

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1195 of 1997

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

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

Shri Bhabatosh Mondal, S/o Shri
Nanigopal Mondal, r/o village Kanak
Nagar, P.O.Sandalerbill, P.S.
Hingalganj, Dist.24-Parganas (North)

... Applicant

VS

1. Union of India, through the
Secretary, Department of Posts,
Government of India, New Delhi-110 001
2. Chief Post Master General, West Bengal
Circle, Yogayog Bhavan, Chittaranjan
Avenue, Calcutta-700 012
3. Superintendent of Post Offices,
Barasat Division, P.O. Barasat-743 201
Dist. North 24 Parganas, W.B.
4. Sub-Divisional Inspector (Postal),
Basirhat 1st Sub-Division, P.O.
Basirhat (Pin-743411), Dist. North
24-Parganas, W.B.
5. Shri Tapan Kumar Mistry, s/o late
Bankim Mistry, Vill. Kanaknagar, P.O.
Sandelerbill, Dist. North-24 Parganas

... Respondents

For the Applicant(s): Mr. P.K. Munsi, counsel

For the Respondents : Mr. S. K. Dutta, counsel

Heard on 8.11.1999 : : Date of order : 8.11.1999

O R D E R

D. Purkayastha, JM

The question before us for decision in this application is to see as to whether the appointment of the respondent No.5, Shri Tapan Kumar Mistry, E.D.M.C. at Sandelerbill, B.P.O. bypassing the applicant was legally justified or not. The grievance of the applicant, in short, is that he secured higher marks than the respondent No.5, but he was not selected for the said post and the respondents selected respondent No.5 for the said post bypassing the eligibility of the applicant as per rules

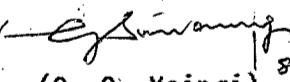
and therefore, he is entitled to get the benefit of appointment after setting aside the order of appointment in respect of respondent No.5, Shri Tapan Kumar Mondal in view of the judgment of the Hon'ble Apex Court, reported in 1997 SCC(L&S) 468 (Baliram Prasad vs. Union of India & Ors.).

2. The respondents did not file any written reply in this case. Mr. Dutta, learned advocate appearing on behalf of the respondents submits that there was an instruction contained in the DG,P&T's memo dated 17.10.66 stating inter alia that near relative of the postal employee should not be appointed to work in the same Branch Post Office as EDBPM or EDMC. Since the father of the applicant has been working in the same post office as EDBPM, he was not selected. So, according to the respondents the application is devoid of merit and hence it should be dismissed.

3. We have considered the submissions of the learned counsel of both sides and perused the records of the case. We have also gone through the judgment of the Hon'ble Apex Court and we find that the Hon'ble Apex Court had considered exactly the similar question as raised in this application on the basis of the judgment passed by the Patna Bench of this Tribunal. In the said judgment the CAT, Patna Bench had taken the view that though the applicant was more qualified than the private respondent No.7, he was not rightly appointed in the post since he was disqualified due to the fact that his cousin brother was already working in the same Post Office as Extra Department Delivery Assistant and consequently the Tribunal dismissed the application bearing OA No.192/94 and confirmed the appointment of respondent No.7 in the said post. But the aggrieved party preferred an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court set aside the order of the CAT, Patna Bench. The Hon'ble Apex Court in that case has taken into consideration the aforesaid notification dated 17.10.66 and observed that notwithstanding the authorities'

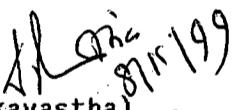
decision to avoid employment of near relatives in the same office, a candidate related to (cousin brother of) a person working in the same Post Office as Extra Department Delivery Assistant not ipso facto ineligible. Rather denial of appointment to a more meritorious candidate on that mere ground, held, totally an arbitrary exercise of power and hit by Art. 14 of the Constitution and in view of much better academic record, the appellant directed to be appointed in place of the respondent.

4. Since the matter had already been settled by the Hon'ble Apex Court, we are unable to accept the contention of Mr. Dutta, learned advocate for the respondents and to take a different view. Therefore, in the result we set aside the order of appointment of respondent No.5, Shri Tapan Kumar Mistry in the post of EDMC and direct the respondents to consider the case of the applicant for appointment to the said post according to his merit within a period of one month from the date of communication of this order. Be it mentioned here that the respondent No.5 did not appear before this Tribunal and did not file any counter, though he was served with a copy of this application. It is also ordered here that the applicant would not get any arrear of pay and he would get the pay only from the date of his joining the duty. With this observation the application is disposed of awarding no cost.


(G. S. Maingi)

MEMBER (A)

8.11.99


(D. Purkayastha)

MEMBER (J)