

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 90 of 1996

Dated the 26th May, 2003

Smt. Kamlesh Verma (daughter of Shri Yogendra Prasad), w/o Shri Jitendra Prasad, resident of village and PO Mirzapur, P.S. Patahi, District East Champaran.

.. Applicant

-versus-

1. The Union of India through the Secretary, to the Govt. of India, Ministry of Communication, Department of Posts, New Delhi-cum- Director General, Department of Posts, Dak Bhawan, New Delhi-1.
2. The Chief Postmaster General, Bihar Circle, Patna-1.
3. The Postmaster General, North Bihar Region, Muzaffarpur-2.
4. The Director of Postal Services, North Bihar Region, Muzaffarpur-2.
5. The Superintendent of Post Offices, Champaran Division, PO Motihari, HO District East Champaran.
6. The Sub-Divisional Inspector of Post Offices, Motihari East Sub-Division, Motihari, PO Motihari, District East Champaran.
7. Shri Ajit Kumar, S/o Shri Sheo Mangal Prasad, resident of village & PO Mirzapur, via Patahi, District East Champaran.

.. Respondents

C O R A M: The Hon'ble Mr. Justice B.N. Singh Neelam, V.C.

The Hon'ble Mr. Sarweshwar Jha, Member (A)

Counsel for the applicant ... Shri S.N. Tiwary

Counsel for the official respondents.. Mr. V.M.K. Sinha

Counsel for the private respondent no.7.. Shri J.K. Karn.

O R D E R

B.N. Singh Neelam, Vice-Chairman:-

1. Heard Shri S.N. Tiwary, the learned Counsel for the applicant, Shri J.K. Karn, the learned Counsel representing the private respondent, figuring here as respondent no.7 and Shri V.M.K. Sinha, the learned Senior Standing Counsel, representing the official respondents. At the request of

the concerned Lawyers, the matter was heard at length.

2. The case of the applicant, in short, is that the post of Extra-Departmental Branch Postmaster (hereinafter referred to as "EDBPM") of Mirzapur Branch Post Office in Patahi Sub-Post Office under Champaran Postal Division fell vacant due to retirement of one Shri Shes Mangal Prasad and the Superintendent of Post Offices, Champaran Division, Motihari (respondent no.5) being the appointing authority viide his letter dated 28.9.1995 notified the vacancy and sent the requisition to the Employment Exchange, Motihari to sponsor names of eligible candidates fulfilling the conditions laid down in the said requisition. The requisition was so advertised for fulfilling the said post. The copy of the requisition giving the terms and conditions for applying the post is also filed marked as Annexure-A/1. The further case of the applicant is that the Employment Exchange Officer, sponsored names against the said vacancy and 7 candidates, including the name of the applicant was so forwarded to the office of the Superintendent of Post Offices, Motihari. The Inspector of Post Offices, East Sub-Division, Motihari, who happened to be the immediate subordinate to the Superintendent of Post Offices, directed the concerned candidates, including the applicant, to appear before him on 12.12.1995 in the Primary School premises of Mirzapur for verification of required documents. The applicant claims to have appeared, accordingly, and produced all her original documents before respondent no.6. The applicant has also claimed to have handed over 13 documents along with a petition to the Sub-Divisional Inspector of Post Offices (respondent no.6). A copy of the petition dated 12.12.1995 is filed marked as Annexure-A/5. It is pointed out by referring to Annexure-A/6

