

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.NO.: 168 of 1996.

[Patna, this Friday, the 17th Day of Nov.'03].

C O R A M

THE HON'BLE MR. JUSTICE B.N.SINGH NEELAM, VICE-CHAIRMAN.
THE HON'BLE MR. MANTRESHWAR JHA, MEMBER [ADMINISTRATIVE]

Ragini Sinha, alias, Ragini Kumari, wife of Shri Akhilesh Kumar, aged about 26 years, resident of village Chhatauna, P.O.: Chhatauna via. Jitwarpur, P.S.: Samastipur, District : Samastipur.APPLICANT.

By Advocate :- Shri N.P.Sinha.
Shri I.D.Prasad.

Vs.

1. Union of India through D.G., Department of Post, Govt. of India, New Delhi-110 001.
2. Chief Postmaster General, Bihar Circle, Patna-1.
3. Postmaster General, Northern Region, Muzaffarpur.
4. Director of Postal Services, Northern Region, Muzaffarpur.
5. Superintendent of Post Offices, Samastipur Division, Samastipur.
6. Sub-Divisional Inspector of Post Offices, East Sub-Division, Samastipur.
7. Smt. Kumari Ranjana, wife of Shri Amresh Kumar, aged about 22 years, resident of village Chhatauna, P.O.: Chhatauna via. Jitwarpur, District : Samastipur and, at present posted as EDBPM Chhatauna EDBO in Samastipur Postal Division.

....RESPONDENTS.

By Advocate :- Mr. V.M.K.Sinha,
Sr. Standing Counsel.

Shri J.K.Karn [For Res.No.7].

O R D E R

JUSTICE B.N.SINGH NEELAM, V.C.:- This OA, it transpires, was so filed by the applicant, Ragini Sinha, alias, Ragini Kumari, challenging the order of appointment of Kumari Ranjana, figuring here as respondent no.7, to the post of EDBPM, Chhatauna BO in account with Jitwarpur SO under Samastipur H.O. vide order dated, the 5th January, 1996, a copy of which is filed marked as Annexure-A/3. While filing this OA, the relief/reliefs, so sought for runs as under :

"[a] That, the orders passed by respondent no.5 appointing respondent no.7 in his Memo. No.A-89 dt. 05.01.1996 [Annexure-A/3] may be declared illegal, arbitrary, malafide and quashed.

[b] That, the applicant be declared a better candidate than respondent no.7 and the respondents be commanded to consider the case of the applicant for appointment on the post of EDBPM, Chhatauna EDBO in Samastipur Postal Division."

2. After filing of this OA it transpires that notices were so issued and the OA, after filing of the written statement, was so admitted by this Bench on 11.10.1996 itself. Even the rejoinder to the written statement was so filed and one Misc. Application, bearing M.A.No. 414 of 2000, was so also filed on behalf of the applicant, to some extent making prayer for amendment of the OA so filed though the same was rejected by this Bench on 11.01.2001, ~~itself~~.

3. Heard Shri N.P.Sinha, the learned counsel appearing on behalf of the applicant; Shri V.M.K.Sinha, the learned Sr. Standing Counsel appearing on behalf of the official respondents and Shri J.K.Karn, the learned counsel appearing on behalf of the private respondent no.7 [Kumari Ranjana]. The averments so made in the OA so filed, with that of the written statement and rejoinder so filed are also thoroughly looked into.

4. The case of the applicant, in short, is that the applicant was also one of the sponsored candidates whose name was so sent by the concerned employment exchange to the appointing authority admittedly, alongwith the names of other candidates which included the respondent no.7 also, but it has been submitted that arbitrarily the appointment of respondent no.7 was so done when as far as applicant is ~~so~~

