

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.T.A. 14 of 1997

Present : Hon'ble Mr. D.Purkayastha, Judicial Member

Hon'ble Mr.G.S.Maingi, Administrative Member

Sri Samiran Biswas, Son of Late Sudhir Kumar
Biswas, Village : P.O. and P.S. Krishnaganj,
District : Nadia.

... Petitioner

-Versus-

1. Union of India, service through the Post Master General, West Bengal, Calcutta-1.
2. Superintendent of Post Offices, Nadia, (South Division), P.O. Kalyani, District: Nadia.
3. Inspector of Post Offices, Ranaghat, District: Nadia.
4. Sub Postmaster, Krishnaganj, Nadia.
5. Saraswati Dey, P.S. Krishnaganj, District: Nadia.

... Respondents

For the applicant(s) : Ms. U. Sanyal, counsel
Mr. N. Mukherjee, counsel

For the respondents : Ms. B. Ray, counsel

Heard on : 4.8.2000

Order on: 4.8.2000

O R D E R

D.Purkayastha, J.M.:-

The grievance of the applicant in short is that he was denied the scope of appearance in the Interview for selection against the post of E.D. Packer in Krishnaganj S.O. in the year 1985 though he applied for the said post in response to the advertisement made by the Official Respondents for filling up of the said post. According to the applicant, he was Class VIII passed. Applicant admittedly was asked to work in the place of E.D.Packer, Krishnaganj S.O. by the SPM, Krishnaganj S.O. vide his Memo No. B1/Staff/85-86 dated 26.4.85 as substitute of Sri Ashim Kumar Sarkar who was absorbed in Postman cadre elsewhere resulting

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a vacancy in the post of ED Packer, Krishnaganj S.O. The grievance of the applicant is that the respondents called other 14 candidates who applied for the said post excluding the applicant though they received the application of the applicant in due time. Due to denial of scope of appearance in the Interview, ^{the} applicant was deprived of opportunity of employment in the Department though he was working at that time in that Post Office. Being aggrieved by and dissatisfied with the said action of the respondents, applicant filed a Writ Petition before the Hon'ble High Court bearing No.CO.14162-W/85 seeking direction upon the respondents for cancellation of the Interview which was held on 27.9.1985 for filling up of the said post. He also sought for further direction and order under the Constitution of India.

2. Respondents filed written reply denying the case of the applicant. It is stated by the respondents in their reply statement that the applicant was working as substitute of Sri Ashim Kumar Sarkar in the post of E.D. Packer. It is also admitted by the respondents in their reply that they received the application of the applicant for the said post. In his application the applicant Sri Samiran Biswas claimed to be a permanent resident of Krishnaganj S.O. on the basis of the certificate from the Anchal Pradhan, Krishnaganj Gram Panchyat. But the Headmaster, Gazna Anchalik Vivekananda Vidya Mandir where the applicant last studied, in his School Leaving Certificate certified that Sri Samiran Biswas was a resident of Vill. P.O. Putikhali. It is further stated by the respondents that later on the basis of a mass petition headed by Sri Biswanath Sarkar of Krishnaganj to the effect that Sri Biswas was not a resident of Krishnaganj S.O., an enquiry was carried out by the then SDI(P), Ranaghat Sub-Division and it was established from the inquiry that Sri Samiran Biswas is not a resident of Krishnaganj S.O. and automatically the application of Sri Samiran Biswas was rejected and he was not allowed to appear for verification of his testimonials as he failed to fulfil the main criteria for the engagement in the said post. Rather, he produced false information. So, application Sri Biswas not called in the interview. Therefore,

application is devoid of merit and liable to be dismissed.

3. Applicant filed rejoinder after receipt of the reply from the respondents. In paragraph 7 of the rejoinder, applicant again claimed that he was a permanent resident of Krishanganj S.O. by virtue of the certificate issued by the Anchal Prodhan, Krishanganj Gram Panchayat. The respondents further admitted that the Head Master, Gazna Anchalik Vivekananda Vidyamandir, certified in the School leaving certificate that the petitioner was a resident of Vill. P.O. Putikhali. It also appears from the certificates dated 24.8.85, 16.1.93 issued by Sub-Post Master, Krishanganj, Nadia and verificates dated 18.8.85 issued by Member of Legislative Assembly, West Bengal and certificate dated 5.3.1990 issued by Upa-Prodhan Bhajanghat Tungi Gram Panchayat, P.O. Bhajanghat, Nadia that the petitioner was a permanent resident of Village & P.O. Putikhali, P.S. Krishanganj, District. Nadia. Therefore the application filed by the petitioner in the post of E.D.Packer on 1.8.85 was within delivery jurisdiction of Krishanganj S.O. by virtue of those aforesaid certificates.