that as per the letter of the Director-General of Posts, New Delhi, dated 10.5.1991, the person having the maximum marks in the Matriculation with the prescribed minimum landed property be given preference for appointment on the post of EDBPM. According to her, though arbitrarily appointment was given to the private respondent, figuring as respondent no.7, but she had secured more marks than that of respondent no.7, which is admitted even by the other side but her candidature was not so considered only on the ground that with regard to landed property, she was not in a position to show any landed property in the local area and in that way, the area so being less, according to the respondents, she could not fulfil the criteria though certain papers with regard to mutation, also being done exclusively in her name, was filed. The applicant had also shown her annual income of Rs.20,000/- on 2.9.1994 itself, that is, prior to the date of verification. One of the names sponsored, namely, Shri Sudhir Kumar had secured more marks but on other counts, he was not found eligible, therefore, not considered. The applicant, it is claimed, was the most eligible candidate and was superior on all counts than that of the person getting the appointment, that is, respondent no.7, causing great prejudice by such action of the respondents. The respondent no.7 was so selected and appointed on 13.12.1995, according to the applicant, illegally, arbitrarily and irregularly and the applicant was so denied the opportunity to be appointed, which was, as per the averments so made in this O.A. in violation of Articles 14,16 and 21 of the Constitution of India. With regard to the appointment so made to the respondent no.7, reference is also made to Annexure-A/11, which is a copy of the order of appointment so given to the respondent no.7.

Post offic,
It is claimed that the Sub-Divisional Inspector, East Sub- Division, Motihari, mischievously and arbitrarily at the time of verification scuttled the case of the applicant when the applicant fulfilled all the requisites of advertisement (Annexure-A/1) and that too, admittedly, securing more marks than that of respondent no.7 so appointed. The applicant has shown having land in the heart of Motihari town. That being the position, it was more valuable than the landed property shown by respondent no.7 which would not have been accepted and also with regard to her annual income she had shown to be Rs.20,000/- being certified by the Circle Officer of the Block and if in any way, the Inspector of Post Offices, East Dub-Division, Motihari, had any doubt, with regard to the certificate so issued by the Circle Officer, Revenue, who is a Gazetted Officer, it was incumbent on his part as to have correspondence with the Circle Officer in this regard, instead arbitrarily not banking upon her annual income certificate so issued by the competent authority.

3. In course of argument, much emphasis is put on the terms and conditions of the requisition advertisement (Annexure-A/1), which is being detailed threadbare and it is submitted that nowhere it was incorporated in the advertisement that the persons should have agricultural land, as claimed by the other side, which was nothing but the misconception running in the mind of the other side causing injustice by debarring the applicant of being offered the post, instead wrongly being offered to respondent no.7. By referring to para 4.17 of the O.A. it is further pointed out that Shri R.P. Lal, the then Superintendent of Post Offices,

Champanar Division, Mithiari, was at the verge of retirement and his power was seized relating to appointment vide Regional Office letter dated 26.9.1995. Even then, respondent no.5 continued to make appointments illegally ^{at the relevant time} which was not looked into by the higher authorities and to that effect even representation was so filed by the applicant on 29.12.1995, a copy of which is filed marked as Annexure-A/13. On these grounds and on the grounds mentioned in the O.A. hence, the prayer on behalf of the applicant is that the said appointment so given to respondent no.7 rather be quashed and a direction be given to the concerned respondent as to issue appointment letter to the applicant, who in all way was ^{the} most suitable candidate after dropping the name of Shri Sudhir Kumar.

4. On behalf of the respondents, on the other hand, much emphasis is put to the written statement so filed by them and it is pointed out that there is nothing wrong in the appointment so given to respondent no.7 because though he had less marks in the Matriculation, but had fulfilled all other requisites with regard to his having landed property, annual income through other sources to the satisfaction of the official respondents and on this account it can be said that the Inspector of Post Offices had gone out of jurisdiction. As far as applicant is concerned, it was ^{held} found that she had no sufficient source of livelihood or the landed immovable property and even she failed to provide suitable accommodation for functioning of the Post Office in the Post village and, as such, she was found not eligible for appointment to the post as per rules.

5. It will not be out of place to mention here that

in connection with this matter, even the official respondents were directed as to produce the appointment file, which is also so made available and in course of the argument, the same has been looked into closely.

