied upon by the learned counsel for the respondents which reads as under:

Dr. P.N. Dubey vs. State of Madhya Pradesh (1997 (3)-SCC 497)

In the above case, a notification was issued for filling up of 28 posts of Assistant Directors by the Madhya Pradesh Public Service Commission. As per rules in force at the relevant point of time these posts were to be filled by direct recruitment and promotion of Veterinary Assistant Surgeons in the ratio of 1 : 1. But the Government decided to fill up the same by promotion. The High Court held that action of the Government was not in order since the rules were not amended and the posts are to be filled in as per the rules which were in

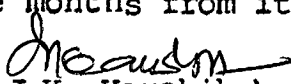
existence when the notification came to be issued. In the instant case it is not the case that subsequent notifications have been issued. Thus the same does not support the defence of the respondents 1 to 3.

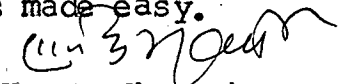
In the case of Managing Director ECIL Hyderabad vs. B. Karunakar 1993 (4) SCC 727. It was case where inquiry report was not given prior to the passing of penalty order. Relying upon the judgement of the Apex Court in the case of Md. Ramjan Khan (1991 (1) SCC 588,) wherein it was held that it would be obligatory to supply a copy of the inquiry report prior to the imposition of penalty and this would be effective from the date of the judgement. The Apex Court itself directed that the judgement shall be prospective. But in the judgement in Ranaram (supra) there is no such proposition. In this view of the matter this decision also is of no help to the respondents.

In the case of Govind Prasad vs. R.G. Prasad (1994 (1) SCC 437), which is related to selection to the post of Assistant Engineer working in Electrical and Mechanical Wing of PWD in the State of U.P. where a memorandum was issued showing the policy decisions of Government to be implemented in future and it was held that it is settled law that an executive order of the Government cannot be made operative with retrospective effect. The facts of that case ^{are} also distinguishable in as much as in the instant case ^{as} there is no executive order which can be said to be effective from a back date was issued. Thus this decision also does not support the contention of the learned counsel for the respondents.

12. We may point out that the general position of the law is that the ratio of the judgement would be from retrospective effect until otherwise directed and it is otherwise in the case of legislation. Legislation shall be always prospective until it is stated to be retrospective. Thus for the reasons adduced above, we are not impressed with the submission made on behalf of the learned counsel for the respondents and we find ourselves in agreement with the submissions made on behalf of the applicant, and have absolutely no hesitation in following the decisions of the Full Bench in the cases of Ranaram and Lakshmana and others (supra). It may also be noticed that now the question as to whether the applicant in fact submitted the documents relating to the income/property at the time of selection or not, we need not examine that question since the same are not required to be fulfilled and the precise condition subsequent would be that of providing suitable premises for running postal operation.

13. The upshot of the aforesaid discussion is that the O.A. has ample force and the same stands allowed. The appointment of 4th respondents to the post of EDBM, Ramgopalpur stands quashed. The respondents are directed to give offer to the applicant to the said post within a period of one month from the date of communication of this order and in case he is not able to satisfy the condition for providing adequate space to serve as an agency premises for postal operation within a period of two months, thereafter the offer may be given to the candidate next in merit. This order shall be complied with within a period of three months from its communication. Costs made easy.


(J.K. Kaushik)
Member (J)


(R.K. Upadhyaya)
Member (A)