concerned he has secured more marks in the matriculation i.e., total marks obtained is 704, whereas, the person appointed [respondent no.7] has secured only 644 marks in the matriculation. It is pointed out by challenging Annexure-A/3, the appointment letter which was so issued in the name of respondent no.7, that the candidature of the applicant was not so considered only on the ground that the applicant at the time of verification so done on 04.01.1996, the cut-off date for fulfilling the required conditions being 27.12.1995, had failed to produce any document with regard to mutation of the land being done in her name though the deed of gift of the land in question was so being ^{produced} ~~done~~ in her name prior to the cut-off date and the date of verification and on these flimsy grounds she was not offered the post of EDBPM and as submitted, violating the principles of natural justice the said offer was so made to the respondent no.7 against which the applicant has filed this OA. In support of this contention on behalf of the applicant it is pointed out that on no account it can be said that the documents were not so filed in support of his having adequate means of livelihood which was one of the criteria which was so given in the advertisement so made, a copy of which is filed marked as Annexure-A/1. It has been submitted that whether the mutation done or not done does not confer any title and it was the deed of gift so duly registered and executed in favour of the donee that the title passed and that way, the objection so raised by the department was not sustainable. In support of his contention on behalf of the applicant reference is made to some of the cases so decided by different Benches of CAT. In this connection, the learned counsel for the applicant has referred to Annexure-A/4 which is

an order so passed by this Bench while disposing of OA 674 of 1991 on 12.08.1992; Annexure-A/13 which is a copy of the order so passed by this Bench while disposing of OA 109 of 1992 on 21.12.1992 and also a reported case [D.Ramesh Vs. Supdt. of Post Offices & Ors.] which is the order so passed by the Hyderabad Bench of CAT as reported in 2003 [2] AISLJ CAT Page 25. By referring to these orders so passed in different OAs, referred to above, it has been submitted that when the applicant had admittedly secured more marks than that of the respondent no.7 and even the applicant was in a position to submit the deed of gift so executed prior to the cut-off date or the date of verification it was not necessary for the official respondents as to stick to the condition so laid down with regard to mutation also to have been done prior to the cut-off date in the name of the applicant because as held by the different Benches of CAT in their orders referred to above, according to the learned counsel for the applicant the mutation paper does not pass any title. Broadly, on these grounds and on the grounds so referred in this OA, the prayer is that the impugned order giving appointment to respondent no.7 rather, be set-aside and official respondents be directed as to offer appointment to the applicant in the background of the circumstances detailed above. It has also been submitted on behalf of the applicant that requisites to be fulfilled by the candidates whose names were so called for through employment exchange, one of the conditions so put of filing the mutation paper in the name of the sponsored candidate can rather, be declared ultravires.

5. On behalf of the private respondent, Kumari Ranjana, it has been pointed out by Shri

J.K.Karn, the learned counsel, that there was nothing wrong in the impugned order and the applicant has been rendering her services as EDBPM vide order, a copy of which is made available marked as Annexure-A/3, right from the date of her appointment in the year 1996 and is rendering her services with all sincerity and devotion now for the last seven years. It has been submitted on behalf of the respondents by particularly referring to Annexure-A/1 that by looking to one of the conditions so detailed in para 'Gha', it comes in light that it was so specifically mentioned therein that at the time of verification and before the cut-off date so given in the this case, the candidates had to produce the registered sale deed as also the mutation paper relating to the said piece of land with the rent receipt in his or her name exclusively. That being one of the conditions and the same being not fulfilled by the applicant particularly, relating to the mutation paper and RR not being produced exclusively in her name, the official respondents were perfectly justified as not to consider her name. With regard to the applicant's side challenging the very condition so put as also to produce mutation paper as also RR, over and above registered deed of transfer of land in the name of the candidate, it is pointed out that all these conditions so put in Annexure-A/1 can very well be said to be acceptable to applicant as a result of which she applied and also faced the verification so done by the department by filing documents but when she could not succeed, at the subsequent stage the applicant has in such circumstances has prayed ^{for} to declare as one of the conditions so put therein as ultravires. If the applicant so felt that could have very well been challenged at the initial