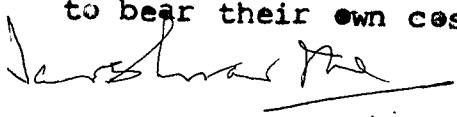
6. In course of perusal of the concerned appointment file, it transpires that, admittedly, the applicant had more marks in the Matriculation, that is, in the Madhyama Examination in 1989 which is equivalent to Matriculation. She had shown mutation in her name of 12 dhoors of land as the landed property falling exclusively in the name of the applicant, the mutation being done on the basis of sale deed situated in Mathia, one of the Mohallas of Motihari. At the time of verification, it is also incorporated, as detailed in the concerned appointment file, that the applicant had not shown any landed property in the Post village and her annual income shown only to be approximately Rs.20,000/- per annum, as certified by the Circle Officer concerned. That being the position, and in the background of the terms and conditions so put in Annexure-A/1 for applying to fulfil the post, we are of the considered view, after hearing both the sides Lawyers that when the applicant had secured more marks than that of respondent no.7, it seems that she also fulfilled the minimum requisites relating to the landed property and sufficient means of livelihood, her case at the very initial stage of verification ^{(I could not have} had not been scuttled, rather it would have been examined by the Superintendent of Post Offices or higher authorities prior to issuing appointment letter to respondent no.7 hurriedly. As regards the applicant not undertaking as to shift her house to the place of posting with regard to the conditions so put, the

rider is that it is after selection and before the appointment letter is issued, the candidate who is selected, has to satisfy this condition, but in the instant case, in our opinion, it was not expected of the applicant to fulfil this condition when she was not at all selected and furthermore by looking into the relevant appointment file made available, it transpires that at the time of verification, she had also given undertaking that if so selected, she will fulfil this condition too. In that background, after hearing both the sides Lawyers also particularly after going through Annexure-A/1 with that of the relevant pages of the appointment file relating to this appointment made available, we are of the considered view that the motto while making such appointment should rather be that to give offer of appointment to the most suitable candidate who fulfills all the requisites, and in that background we feel that without probing the matter thoroughly, the case of the applicant was not allowed to be considered for her appointment at the very initial stage, that is at the time of verification without the higher authorities taking the pains as to look into the matter on the report of the Inspector of Post Offices.

7. we, thus, find it to be a fit case which requires re-examination of the matter with open mind and to appoint the most eligible candidate among the names sponsored, particularly, to threadbare scrutinise between the case of the contestants, that is, applicant and respondent no.7 who are in the race and to appoint the best person out of them. For this exercise, it has become necessary as to set aside the order of appointment so given to respondent no.7.

dated 13.12.1995 (Annexure-A/11) which thus stands set aside and respondent no.3, Postmaster General, North Bihar Region, Muzaffarpur, is hereby directed as to look into the matter, examine the record and pass necessary orders in this direction in the light of observations and directions made by us. as detailed above, within a period of four months from the date of receipt/production of this order by passing a reasoned and speaking order in accordance with law. This direction is so given by us after thoroughly going through the concerned appointment file and also going through the averments so made in the D.A. and the W.S. so filed on behalf of the other side and rejoinder so filed on behalf of the applicant. Needless to say that while remanding, the matter to be looked into by respondent no.3 as per the observations and directions so given even fixing up time-frame for doing such exercise, we have not expressed our opinion as to who is the best candidate among the applicant and respondent no.7. It is for the concerned respondent as to decide after thorough inquiry and probe into the matter, but to us, it seems to be a case of remand and afresh thorough inquiry with open mind because while rejecting the case of the applicant in the hands of the Inspector of Post Offices, it seems necessary for the superior Postal Officers also to verify the same which would not have been done in the instant case, hence this order.

8. Before parting with the order, it is also made clear that till the matter is so decided in the hands of respondent no.3, Shri Ajit Kumar (respondent no.7) was to continue and serve as EDBPM of the said Post Office for its smooth running as a stop-gap arrangement. The parties to bear their own costs.


(Sarweshwar Jha)
Member (A)


(B.N. Singh Neelam)
Vice-Chairman

20.5.03