

CENTRAL ADMINISTRATIVE TRIBUNA
CALCUTTA BENCH, CALCUTTA

ORIGINAL APPLICATION NO.421/1997

PRESENT: MR. MUKESH KUMAR GUPTA MEMBER (J)

Mr. M.K. MISHRA

MEMBER(A)

Pradip Kumar Mondal
son of Shri Jiten Mondal,
Bangaltuli,
near Medium Club,
P.O. Malda,
District – Malda

Applicant's

v.

1. Union of India,
service through the Secretary,
Ministry of Communication,
Dak Bhavan,
New Delhi
2. The Post Master General,
North Bengal and Sikkim Region,
Siliguri P.O. Siliguri,
District Darjeeling
3. The Director of Postal Services,
Office of the Post Master General,
North Bengal and Sikkim Region – Siliguri,
P.O. Siliguri, District Darjeeling
4. The Superintendent of Post Offices,
Malda Division,
P.O. Malda, District Malda
5. Smt. Sheuli Roy (Guha Thakurata),
wife of Shri Dipak Guha Thakurata,
Village _ Ramnagar, P.O. Mokdumpur,
P.S. - Englishbazar,
District Malda

Respondents

For the applicant

Shri P. Dhole

For the respondents

None

Heard on: 22.12.2004

Date of Order: 22.12.2004



O R D E R (ORAL)

MUKESH KUMAR GUPTA, MEMBER(J)

By the present O.A., Shri Pradip Kumar Mondal seeks direction to the respondents nos. 1 to 4 to appoint him as Extra Departmental Branch Post Master, Rajbati Ramnagar Branch Post Office in account with Mukdumpur SO.

2. The admitted facts of the case are: The post of Extra Departmental Branch Post Master (hereinafter referred as EDBPM for short), Rajbati Ramnagar Branch Post Office, had fallen vacant and, therefore, a notice was issued to the concerned Employment Exchange Officer, Malda, on 15th May, 1996, requiring him to sponsor eligible candidates within one month. As the said Employment Exchange Officer forwarded 13 names on 16th August, 1996, i.e. outside the prescribed limit, a public notification dated 22nd August, 1996, was issued inviting applications from general public. The last date for receipt of such applications was 12th September, 1996. Pursuant to the aforesaid notification, in total, 19 applications were received and 25th September, 1996, was fixed for verification of records etc. Four candidates belonging to the same locality and Post Village i.e. the place where the Post Office was located, were found eligible. Shri Pradip Kumar Mondal was not within those four candidates as he was resident of Malda, which falls within the jurisdiction of Malda Post Office. Rajbati Ramnagar Branch is under the jurisdiction of Mukdumpur SO and has a separate identity besides being a distinct place from Malda Post Office. Despite the fact that the applicant was having the highest marks amongst all 19 candidates, who had applied for the said post, he was not selected as he allegedly neither fulfilled the residential qualification nor could hold the property qualification as mentioned under clause (3) of the Public Notice dated 22nd August, 1996. In Column (3) of the said notification, the required condition was that a candidate: "must have adequate means of livelihood and some immovable




property". Para-4 of the said notification required that "candidates must before appointment should take up his or her residence in the Post Village if he/she is not the resident of Post Village".

3. Being aggrieved with the aforesaid action and non-selection the applicant instituted the aforesaid O.A. On 17th April, 1997. The notice were issued in the said O.A. Vide order dated 27th May, 1997, with a further direction that "any appointment to Branch Post Master, Rajbati Ramnagar Branch Office shall abide by the result of this case provided the petitioner impleads such appointee as party respondent in this case". Pursuant to the aforesaid order, Respondent no.5 was impleaded by filing MA No.374/97.

On an earlier occasion, the aforesaid OA was dismissed vide order dated 17th May, 2000, on the ground that the applicant failed to possess the requisite qualification as prescribed under Clause (3) and Clause (4) of the Public Notice dated 22nd August, 1996. It was further held that the applicant did not have any property in his own name on the last date of filing of the application i.e. 12th September, 1996. Since he was at fault, he cannot claim any discrimination, was the finding recorded by this Tribunal.

4. Being aggrieved by the dismissal of the OA, the applicant preferred W.P.C.T.No.409/2000 before the Calcutta High Court and after hearing the parties, the judgment and order of this Tribunal dated 17th May, 2000, was quashed and set aside by the High Court on 10th January, 2001, with the following direction:

"Since the tribunal has passed the order on consideration that the application of the writ petitioner could not be allowed as the document was not filed before 12th September, 1996, we are of the view that the question that was raised in this writ petition cannot be decided in this application and accordingly, we direct the tribunal to go into that question and decide the facts on merits. Impugned order is, therefore, set aside and the matter is sent back to the tribunal to dispose of the application of the writ petitioner afresh within two months from the date of communication of this order positively without granting any unnecessary adjournment to the parties.



The writ petition is allowed to the extent indicated above.

There will be no order as to costs."

