

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A.No. 313/2004

Lucknow this the 24th day of Nov., 2004.

HON. SHRI JUSTICE R.K. BATTA, V.C.

HON. SHRI S.C. CHAUBE, MEMBER(A)

Virendra Kumar Verma, aged about 40 years, son of Sri Banshidhar Verma, resident of village and P.O. Nayagaon Newada. O.S. Laharpur, District Sitapur.

Applicant.

By Advcoate Shri A.P. Singh.

versus

1. Union of India through the Secretary, Posts and Telegraph, Department Ministry of Communications, Central Secretariat, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Superintendent, General Post Office, Sitapur.
4. Mohd. Amin, son of Abdul Rahman, resident of village and P.O. Nayagaon Newada, P.S. Laharpur, District Sitapur.

respondents.

By Advocates:

Shri S.P. Singh for respondents 1 to 3.

Shri R.S. Gupta for respondent No.4.

O R D E R

BY SHRI JUSTICE R.K. BATTA, V.C.

The applicant was appointed to the post of EDBPM vide order dated 2.8.95. This appointment was challenged by Mohd. Amin, the respondent No.4 in this application, by filing O.A. NO. 75/96. The said O.A. was disposed of on 24th March, 2004 with the directions to the respondents to consider the affidavit given by Village Pradhan on 5.5.97 and to enquire into the matter. It was further observed in this order that if the property of the applicant was found to be situated within the village, he may be considered for ^{regard to} appointment, having considered all the factors, including the character antecedents and inthat event

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the appointment of respondent No.4 therein, namely the present applicant be rescinded. Three months time was given to comply with the directions. Pursuant to the said directions, the respondent No.4 was ordered to be appointed to the post of EDBPM vide order dated 2.8.04. By another order of the same date, the present applicant was informed that keeping in view his long service, he may inform whether he was interested for being considered for any future vacancy of EDBPM at other places. These orders have been challenged by the applicant in the present application.

2. We have heard the learned Advocate appearing on behalf of the parties.

3. The learned counsel for the applicant has urged before us that the applicant was not at all associated with the enquiry conducted pursuant to order dated 24.3.04 in O.A. 75/96 and as such there is total failure of compliance of principles of natural justice; that the respondent No.2 in the Counter reply filed in O.A. 75/96 had categorically stated that the present respondent No.4 who was applicant therein was not found suitable for the said post of EDBPM; that the applicant has been continuing against the post for almost 9 years now and there has not been any complaint whatsoever regarding his working and in these circumstances, the applicant should not be disturbed from the post of EDBPM.

4. The learned counsel for the respondents 1 to 3 placed preliminary objection that on principles of res-judicata, the present application is not maintainable; that even otherwise the sole criteria for selection to the post of EDBPM is merit to start with and the other relevant factors have to be examined and thereafter; that there was absolutely no need or necessity to associate the present applicant with the enquiry ordered to be conducted in O.A. 75/96 and that the appointment has been given to respondent No.4 on merits.

5. The learned Advocate for the respondent No.4 submitted that the respondent No.4 is more meritorious than the present applicant and merit being the sole criteria for appointment to the post of EDBPM, the order of his appointment cannot be faulted with.

6. The learned Advocate for applicant after/reliance on Mool Shankar Singh vs. Regional Manager, PNB and another (2004)9 SCC, 754 submitted before us that the principle of res-judicata does not come into play since in O.A. 75/96, the matter was not disposed of on merits but certain directions were given to take decision in the matter after due consideration of Affidavit dated 5.5.97 of the Village Pradhan.

7. In so far as the Preliminary objection is concerned, the objection has absolutely no merit. The O.A. No. 75/96 was, in fact, not decided on merits, but therein directions were given to consider the Affidavit dated 5.5.97 of village Pradhan and to make further enquiry into the matter. It was further ordered that the decision be taken having regard to all factors including character antecedents of the present respondent No.4. We shall now, therefore, deal with the matter on merits.

7. It is now well settled that the appointment to the post of EDBPM has to be made on the basis of merits and it is thereafter only that the other requirements have to be considered before making final appointment. If the candidate who is first in merit fails to provide appropriate space for housing the Post office or fails to satisfy the requirement of residence, then the offer of appointment is extended to the candidate next to the candidate in the order of merit. This principle was laid down in the case of Arvind Kumar Shukla vs. Union of India (Writ Petition No. 384/02) filed before the Allahabad High Court which has been followed in Mool Chand vs. Union of India through Secretary Deptt. of Telecommunication, Govt. of India, New Delhi in writ petition No. 309(S/B)/03 of the Allahabad High Court.

