

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 266 of 1996

Patna

Dated the 7th May, 2004

C O R A M

The Hon'ble Mrs. Shyama Deogra, Member (W)

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

Hira Lal Prasad, son of Late Ram Sharan Sah, Village Bakhari, via Pathai, District Motihari (East Champaran) at present working as EDBPM of Bakhari EDBO in a/c with Pathai S.O.

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Applicant

By Advocate Shri S.K.Bariar

-versus-

1. The Union of India, through the Secretary-cum-D.G., Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Superintendent, Post Offices, Champaran Division, Motihari.
5. Sri Ram Nath Prasad, son of Sri Kapil Deo Sah, Village Bakhari via Pathai, District East Champaran (Motihari).

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Respondents

By Advocate Shri H.P.Singh, Additional S.C. for official respondents.

By Advocate Shri N.P.Sinha for respondent no.5.

O R D E R

Mantreshwar Jha, Member (A):-

This OA has been preferred by the applicant Shri Hira Lal Prasad for quashing and setting aside the impugned order at Annexure A/1 and for directions to the official respondents not to interfere with the duties and cancelling of the applicant as EDBPM of Bakhari E.D.B.O. in account with Pathai S.O.

2. The case of the applicant is that he was appointed on the post of EDBPM at Bakhari E.D. B.O. on 22.6.1993 (Annexure A/2). The respondent no. 5 Shri Ram Nath Prasad bearing filed a case before this Court, O.A. No. 614/93 in which the applicant was made respondent no. 8. In that case also respondent no. 5 in this case had levelled allegation against the applicant regarding three dates of birth of the applicant. This Court in the aforesaid OA (Annexure A/3) quashed the appointment of the applicant on the ground that since the respondent had also made his application directly on time his case should also be considered alongwith the applicant. The Court further directed the concerned respondents (Superintendent of Post Offices, Motihari) to consider the case of respondent alongwith others afresh and make a fresh appointment. The Court also observed in passing as follows:-

" In all the three examinations that he appeared, the date of birth was one and the same, namely, 9.1.1970. Photocopies of the Madhyama certificate dated 11.2.1994, Provisional Madhyama Certificate dated 10.7.1993, Provisional Madhyama Certificate dated 13.8.93 and admit cards for 1989 and 1992 attest to the fact that he consistently maintaining his date of birth as 9.1.70. But this aspect does not concern us here. "

3. The case of the applicant is that in pursuance to the aforesaid order of this Court, the case of the applicant was reconsidered alongwith respondent no. 5 and he was again appointed to the post vide memo no. 51 dated 11.3.95 (Annexure A/4). Thereafter, the applicant was working in his

post when suddenly vide letter dated 14.3.1996, issued from the office of the Postmaster General, Muzaffarpur was (respondent no. 3), the applicant served a show cause on termination, on the same ground, which were settled by this Hon'ble Tribunal vide its judgement dated 25.11.1994 in OA No. 614/93. The applicant submitted his show cause (Annexure A/6) which was not accepted and impugned order of termination of the applicant Annexure A/1 was issued.

4. The official respondents have filed their written statement in which the facts as indicated above are more or less admitted. It has also been submitted that the order of removal of the applicant has not been made effective as the applicant has filed this application before this Tribunal. The official respondents have also emphasized the fact that this Tribunal did not settle the issue of the date of birth of the applicant in OA No. 614/93 as it had observed that " the aspect of date of birth does not concern us here ". It has further been submitted that on the receipt of complaint from respondent no. 5, the case of appointment of the applicant was reviewed by the respondent no. 3, Post Master General, Muzaffarpur and since it was found that his appointment was not in order, the applicant was asked to give a show cause. The respondents have referred to judgements of this Court in OA No. 582/93 in support of their contentions that since the allegation of three dates of birth were established, the respondents were entitled to take their view and terminate the appointment of the applicant.

5. Written statement has also been filed on behalf of respondent no. 5. In the W/s the respondent no. 5 has also

supported the contentions of the official respondents and submitted that the termination of the appointment of the applicant was in accordance with the procedure and therefore justified.

6. Rejoinder has been filed on behalf of the applicant. In the rejoinder, applicant has taken the plea that removal of his service is a statutory penalty within the meaning of Rule 7 of the E.D.As (Conduct & Services) Rules, 1964 which cannot be passed without holding an inquiry as laid down in Rule 8 of EDAs (Conduct & Service) Rules, 1964. Further, removal from service or for that matter any of the penalties prescribed under Rule 7 of the EDA (Conduct & Service) Rules can be imposed only by the appointing authority. The case of the applicant in the rejoinder is that these mandatory provisions have been wholly ignored. Neither any enquiry was held in the manner prescribed nor the order has been passed by the appointing authority. The appointing authority has been ordered by Post Master General, Muzaffar pur, respondent no. 3 to pass the removal order of the applicant without any proceedings. It has further been submitted that respondent no. 3 has gone through the extent of ordering the appointment of respondent no. 5 on the post of the applicant.

7. We have carefully gone through the averments made by the contesting parties and gone through the records of the case. The original record relating to the appointment of GDSBPM Bakhari B.O. had also been requisitioned by us which have also been looked into. Admittedly, the applicant was appointed to the post of EDBPM at Bakhari EDBD originally on 22.6.1993. He was again appointed on the said post after considering his case alongwith respondent no. 5 after determining the respective merit of

of the applicant alongwith respondent no. 5 in terms of order of this Court in OA No. 614/93 on 11.3.1995. So far as allegation of three dates of birth in respect of the applicant is concerned, Court had observed in OA No. 614/93 that in all the three examinations that he appeared, the date of birth was one and the same, namely, 9.1.1970. It is true that the Court did not pronounce any verdict in favour of the applicant in that OA, but while delivering the judgement, the Court observed that there was hardly any discrepancy in the dates of birth. Even if it is assumed that the date of birth of the applicant remained in dispute at that point of time it was open for concerned respondents to look into the same before or his re-appointment in terms of the order of the Court in OA No. 614/93 before passing the order of appointment of the applicant dated 11.3.1995. Once his appointment was re-confirmed by the concerned respondents, it was not open for respondent no. 3, Post Master General, North, Muzaffarpur to reopen the matter and order for the removal of the applicant without following prescribed procedure in the peculiar circumstances of the case as narrated above. The impugned order at Annexure A/1 has been passed after attaching the stigma with reference to the date of birth as well as the qualification of the applicant without holding a proper enquiry which would be bad in law and violation of the principles of natural justice. It is not clear why all of a sudden respondent no. 3 decided to issue show cause notice on 14.3.1996 to the applicant when the issues in question had been raised at the time of hearing in OA No. 614/1993 also.

8. Under the facts and circumstances discussed above,

we are satisfied that the order passed by respondent no. 3 at Annexure A/1 is bad in law and, therefore, the same is quashed and set aside with a direction to the respondents to allow the applicant to serve on the post and not to interfere with the duties and functioning of the applicant. However, if the respondents (appointing authority) is satisfied that the applicant has given false or defective declaration or otherwise, then they are at liberty to proceed further in the matter in accordance with the procedure laid down in EDA (Service and Conduct) Rules, 1964 after holding a proper enquiry as prescribed in the law.

9. In terms of observations made above, this OA is allowed. No order as to costs.

(MANTRESHWAR JHA)

MEMBER (A)

SRK/

Shyam
Dogra
(SHYAMA DOGRA)

MEMBER (J)

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