5. The present OA has been taken up for re-hearing pursuant to the aforesaid order and direction. None appeared for the respondents and, therefore, we heard learned counsel for the applicant and perused the pleadings. On perusal of the pleadings, we find that the applicant's candidature was rejected by the official respondents as he was neither the resident of the Village Post Office nor did he possess the adequate means of livelihood. According to official respondents, Respondent No.5 was among the four candidates belonging to the same Post Village or locality where the said Post Office was located. Since Respondent No.5 was holding the highest marks among the four candidates, she was appointed to the post in question. The private respondent in her reply filed has also maintained the same stand as taken by the official respondent in addition to the fact that she was appointed to the said post vide appointment letter dated 14th June, 1997. On perusal of the mark sheet appended by her, we find that she had secured 435 marks out of 900 though the applicant had secured 583 marks out of 900 in the Secondary Examination. We further note that Respondent No.5 was appointed on provisional basis for 89 days subject to the outcome of the present OA No.421/1997. The said appointment made for 89 days in succession seems to continue till date as we find various orders have been appended by her along with the reply statement.

6. It is well settled law that the requirement of holding permanent residence in the village wherefrom the mail originates/terminates is no longer necessary as the only requirement is that the incumbent of the post on appointment should take up residence in the delivery jurisdiction of the post office. As far as the question of holding the adequate means of livelihood as




required under Column (3) of the Public Notice dated 22nd August, 1996 is concerned, we may note that the validity of the said requirement came up for consideration before a Full Bench of the Tribunal in 2003(1) ATJ 277 – H. Lakshmana and Ors. v. The Superintendent of Post Offices, Bellary & Ors. After noticing various judgments including that of the Hon'ble Supreme Court in Indira Sawhney and Ors. Union of India and Ors. - 1992 Supp (3) SCC 217, the Full Bench held as under:

"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 abovesaid post."

(emphasis supplied)


7. A perusal of the aforesaid judgment, in specific, would show that the requirement of possessing the adequate means of livelihood, as required under the Director of Posts communication dated 6.12.93, was held to be invalid and, therefore, no longer remains in existence. What is the effect of such judgment is the further question which needs consideration. In our considered view, even such question is no more res integra as it is well settled that whenever a statute/OM is quashed and set aside by the Court of Law, it means that it was never in existence on the Statute Book. In other words, it should be so held that there never existed such requirement of possessing adequate means of livelihood. On both account i.e. that the applicant was not the ordinary residence of the Village Post Office as well as he was not holding the property qualification, in our considered view, which conditions are no more applicable, there was no justification to reject the applicant's candidature.



We may also note that the High Court of Calcutta has noticed that the applicant has acquired ownership right in some property on 20th September, 1996 though the date for verification of such application was fixed as 25th September, 1996. It is no doubt true that the said document was not annexed by the applicant with his application but on the date when verification of the applications were done on 25th September, 1996, the applicant was holding a ownership in immovable property. This aspect was not considered by the Tribunal on an earlier occasion while passing the order dated 17th May, 2000, and as per the direction of the High Court of Calcutta in W.P.C.T.No.409/2000, this Tribunal is required to consider that aspect. We may note that in view of the settled position as held by Full Bench of this Tribunal, there is no such requirement, to be satisfied.

8. In view of the discussion made herein above, we have no hesitation to allow the present OA. We accordingly issue direction to the respondents to appoint the applicant being the most meritorious candidate for the post in question. Such exercise should be completed within a period of three months from the date of receipt of a copy of this order. No costs.

9. Before parting with the present judgment, we would like to observe certain disturbing aspects in the present case which necessarily rests with the Registry of this Tribunal. As noticed herein above, Respondent No.5 was impleaded vide MA No.374/1997. As per Rule 34 of Central Administrative Tribunal Rules of Practice, 1993, when there is an amendment in the pleadings or addition of parties, the same is mandatorily required to be carried out in red ink indicating the date of the order and duly signed by the party/legal practitioner within the time prescribed by the Bench. The perusal of the OA goes to show that despite the fact that Respondent No.5 was impleaded by the aforesaid MA, no amendments were carried out at any stage. Even the cause title of the order



dated 17th May, 2000, passed on earlier occasion, goes to show that Respondent No.5 name was not included therein. Not only this, we have also come across certain practice in this Bench like that there is no indexing or continuous pagination done, papers/pleadings are kept loosely, Part B of the paper-book do not contain any order sheet etc. and such practice is followed in complete disregard to the mandate of the aforesaid rules. This not only hampers in the discharge of judicial duties by the Members etc. but could also in certain circumstance lead to injustice as well as chaotic situation like in the present case where even a judgment and order passed in earlier occasion did not indicate and include the name of private respondent i.e. Respondent No.5. We hope and trust that corrective measures would be taken up by the Registry immediately.



M.K. MISHRA)
MEMBER(A)



(MUKEKSH KUMAR GUPTA)
MEMBER(J)

ua.