

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.378/1997

Dated:9.12.2004

PRESENT: MR. MUKESH KUMAR GUPTA, MEMBER (J)

MR. N.D. DAYAL, MEMBER (A)

Naskar
PRASANTA KUMAR NAYAK, Son of Late A.K. Naskar
Aged about 24 years, residing at Vill.& P.O.
Fulmalancha, P.S. Basanti, Dist.24 – Pgs.(S) Pin-743 329.

Vs.

1. Union of India service through the Secretary,
Ministry of Communication, Deptt. Of Post,
New Delhi.
2. The Chief postmaster General
W.B. Circle, Calcutta.
3. The Supdt. Of Post Offices
South Presidency Division, Baruipur
Dist. 24-Pgs. (S).
4. Shri Pallav Kumar Naskar
Son of Shri Amal Kr. Naskar, EDBPM
Of Fulmalancha B.O, residing at
Vill. & P.O. Phulmalancha, P.S.
Basanti, Dist.24-Pgs (S).

For the applicant : Mr. S.K. Dutta

For the respondents: Mr. B. Mukherjee for official
respondents and Mr. M.K. Bandopadhyay for respondent
no.4.

ORDER (ORAL)
SHRI MUKESH KUMAR GUPTA, MEMBER (J)

The facts as stated are that: The applicant,
unemployed Youth and belonging to SC community having passed
Madhyamik examination in First Division in the year 1993 got



himself registered with the Employment Exchange in the year 1994 and pursuant to notification issued by the respondents for the post of EDBPM, Phulmalacha B.O. under Canning Town P.O., was sponsored by the Employment Exchange. Vide Memo dated 7.11.1996, Superintendent of Post Offices, South Persay Division, Baruipur directed him to appear for interview on 23.11.1996. Pursuant to the aforesaid, he appeared on the said date and submitted all required documents including title deeds of landed property and was expecting his selection to the said post. Since no response was forthcoming, he submitted representation dated 31st January, 1997 which remained unconsidered. He was shocked to learn that respondent no.4, less qualified than him was selected and appointed to the said post in disregard to well settled position of law. It is contended that the selection and appointment of respondent no.4 is illegal and arbitrary and without jurisdiction and he, being more meritorious and having satisfied all required conditions is liable to be appointed. The applicant has also pleaded mala fides, malice in law, violation of rules and principles of natural justice etc.

2. The official respondents by filing their reply contested the applicant's claim and stated that applicant being a co-sharer of the joint property did not produce any registered deed showing to be the exclusive beneficiary of any unencumbered property. However, the contention raised in para 4 (p) that the applicant had obtained the highest marks in the Madhyamik examination compared to others, including respondent no.4 was not denied.



3. Respondent no.4 also filed his reply and contested the applicant's claim by stating that the O.A is barred by limitation, laches and acquiescence.

4. We heard learned counsel for the parties at length and perused the pleadings. From the perusal of the records produced before us, it is seen that the applicant had secured 548 marks in Madhyamik Pariksha 1990 in comparison to respondent no.4 who has secured only 451 marks in the same examination. The applicant's candidature was rejected merely because he was holding the property in joint name and not in his name exclusively.

5. It is seen from the record that earlier the present O.A was allowed vide order dated 5th May, 2000 and the selection and appointment of respondent no.4 was set aside holding that merit was the first criteria for selection following the law laid down in Baliram Prasad vs. Union of India & Ors, reported in 1997 (2) SCC 292, and also that it was not the intention of the authority while inviting applications to the post in question that the property should be held by the candidate in his own name. The said judgement was challenged by filing Writ Petition C.T. No.739/2000 before the Calcutta High Court and vide order and judgement dated 30.1.2000, the aforesaid order passed by his Tribunal was quashed and set aside and the matter was remitted to this Tribunal for consideration of the same afresh.

