

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.203 of 1996

Date of order 23.2-1999

Shri Sunil Kumar Singh S/o Sri Baijnath Prasad Singh
resident of Village & PO Karsara Via Jakhim District
Aurangabad.

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Applicant

-versus.

1. Union of India through the Secretary-cum-DG (Posts),
Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Meghdoot
Building, Patna-800001.
3. The Supdt. of Post Offices, Aurangabad Division.
4. The Head Postmaster, Aurangabad H.O.
5. The SDI (P) East Sub-Division, Aurangabad.
6. Randhir Prasad Singh, Village & PO Karsara, Via
Jakhim District Aurangabad.

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Respondents


CORAM : Hon'ble Shri L.R.K. Prasad, Member (A)
Hon'ble Shri Lakshman Jha, Member (J)

Counsel for the applicant .. Shri R.K. Choubey.

Counsel for the respondents .. Shri S.C. Dubey.

O R D E R

Hon'ble Shri L.R.K. Prasad, Member (A):-

 This application has been filed against Memo
No.P/F Karsara/Jakhim/Aurangabad dated 3.4.1996 passed by
Superintendent of Post Offices, Aurangabad Division in
pursuance to the order passed by respondent no.2, as contained

in Memo No.Staff/Court Case No.08/96 dated 17.2.1996 whereby the selection of the applicant to the post of EDBPM, Karsara has been set aside and cancelled without issuing any show cause notice.

2. The case of the applicant is that in response to advertisement made by Superintendent of Post Officer, Aurangabad Division, vide his letter dated 6.4.1995 (Annexure-A/1) he applied for the said post. His name was forwarded by the Employment Exchange. After due process of law, he was selected for the post vide letter dated 17.6.1995. (Annexure-A/2). He joined as EDBPM, Karsara on 28.6.1995. Since then he has been working in the said post. It is stated by the applicant that 7 persons had applied for the said post. He was selected and appointed as he fulfilled all the requisite qualification. However, aggrieved by his selection, one candidate, namely, Smt. Rekha Singh moved this Tribunal vide O.A.No.701/95. In the said O.A. the Tribunal directed the Chief Postmaster General, Bihar Circle, to consider and dispose of the representation of Smt. Rekha Singh dated 24.7.1995. The applicant has further stated that after due consideration, the Chief Postmaster General rejected the representation of Smt.Rekha Singh. It is further stated that while disposing of the representation of Smt.Rekha Singh, the Chief Postmaster General, Bihar Circle (respondent no.2) ordered appointment of Shri Randhir Prasad Singh, respondent no.6 after cancelling the appointment of the applicant without giving him any show cause notice. Being aggrieved by the order passed by respondent no.2, the applicant filed O.A.144/96. In the aforesaid O.A. the applicant was directed to move the appropriate authorities for disposal of his representation within a time schedule. The applicant filed representation dated 14.3.1996 along with



copy of the ~~said~~ order addressed to respondent no.2. Instead of his representation being considered, he received a cancellation order, as at Annexure-A/6, from the Superintendent of Post Offices, Aurangabad without any show cause notice. According to the applicant, this action of the respondents are arbitrary, illegal and unconstitutional specially in view of the fact that the applicant was appointed after following due process of law. It also violates the principles of natural justice as the cancellation order was issued without giving him show cause notices. In view of the above submissions, the applicant sought for following reliefs:-

- (i) The order contained in Memo No.P/F Karsara/Jakhim Aurangabad dated 3. 4.1996 passed by Superintendent of Post Offices may be set aside.
- (ii) Order contained in Memo No.Staff/Court Case No.08/96 dated 17.2.1996 (Annexure-A/3) be quashed so far as it relates to the applicant.