4. Id. Advocate Ms. U. Sanyal appearing on behalf of the applicant contended that the denial of scope for appearance in the Interview which took place on 27.9.1985 is arbitrary and illegal and without giving the applicant any reasonable opportunity to state his case against the allegations brought against him. So, entire action of the respondents is arbitrary and illegal and the decision of the respondents is liable to be quashed. According to Ms.Sanyal, applicant ought to have been considered for the purpose of selection to the post of E.D.Packer in Krishanganj S.O. since the post is lying vacant due to promotion of the incumbent who was appointed to that post after selection through the Interview held on 27.9.1985. It is further contended by Ms. Sanyal, ld. counsel for the applicant that Interview Letter ought to have been issued in favour of the applicant since his application for the said post was found in accordance with the rules. Since no opportunity to state his case

was offered to the applicant before taking decision of disallowing him to appear in the said Interview which took place on 27.9.1985, entire action of the respondents is arbitrary and illegal and thereby liable to be quashed.

5. Ms. B. Ray, ld. counsel appearing on behalf of the respondents submits that the applicant is a resident of Village & P.O. Putikhali, P.S. Krishanganj, District - Nadia according to his own statement made in the rejoinder. Therefore, he was not entitled to be considered for the purpose of selection to the aforesaid post. She further submits that the post is at present lying vacant and the Department is ready to invite applications for filling up of the post for administrative interest. Applicant can apply for the said post, if he is otherwise eligible for the same. But present application is devoid of merit and liable to be dismissed.

6. We have considered the submissions made by ld. counsel of both the parties and we have gone through the records. It is admitted by the respondents that applicant applied for the said post which was required to be filled up by the respondents from the candidates who had applied directly for the said post since the respondents did not get any name from the Employment Exchange. Though respondents received application from the applicant for the said post, they did not call him to appear in the Interview on the basis of the allegations made against him regarding his permanent residence ^{on the ground} and that he made false statement in respect of permanent residence in his application for which his candidature was cancelled. We find that applicant was not allowed to appear in the interview on the basis of the allegations made by third parties against the applicant regarding his permanent residence. Since no opportunity of being heard was given to the applicant before taking decision in respect of disallowing him in the said interview; therefore, in our view, respondents acted arbitrarily and illegally in violation of the principles of natural justice and applicant has been adversely affected by the decision of the respondents in the matter of disallowing him in the said interview. We are of

the view that by the arbitrary decision of the respondents, applicant was denied the reasonable opportunity of employment ⁱⁿ ~~on~~ the ^{vacant} ~~basis~~ of the selection which took place on 27.9.1985. We find that this application was filed on 1.10.1985 before the Hon'ble High Court and that has been transferred to this Tribunal for adjudication in the year 1997 which has been numbered as TA. 14 of 1997. During the course of argument, Ms. U. Sanyal, ld. counsel for the applicant submits that the post in respect of which the interview took place on 27.9.1985 again falls vacant due to the promotion of the incumbent who was appointed to the aforesaid post on the basis of the interview held on 27.9.1985. This fact is not disputed.

We find that the post is at present lying vacant and the department ^{Should} ~~can~~ consider the case of the applicant for the purpose of appointment to the said post since he was denied the reasonable opportunity of employment on the basis of the selection held on 27.9.1985 ^{for that} and no opportunity to state his case was given to him before taking the decision of disallowing him to appear in the interview. Therefore, we are of the view that he has legitimate right to be considered for appointment to the said post. More over, we find that applicant was working in the Department as a substitute to that post. In view of the aforesaid circumstances, we are of the view that respondents are legally bound to consider the case of the applicant for the purpose of appointment to the said post on the basis of the experience in services rendered by him in the Department. ~~At the time of selection for filling up of the said post~~ ^{due} weightage of experience should be given to the applicant. Since the post is at present lying vacant, therefore, we direct the respondents to consider the case of the applicant for the purpose of appointment to the said post i.e. E.D. Packer. It be mentioned here that applicant would not get any arrear of pay & allowances and seniority in respect of appointment, if any, made by the Authority as per our direction. Applicant would get the pay & allowances and seniority only from the date of appointment. The aforesaid

direction should be carried out by the respondents within one month from the date of communication of this order. With this observation, application is disposed of without any order as to costs.

G.S. Maingi

G.S. MAINGI 4.8.2000.
MEMBER(A)

H. Purkayastha
4/8/2000

D. PURKAYASTHA
MEMBER(J)

a.m.