6. Mr. S.K. Dutta, learned counsel appearing for the applicant strenuously contended that while setting aside the order



of this Tribunal dated 5th May, 2000 and while remanding the said O.A, the Hon'ble High Court made a reference to the notice issued by the Employment Exchange on 25th September, 1996 requiring the candidate to possess adequate means of income from an independent source of livelihood. The circular dated 1.1.1994 define the meaning of adequate means of livelihood. It was contended by Mr. Dutta, learned counsel that the said order and judgement was rendered on 30.11.2000 but the Hon'ble High Court had not taken into consideration an earlier judgment of the same Court dated 22nd June, 2000 passed in W.P. C.T No.21/2000 holding that the purported classification issued by the Union of India with regard to the income and ownership property condition that ownership of a property is a "must" condition cannot be accepted for more than one reasons and clarification cannot be made in relation to provision of rule which is clear and explicit. The said clarification was issued by the Department on 18th September, 1995. Reliance was placed on an order passed by this Bench in O.A. No.1231/2000 dated 23rd August, 2004, Mahababur Rahaman vs. Union of India and Others, whereby a direction was issued to consider the candidature of the applicant therein for regular appointment based on his merit position. Similar reliance was placed on order dated 29th July, 2004 passed in O.A.No. 1409/1997, Subrata Mukherjee vs. Union of India and Others, wherein it was held that the doctrine of preference by ignoring the claim of other candidates having higher merits was ultravires of the provisions of the Constitution and appointment made in such circumstances was not legal and valid. However,



keeping in view that the appointment of respondent no.6 was made long back and he continued in the post concerned, direction was issued to accommodate him against the immediate vacancy as he could ^{not} be blamed for the action of the official respondents.

7. Mr. M.R. Bandopadhyay, learned counsel appearing for respondent no.4 on the other hand, placed reliance on order dated 31st March, 2000 passed in O.A. No.447/1995, Ziaul Haque vs. Union of India and Others, of this Bench wherein it was held that the applicant who got more marks than the private respondent therein could not have claimed the appointment merely on that basis as he failed to submit documents of landed property in his name and therefore, the lacunae on the part of the applicant cannot be cured subsequently.

8. Mr. B. Mukherjee, learned counsel for the official respondents stated that the respondents are unable to adjust the applicant as he did not possess the landed property in his own name at the relevant point of time and therefore, he was ineligible for the post in question. He also placed reliance on D.G. Posts D.O.letter No.40-35/10th Plan/Plg dated 14.8.2003 issued in connection with the impending proposal to revamp the rural postal network and directing that no vacant post of Grameen Dak Sewaks be filled up in any office which has ^{one} hand or more, till further instructions.

9. On bestowing our careful consideration to the contention raised by the parties and upon hearing the counsel for both sides as well as perusing the pleadings and judgements placed before us, we find that the order passed by this Tribunal on



5th May, 2000 setting aside the selection and appointment of respondent no.4 was indeed quashed and set aside by the Calcutta High Court vide judgement dated 30.11.2000 in W.P. C.T No.739/2000. Though there may be some substance in the contention raised by the learned counsel for the applicant that the Hon'ble High Court did not notice its earlier judgement dated 22nd June, 2000 in W.P. C.T. No.21/2000, but we are required to read both the judgements harmoniously. It is well settled law as laid down in 1997 (2) SCC 292, Baliram Prasad vs. Union of India, that merit is the first criteria for appointment. Vide judgement dated 22nd June, 2000, the Hon'ble High Court considered a specific question as to "whether the requirement as regard to income and ownership of property is mandatory" and after discussing in detail about the said aspect as well as Rule 3 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 as well as certain judgements ruled that any provision imposing restriction in the matter of obtaining an employment must be read keeping the provisions of Articles 14 and 16 of the Constitution in mind and also observed that the applicant's case was not considered in its proper prospective.

A perusal of judgements dated 22nd June, 2000 in W.P. C.T. No.21/2000 shows that other specific question which was considered by the High Court was "whether filing of document of title in relation to immovable property is a principle condition for appointment for the post of Extra Departments Branch Post Masters" as well as "whether the requirement as regards income and ownership of property is mandatory". After noticing the facts



On May 2000 setting aside the application and judgment of respondent no.4 was issued dated 20.11.2000 by the Calcutta High Court vide judgment dated 30.11.2000 in W.B.C.T. No.534/2000. Therein plaintiff was to move application, in the court of Calcutta for the application that the court issued by the court of Calcutta for the issuance of writ of habeas corpus dated 22nd June, 2000 in W.B.C.T. No.51/2000, but the same is ready to pass the judgment promulgated. It is well settled law as laid down in 1987 (2) SCC 215, *Union of India*, that right to appointment of a judge is the right to appointment of a specific date as of 25th June, 2000, the High Court considered a specific question as to whether the defendant is liable to income and ownership of property immovable, and after discussing in detail about the said aspect as well as Rule 3 of Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rule 1964 as well as certain judgments relied that such divisional imposts including the limitation of appointment of a judge under the Constitution in relation to Article 14 and 16 of the Constitution in mind and also operate that the applicant's case was not considered in the latter prospectus.