3. The respondents have filed written statement. It is stated that the Employment Exchange, Aurangabad was requested on 6.4.1995 by the Superintendent of Post Offices, Aurangabad to sponsor names of eligible candidates for the post of EDBPM, Karsara. In response, nine applications were received which included the names of applicant, one Smt.Rekha Prasad and respondent no.6. Shri Sunil Kumar Singh was selected for the appointment as EDBPM, Karsara by respondent no.3. The applicant joined the said post on 28.6.1995. In pursuance to direction of this Tribunal passed in O.A.701/95, the Chief Postmaster General reviewed the position with reference to the

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representation of Smt. Rekha Singh. While reviewing the case he observed that Shri Randhir Prasad Singh, who secured 701 marks in Matriculation, was superior candidate for selection. However, vide his application dated 2.5.1995 Shri Randhir Prasad Singh requested to consider his appointment on priority basis but the S.D.I., East Sub-Division, obtained an application without date from this candidate showing withdrawal of his candidature before selection of EDBPM, Karsara. According to the respondents, as there is no provision for withdrawing candidature, dropping of the name of Shri Randhir Prasad Singh by respondent no.3 was considered incorrect. Respondent no.2 also felt that the appointment of Shri Sunil Kumar Singh as EDBPM, Karsara was irregular because he was the 3rd candidate in the merit list. Accordingly, he ordered cancellation of the selection of Shri Sunil Kumar Singh. It has been alleged that the applicant and Shri Randhir Kumar Singh are own brothers and the withdrawal of the candidature of Shri Randhir Prasad Singh from the post of EDBPM, Karsara was with a view to ensure appointment of his brother as EDBPM, Karsara.


4. We have heard the learned counsel for the parties and perused the materials on record of this case along with O.A.220/96. The factual position of the case is that for the post of EDBPM, Karsara, the respondent no.3 requested the Employment Exchange, Aurangabad on 6.4.95, to sponsor the names of suitable candidates who fulfill the qualifications as contained in the said letter. In response to the said request, the Employment Exchange sponsored names of nine candidates including the names of Sunil Kumar Singh (the applicant), Smt. Rekha Singh and Shri Randhir Prasad Singh,

W. S. Rao

who is respondent no.6 in this O.A. It is admitted fact that after completion of formalities, a list was prepared in order of preference. Shri Randhir Prasad Singh (respondent no.6) was at the top of the list. He submitted an application through the Sub-Divisional Inspector of Post Offices on 26.5.1995 stating that he was not willing to take up the job at Karsara. In the above merit list, Smt. Rekha Singh was second. However, she was not given appointment on the ground that she did not have landed property in her name at the relevant time which is one of the requisite qualification for such appointment. In the result, Shri Sunil Kumar Singh (the applicant) being 3rd in the merit list was selected and appointed to the post of EDBPM, Karsara by respondent no.3. The applicant joined the post on 28.6.1995. Aggrieved by the said selection of the applicant, Smt. Rekha Singh sent a representation dated 24.7.1995 to Chief Postmaster General, Bihar Circle, Patna. When she did not get any response, she filed O.A. 701/95 on which this Tribunal passed following order on 13.12.1995:-

"Considering the submissions and going through the averments made in the application and the representation dated 24.7.1995 pending before Shri A.K. Chakravorti, Chief Post Master General, Bihar, Patna, we feel that it would be expedient in the interest of justice to give a suitable direction to Shri A.K. Chakravorti Chief Post Master General, Bihar, Patna to dispose of the representation dated 24.7.1995, filed by the applicant, within two months by giving a personal hearing and by a speaking and reasoned order. With this observation, this application is disposed of."

5. In pursuance to the above order, respondent no.2 reviewed the position of the case. His order dated 17.2.1996 is at Annexure-A/3. According to respondent no.2, Shri Randhir Prasad Singh in his application dated 2.5.1995 had requested to consider his appointment on priority basis. However, the SDI, East Sub-Division, obtained an application without date from this candidate showing withdrawal of his candidature before selection of EDBPM, Karsara. His name was, therefore, dropped from the selection to the said post of EDBPM, Karsara. According to him, since in the departmental rules, there is no provision to withdraw candidature, the application of Shri Randhir Prasad Singh without date is not valid and, therefore, action of respondent no.3 in dropping the name of said Randhir Prasad Singh from the selection of EDBPM, Karsara is not correct. He, therefore, held that the selection of the applicant is irregular and untenable. Accordingly, the respondent no.2 held that the selection of the applicant is set aside and cancelled. In view of the aforesaid position, the respondent no.2 approved the candidature of Randhir Prasad Singh for his selection and ordered the concerned Superintendent of Post Offices to appoint him to the post of EDBPM, Karsara. The application dated 24.7.1995 of Smt. Rekha Singh was rejected by respondent no.2 on the ground that her position in the merit list is second and she has secured 614 marks in Matriculation examination, whereas the candidate, now approved for the post, has secured 701 marks in the same examination and, therefore, she has no superior claim to make. Accordingly, the respondent no.2 rejected the representation of Smt. Rekha Singh. In pursuance to the order of respondent no.2 the appointment of the applicant is said to have been cancelled.