stage prior to the date of verification or the process of selection so started. Our attention is also drawn that even till today the applicant has failed as to file any mutation paper or reference with regard to mutation case number of the land in question said to have been gifted to her by her husband and even the rent receipts are not so produced. That goes to show that the transaction, if any, so made between the husband and the wife by deed of gift, that was a flimsy transaction rightly not accepted by the department. In support of his contention, the learned counsel appearing on behalf of the respondent no.7 has also relied upon two of the cases so decided by this Bench. In this connection, reference is made to OA 168 of 1999 so decided by this Bench on 28.04.1999 in Ragini Sinha Vs. Union of India and in OA 419 of 1995 so also decided by this Bench on 27.08.1999 in Ranjit Kumar Prasad Vrs. Union of India & Ors. and over and above these two orders so passed by this Bench a reference is made to the orders so passed by the Hon'ble High Court of Jharkhand in CWJC No. 1171 of 1999, so disposed of on 09.02.2001. Copies of the decisions so relied upon, referred to above, are also made available for perusal. In the background and on the basis of the averments so made in the written statement so filed by the private respondents it is submitted that since this OA so filed has got no leg to stand, the same rather, be dismissed. Before parting with, it has also been submitted that in CWJC No.1171 of 1999 the observation of the Hon'ble High Court, Jharkhand, is relevant wherein it has been observed that once an appointment is given to a person to a post, the aforesaid right accrues to the person as to continue on that post and by arbitrarily passing the order contemplating

termination of his or her services is said to be a grave injustice to be made to the person already appointed. In the case of the private respondent no.7, that for the last seven years she is rendering her services, had fulfilled all the conditions so put in the advertisement and simply on the ground that the applicant had secured more marks and even failing as to fulfil other conditions with regard to mutation being done in her name or even rent receipt which was expected to have been granted before cut-off date, being not produced, it was a fit case when the official respondents rather took a right view as not to consider the candidature of the applicant.

6. Shri V.M.K.Sinha, the learned Sr. Standing Counsel representing the official respondents has also argued on the same line, as detailed above being argued on behalf of the pvt. respondent no.7 and has submitted that after thorough examination and enquiry so made, ^{in course} ~~in course~~ ^{was not} of the appointment so offered to the applicant because of the applicant not fulfilling all the conditions so put in Annexure-A/1 the official respondents did thus, offer the said post to the respondent no.7 and all other points so taken as good grounds in the written statement are pressed into service submitting that the present OA thus, so filed, is devoid of merit and is liable to be dismissed.

7. In the background of the facts and circumstances also after hearing the learned counsel representing the applicant, private respondent and the official respondents, we are of the considered opinion that the argument so advanced on behalf of the official respondents with that of the private respondent seem to be having much of strength as not to grant the

relief/reliefs so sought for by the applicant. In course of argument when the applicant's lawyer was so asked as to show when the mutation was so done in the name of the applicant even after the date of verification and also to produce the rent receipts if any, so granted in her name by allotting a separate jamabandi on the basis of such deed of gift, the applicant's counsel failed to satisfy us saying that on these points he has got no instructions from her client. We also find that the points has rightly been raised on behalf of the respondents that at this belated stage challenging that one of the conditions so put while calling for the interview with regard to the mutation paper and rent receipt to be produced be rather declared ultravires if the applicant had found those conditions to be arbitrary and not in accordance with law, it was open to him to challenge the same at the initial stage and not belatedly when the applicant was not selected after observing due process of selection. To us also it seems that since one of the conditions so put in column 'Gha' was not so fulfilled by the applicant and thus, the applicant cannot claim setting-aside the appointment order of the respondent no.7 so made on 05.01.1996 itself. As regards some of the orders so passed by this Bench and also by Hyderabad Bench of CAT, so referred to by the applicant's side, in our considered opinion, are distinguishable in the background of the facts and circumstances of the case. On the other hand, the cases so decided by this Bench with that of some observations and directions so given by the Hon'ble High Court, Jharkhand, while disposing of CWJC No.1171 of 1999 on 09.02.2001 [supra] also support the stand so taken by the respondent no.7 with that of the official

respondents.

8. Consequently, finding no merit in this OA the same stands accordingly dismissed. Parties to bear their own costs.

[MANTRI
SHWAR JHA]
MEMBER [A]


[B.N.SINGH NEELAM]
VICE-CHAIRMAN

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