A reversal of judgment dated 22nd June, 2000 in W.B.C.T. No.51/2000 shows that other specific division which was considered by the High Court was, "whether filing of document of title in relation to immovable property is a principle condition for appointment for the post of Extra-Departmental Agents as well as acceptance of post as well as acceptance the defendant as regards income and ownership of post in the application". After noticing the facts

as well as the rule position in relation to Post and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964, it was observed that rule-3 of the aforesaid rule did not refer to ownership of any property but merely referred to the capacity of a person who is asked to offer space to serve as the agency premises for postal operations and nothing more. With regard to the condition of ownership and property, it was observed that the ownership of a property is a must, cannot be accepted for more than one reasons, firstly, a clarification cannot be made in relation to provisions of rule, which is clear, and, secondly that the purported clarification issued on 18th September, 1995 was not widely circulated. In any event any provision imposing restriction in the matter of obtaining an employment, it was held, must be read keeping the provisions of Articles 14 & 16 of the Constitution in mind. Since the above aspect was not considered by this Tribunal, the matter was remanded for consideration afresh in accordance with law.

Similarly, a perusal of order dated 30.11.2000 passed in W.P. C.T. No.739/2000 reveals that the matter was remanded to this Tribunal for the reasons that the Tribunal did not consider the issue as to whether the requirement stated in the notice to the Employment Exchange was in accordance with the rule for appointment or not. Similarly, the purported circular dated 1st January, 1994, clarifying the meaning of "adequate means of livelihood" had not fallen for consideration before the Tribunal.

10. We may note that the Full Bench of this Tribunal considered the requirement of possessing adequate means of livelihood as required under Department of Posts circular dated 6.12.1993 in H.



Lakshmana and Ors. Vs. The Superintendent of Post Offices, Bellary and Ors, 2003 (1) ATJ 277, decided on 2.12.2002. After noticing various judgements including the judgement of Hon'ble Supreme Court in Indira Sawheny and Ors. V. Union of India and Ors., 1992 Supp(3) SCC 217, it was held as follows:

“19. The result would be that we have no hesitation in concluding that the condition so imposed pertaining to adequate means of livelihood in the circular of 6.12.1993 must be held to be invalid. We hold accordingly. As a necessary consequence, the answer would be as under:

“Possessing of adequate means of livelihood in terms of Circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the above said post.” (emphasis supplied)

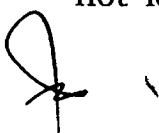
A cumulative reading of the above judgements goes to show that possessing adequate means of livelihood is neither a preferential nor an absolute condition and requirement so prescribed vide the aforesaid circular dated 6.12.1993 was held to be invalid. In the facts of the present case, it is an admitted fact that the applicant had obtained the highest marks in the Madhyamik examination compared to respondent no.4 as he had secured 548 marks in comparison to respondent no.4 who secured only 451 marks. The only reason for rejecting his candidature was that the applicant was holding the property in joint name and not in his name exclusively. It is well settled law that when a statute/O.M is declared to be illegal, the effect of such judgement is that such statute/O.M was never in existence.



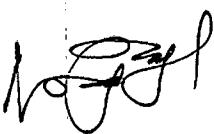
Once it is found that the applicant was more meritorious and his claim was not considered on a totally irrational and arbitrary ground, the legal consequences resulting from the voiding of such an illegal exercise must follow. Therefore, we have no hesitation to conclude that the condition of holding property in the name of the candidate exclusively, was not justified and could not have been the reason for rejecting his candidature. Merit being the criteria for appointment to the post in question, the applicant had better claim than respondent no.4. If we read the judgements passed by the High Court of Calcutta as well as law laid down in Baliram Prasad as well as H. Lakshmana (supra) cumulatively and harmoniously, the conclusion is inescapable that the applicant who had been the meritorious should have been appointed to the post in question.

11. In view of the discussions made herein above, we allow the present O.A and direct the respondents to appoint the applicant to the post in question as expeditiously as possible and preferably within a period of 3 months from the date of receipt of a copy of this order.

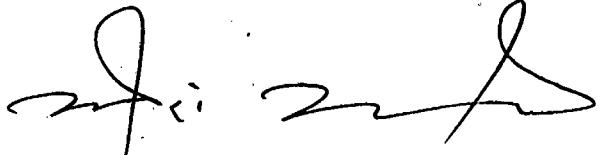
12. As far as respondent no.4 is concerned, we may note that as per the D.G.P&T letter dated 18th May, 1979, effort should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than three years continuous service. Since respondent



no.4 was appointed and continued to work in the said post as per appointment order dated 14.3.1997, the respondents 1-3 will be advised to follow the mandate of the aforesaid communication. Accordingly, the O.A is disposed of. No costs.



(N.D. DAYAL)
MEMBER (A)



(MUKESH KUMAR GUPTA)
MEMBER (J)

mr.