

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. NO. 486 of 1996

Patna, dated the 28th April, 2004

C O R A M

The Hon'ble Mrs. Shyama Dogra, Member (J)
The Hon'ble Mr. Mantreshwar Jha, Member (A)

Jainarayan Sah, son of Shri Kakhan Sah, village Pacharhi,
P.S. Raiyam (Keoti), District Darbhanga.

.. Applicant

By Advocate Shri J.K. Karn

-versus-

1. The Union of India, through the D.G-cum- Secretary, 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 of Post Offices, Darbhanga Division.
5. The Subdivisional Inspector of Post Offices, Darbhanga North Sub-Division, Darbhanga.
6. Kameshwar Thakur, son of Late Madhuri Thakur, Village and PO Raiyam, District Darbhanga at present working on the post of EDMC, Pacharhi-Raiyam Line.

.. Respondents

By Advocate Shri V.M.K. Sinha, Senior S.C.
for official respondents.

By Advocate Shri S.N. Tiwary-for respondent no.6

O R D E R

Mantreshwar Jha, Member (A):-

1. This O.A. has been filed for quashing and setting aside the impugned order dated 9.9.1996 issued by respondent no.4, as contained in Annexure-A/1, for quashing the joining of respondent no.6 and for direction to the respondents to appoint the applicant on the post and allow him his salary and other allowances for the period.

2. The case, in short, is that the applicant was appointed as EDMC, Pacharhi in accordance with proper procedure in pursuance of the appointment memo No.A/ Pacharhi dt. DEN 2.2.1996 issued by respondent no.5, as per Annexure-A/3. He accordingly joined the post on 2.2.1996. He was, however, issued a show cause on 26.7.1996 (Annexure-A/4) alleging therein that his appointment was irregular because another candidate shri Kameshwar Thakur, respondent no.6, who had obtained higher marks than that of the applicant, was ignored by the appointing authority. The applicant submitted his show cause on 2.8.1996. The case of the applicant is that thereafter on 11.9.1996, Superintendent of Post Offices, Darbhanga, came at Pacharhi B.O. along with five other persons and forced the applicant to put his signature on 12 places and said that "you are no more in service". Thereafter, Kameshwar Thakur, respondent no.6, joined on the post vacated by the applicant without appointment memo. The applicant filed a representation before the Postmaster General, Muzaffarpur, at Annexure-A/8, but no action was taken on his representation. According to the applicant, entire exercise done by respondent no.4, that is, Superintendent of Post Offices, Darbhanga, is tainted with mala fide and bias because his motive was to appoint Kameshwar Thakur, respondent no.6, on the post of the applicant. It has further been submitted that the appointment of the applicant has been cancelled in an arbitrary manner.

3. The case of respondent no.6, as revealed from the written statement filed on his behalf is that he had also applied for the post along with all relevant particulars and had secured higher marks in Madhyama



(equivalent to Matriculation) Examination. He has also alleged that the appointing authority asked him to pay a bribe. Since he was not able to pay the same, his case was overlooked and the applicant, who had obtained only 304 marks out of 900 in Matriculation, was appointed. He, therefore, filed representations dated 6.4.1996 and 12.6.1996 addressed to the Postmaster General, Muzaffarpur. Respondents thereafter made necessary inquiries and found the appointment of the applicant as EDMC, Pacharhi EDBO, illegal and irregular and, accordingly, the appointment of the applicant was cancelled after issuing him a show cause and he joined duty as EDMC, Pacharhi EDBO on 11.9.1996 vide orders contained in Superintendent of Post Offices, Darbhanga Division Memo No. A 489 dated 9.9.1996 and since then he has been continuing on the said post continuously.

4. The official respondents have also filed their written statement. According to the official respondents, even though respondent no.6 had secured higher marks than the applicant at the Madhyama, which is equivalent to Matriculation, respondent no.6 was not appointed originally on the ground that he was not a man of sound character. After the applicant was appointed and respondent no.6 sent representations, the entire matter was inquired into and it was found that the appointing authority, that is, Sub-Divisional Inspector of Post Offices, Darbhanga North Sub-Division, had ignored the claim of respondent no.6 on a false and fabricated ground that respondent no.6 was found to be a man -- not of sound character. In course of inquiry, the Officer Incharge of Raiyam P.S. gave in writing that in the previous certificate issued by him some one had inserted word "Not" before good character in order to prevent respondent no.6 from being appointed.

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The Mukhiya concerned also stated in course of the departmental inquiry that the alleged certificate issued in his name was not issued by him. The official respondents have, therefore, contended that appointment of the applicant has been cancelled after issuing a show cause and after giving due consideration of his reply dated 2.8.1996. It has further been submitted that since respondent no.6 was a man of sound character and had been denied appointment wrongly even though he had secured higher marks and fulfilled all other criteria, he was allowed to join the post vacated by the applicant. It has also been stated that the applicant in collusion with the Sub-Divisional Inspector of Post Offices, Darbhanga, had wrongly secured his appointment to the post of EDMC, Pacharhi EDBO on the ground that respondent no.6 was not a man of good character which was found false and fabricated in course of departmental inquiry.

5. A detailed rejoinder has been filed on behalf of the applicant and several decisions of various Courts have been cited in support of the contentions. The main ground taken in the rejoinder is that termination of the applicant ordered by the higher authority is without jurisdiction and, therefore, illegal.

6. We have gone through the averments of both parties and also carefully examined the citations. In the peculiar facts and circumstances of the present case, it is quite clear that the applicant had been initially appointed fraudulently which was detected soon after his appointment and the matter has been inquired into at length. The applicant joined as EDMC, Pacharhi on 6.2.1996, and within six months, he was issued show cause notice on 26.7.1996 alleging, therein that his appointment was irregular because another candidate,



respondent no.6, who had obtained hither marks, had not been considered for appointment on extraneous considerations. Subsequently, on 11.9.1996, his appointment was terminated and respondent no.6 was appointed on the post. The applicant has, therefore, worked on the said post just over six months. After thorough inquiry, it has been clearly established that the name of respondent no.6 had been mischievously ignored by the appointing authority for which, we are sure, official respondents 1 to 5 have taken an appropriate action ~~against him~~. So far as legal issue raised by the learned counsel for the applicant is concerned, we have no option but to abide by the judgment of the Hon'ble Apex Court in the case of Brij Mehan Singh vs. Union of India in Civil Appeal No.5918 of 1997 decided on January 24, 2001, reported in 2002 Supreme Court Cases (I&S) 1118. In this case the Hon'ble Apex Court has held that in view of gross irregularities and illegalities in securing the appointment, the appointee cannot claim any right to the post. The order of termination not vitiated ipso fact and the employee would be entitled to claim a sum equivalent to the amount of basic pay plus D.A. for the period of notice at the same rate at which he was drawing monthly pay or as the case may be for the period by which such notice falls short of one month.

7. In the peculiar facts and circumstances of the case as discussed above and finding that the appointment of the applicant was *prima facie* vitiated, we are not inclined to go into the matter any further and are of the considered opinion that the applicant has failed to

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make out a case to interfere with the appointment of respondent no.6.

8. The O.A. is, therefore, dismissed with no order as to costs.


28/4/04
(Mantreshwar Jha)
Member (A)


28/4/04
(Shyama Degra)
Member (U)

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