

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH: CALCUTTA

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Original Application No.1287/97

Date of decision: 30.11.04

Biren Chandra De, S/o Sru Sankar Lal De aged about 25 years  
residing at Vill. Sonathali PQ, Sonathali Ashram, P.S.  
Kashipur, Via, Adra, Dist. Purulia, Pin 723 121

: Applicant.

Mr. S.Panda : Counsel for the applicant.

versus.

1. Union of India service through the Secretary, Deptt.  
of Posts, Ministry of Communication, New Delhi.
2. The Chief Post Master General, W.B. Circle, Yogayog  
Bhawan, Calcutta 12.
3. The Supd. Post Offices, Purulia Division, Purulia.
4. The Sub Divisional Inspector of Post Offices,  
Adra Circle, Adra, Purulia.
5. Subhasis Nayak, S/o Parthasarathi Nayak, EDBPM,  
PO Sonathali Ashram Dist. Purulisa, Respondents.

Ms. K. Banerjee: Counsel for respondents 1 -4

None Present for the respondent No. 5

ORDER (Oral )

Mr. Mukesh Kumar Gupta, J.M.

The appointment of Respondent No. 5 as EDBPM,  
Sonathali Ashram has been challenged in the present case.  
Further direction is sought to the official respondents  
to appoint the applicant in the said post with all consequences.

2. The grievance of the applicant is that he has  
not <sup>been</sup> appointed to the post of EDBPM, Sonathali Ashram,  
despite the fact that he had secured 471 marks in the  
Madhyamik Examination in comparison to respondent No. 5

who had secured 451 marks; though the applicant was placed at Sl. No.1 in the panel and the respondent No. 5 at Sl. No. 2 yet for collateral purposes and mala fide reasons, the applicant has been denied the said appointment which is violative of principles of natural justice and fair play and also in gross violation of Art. 14 and 16 of the Constitution of India.

3. The only contention urged by the respondents 1-4 in their reply is that the applicant could not prove the fact of holding adequate means of livelihood at the time of interview/bio-data verification and as per the conduct and behaviour of the applicant could not also be found to be temperate habits, trust worthy etc. After verifying the particulars of the eligible candidates the most suitable one in all respects as per the rules was selected. The selection of a candidate who secured more marks in the Madhyamik examination is concerned, he can be considered provided he had adequate means of livelihood but the applicant could not prove this fact. No one has the right that he should be selected and the administration has a right to select best candidate in all aspects of the rules.

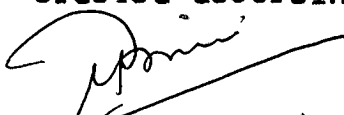
4. Mr. S. Panda, learned counsel for the applicant relied on strongly on the order passed by this Bench in O.A. Nos. 1409/97 ( Subrata Mukherjee vs. UOI and ors ) decided on 29.07.2004 and in O.A. No. 1231 /2000 (Md. Mahababur Rahaman vs. UOI and ors) decided on 23.08.2004 wherein it has been categorically held that appointment of 2

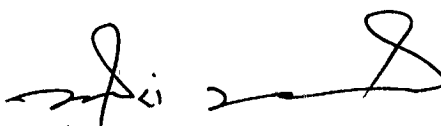


EDBPM Posts, must be given to the candidate who secured highest marks in the Madhyamic Examination among the candidates applied for the post. It is well settled as per the law laid down by a full Bench of this Tribunal in H. Lakshmana and ors vs. The Superintendent of Post Offices, Bellari and others ( 2003 (1) ATJ 252 ) that possessing of adequate means of livelihood is neither a preferential condition nor a condition precedent in appointment to EDBPM posts.

5. On bestowing our careful consideration in the matter, as noticed herein above, we do not find any justification in the respondents contention that the applicant was not trust worthy and was found to be of temperate habits. What were the basis for making such allegations have not been explained to us. Accordingly we do not find any justification in not selecting the applicant though he had secured highest marks among the candidates attended the interview. Further the official respondents in their reply nowhere denied the marks obtained by the applicant as well as respondent No. 5 as noticed herein above.

6. Considering the fact that the respondent No. 5 had been appointed and continuing in the said post for almost 7 years, the applicant should be appointed as EDBPM, Sonathali Ashram forth with and the respondent No. 5 should be accommodated in any other existing vacancy or in the first vacancy which arises in the same division in the near future as there are instructions on the subject that if a person continues for more than three years, should be kept in the waiting list and provide them the job. O.A is ordered accordingly. No costs.

  
( M.K. Misra )  
Administrative Member

  
( Mukesh Kumar Gupta )  
Judicial Member.