8. In so far as the merit is concerned, the record shows that the present applicant had 42.8% marks in High School whereas the respondent No. 4 had 45% marks. There is therefore, no doubt that the respondent No. 4 had more marks than the present applicant. Nevertheless, the other requirements which are necessary for running of Post office have to be given due weightage. There is controversy regarding the antecedents of respondent No. 4. There are 4 material documents on record on this issue. The first document is dated 26.6.95 which is in the nature of letter to Superintendent of Post Office Sitapur from Zahir Ahmad. In this letter, it is stated that for the post of EDBPM there are 5 candidates and amongst them is Mohd. Amin son of Abdul Rahman namely the present respondent No. 4. It is stated that the house of Mohd. Amin is outside the village; there have been thefts and decoities in his house, that his brothers etc. have constructed ~~his~~ house at Laharpur; that the Post office will not be safe in the house of the respondent No. 4 and in order to go to the house of respondent No. 4 there is no road or proper way. It is also stated in this letter that the respondent No. 4 is engaged in smuggling business and sells cloth after bringing the same from Nepal.

9. The second document on record is the Affidavit dated 5.5.97 of the said Zahir Ahmad. In this Affidavit it is stated on 26th June, 95, Virender Kumar Verma namely the present applicant, who is holding the post of EDBPM, had come to him and obtained his signatures on a letter after informing him that it relates to appointment to the post of EDBPM and that the said letter was in relation to the character antecedents of Virender Kumar Verma. It is further stated in this Affidavit that he (Zahir Ahmad) does not know Hindi at all but he knows only Urdu and in fact whatever is stated in letter dated 26.6.95 is not correct and on the contrary, Mohd. Amin has proper house which is fit for Post office and there is proper road to go to the

said house. The conduct of the said Mohd. Amin is good and he is not involved in any smuggling. The Tribunal in O.A. 75/96 had in fact directed the respondent No. 2 and 3 to consider this Affidavit dated 5.5.97 and then to take a decision in the matter.

10. Then we have a letter dated 4.6.04 of Pradhan, Ali Ahmad Ansari. This letter speaks of some enquiry conducted by Assistant Superintendent of Post offices, Sitapur on 3.6.04 in which enquiries were made about Mohd. Amin namely the respondent No.4. It is further stated therein that the Assistant Superintendent of Post Offices enquired with him whether he knew Mohd. Amin and he informed him that he is a resident of the village. Then he gave paper and pen to him and started dictating him and he started writing but he objected at times, namely when he asked him to write that to go to the house of Mohd. Amin there is a proper way, but he had stated that in order to go to the house of Mohd. Amin, there is a ~~land~~ ^{Lane} and there is no proper way and that the room which is shown in the Map for opening the Post Office was constructed after the posting of Virender Kumar Verma, namely the present applicant. It is further stated that the house of Mohd. Amin is in the corner and in the said house there have been thefts and decoity and that the brothers of Mohd. Amin have run away to Laharpur and that the Post office in the house of Mohd. Amin ~~is~~ ^{will be} not in order. It is further stated that the statement dated 3.6.04 is not completely correct and that in order to give proper service to the people, the Post office should be kept at the old place where it is functioning. The statement dated 3.6.04 to which reference has been made in letter dated 4.6.2004 has not been filed by any one and the same is not on record, which is in fact the fourth document, to which we have referred.

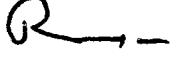
11. A careful scrutiny of all the above documents which pertain to relevant factors to be taken into

account for taking a decision, created grave doubt not only regarding antecedents of Mohd. Amin but also on the question as to whether it would be proper to have Post Office in the house of Mohd. Amin. In the circumstance even though the respondent No. 4 is more meritorious than the present applicant, yet other circumstances which have to be given due weightage, are against Mohd. Amin. Moreover, the applicant has been holding the post of EDBPM for the last about 9 years. Taking all the above facts into consideration, we are of the opinion, that the order dated 2.8.04 of the appointment of respondent No. 4 cannot be sustained. The said order is, therefore, quashed. The application is accordingly allowed in the aforesaid terms with no order as to costs.


(S.C. CHAUBE)

Member (A)

s.a.


(R.K. BATTA)

Vice Chairman.