Aggrieved by the said order, the applicant filed this O.A. with the prayer as has already been indicated earlier. It is observed that in addition to the main prayer, the applicant had also prayed for interlim relief to the extent to stay the operation of the order, as contained in Annexure-A/6 and A/3 so far it relates to the applicant till the final adjudication of the case as the applicant was still working in the said post. On 9.4.1996 it was ordered by this Tribunal that status quo, as existing on the date, should be maintained for a period of 14 days. The said interim order was allowed to continue from time to time and finally on 19.8.1996 it was directed that the stay order passed earlier would continue till the disposal of this O.A.

6. An analysis of the case brings out following points for consideration:-

- (i) The respondent no.6 does not appear to have challenged at any stage selection and appointment of the applicant as EDBPM, Karsara. Respondent no.6 submitted an application through the SDI of Post Offices on 26.5.1995 stating that he was not willing to take up the said job. The applicant was selected to the said post in June, 1995 and he joined the same on 28.6.1995. The basic question is whether there is any legal bar prohibiting a candidate ^{from} ~~withdrawing~~ his candidature before the final selection. The respondents have not produced any relevant service rule for ED Staff or any departmental circular which prescribe that a candidate cannot withdraw his candidature before the final selection is made to the post in question.

In absence of such a provision, it is difficult to agree with the opinion expressed by respondent no.2 in his order dated 17.2.1996 (Annexure-A/3) that since in the departmental rule, there is no provision to withdraw candidature, the application of Shri Randhir Prasad Singh without date, ~~for withdrawing his~~ candidature is not valid.

(ii) In O.A.701/95 this Tribunal had directed on 13.12.95 to dispose of the representation dated 24.7.1995 of one Smt. Rekha Singh. While disposing of the same and rejecting the claim of Smt. Rekha Singh, the respondent no.2 passed the order cancelling the appointment of the applicant and ordering selection of Shri Randhir Prasad Singh, respondent no.6 in this case who is stated to have withdrawn his candidature before the final selection was made to the post of EDBPM, Karsara.

(iii) There does not appear to be any legal bar for appointment of near relative within same district or at ~~any~~ different Extra-Departmental Post Offices. In the instant case, the applicant, who is brother of respondent no.6, has been appointed as EDBPM, Karsara and respondent no.6 was subsequently being considered for the post of EDBPM, Barahi.

(iv) It is also noted that when the EDBP, Barahi fell vacant, Employment Exchange was requested vide letter dated 5.2.1996 (Annexure-A/1 of O.A.220/96) to sponsor the names of suitable candidates. Along with others, the name of the applicant in O.A.220/96 was also sponsored for the said post. He appeared before the concerned authority on 23.3.1996. However, even though he was most suitable candidate for the post of EDBPM, Barahi, he was not selected for that post on the ground that he has already been ordered to be selected for the post of EDBPM, Karsara in accordance with the order

of respondent no.2.

- (v) It is noted that there is no legal bar to apply for two Post Offices provided one fulfills the requisite qualifications. It is observed that the respondent no.6 had applied for the post of EDBPM, Karsara but he withdrew his candidature for the said post before the final selection was done in June, 1995. He applied for the post of EDBPM, Barahi in response to the advertisement dated 5.2.1996 (Annexure-A/1 of O.A.220/96), which was done much after the selection ~~done for the post of EDBPM, Karsara.~~
- (vi) Rule 6 of EDA Conduct and Service Rules provides as follows:-

"6. Termination of Service.-(a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month.

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month."

In the instant case, the services of the applicant were terminated without any such notice.

7. In view of the facts and circumstances mentioned above and taking into consideration the submissions made on behalf of the parties and materials on record, the order dated 3.4.1996 (Annexure-A/6) passed by the Superintendent of Post Offices, Aurangabad and the order contained in Memo dated 17.2.1996 (Annexure-A/3) so far as they relate to the applicant are quashed. Accordingly, this O.A. is allowed. There will be no order as to the costs.

Lakshman Jha
23.2.99
(Lakshman Jha)
Member (J)

L.R.K. Prasad
23.2.99
(L.R.K. Prasad)
Member (A)