

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

O.A.NO.: 146/96.

Date of decision : 27-OCT-99.

Ajay Kumar Sharma, son of Shri Ram Baboo Thakur, aged about 20 years, resident of village Harnathpur, P.O.: Harnatha, P.S.: Pakri Dayal, District-East Champaran, Motihari.APPLICANT.

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

Vrs.

1. Union of India through D.G.[Post], Government of India, New Delhi-110001.
2. Director General, Department of Posts, Dak Bhawan, New Delhi-110 001.
3. Postmaster General, Northern Region, Muzaffarpur.
4. Director of Postal Services, Northern Region, Muzaffarpur.
5. Superintendent of Post Offices, Champaran Division, Motihari.
6. Sub-Divisional Inspector of Post Offices, Motihari East Sub-Division, Motihari.
7. Smt. Sita Kumari, wife of Shri Shyam Kishore Thakur, village Harnatha, P.O.: Harnatha, via- Dhaka S.O., District-East Champaran, and present EDBPM Harnatha EDBO.RESPONDENTS.

By Advocate : Shri D.K.Jha, ASC.
Shri R.S.Prasad [Res.No.7].

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.
HON'BLE MR. L.HMINGLIANA, MEMBER [ADMINISTRATIVE].

ORDER DICTATED IN COURT

S.NARAYAN, V.C.:-The applicant in this case has impugned the order dated, 30th May, 1994, of the respondent no.5, vide Annexure-A/9, whereby, the respondent no.7 [Smt.Sita Kumari] has been appointed to the post of EDBPM, Harnatha, within East Champaran Postal Division while ignoring the candidature of the applicant, who also, along with some other candidates, was within the zone of consideration during the selection process.

2. There is no doubt that the applicant was superior and better candidate among all the candidates

under consideration for appointment to the post of EDBPM, Harnatha. Besides fulfilling some other criteria to the eligibility for the post, it was the applicant who had secured higher marks in the Matriculation standard as compared to all the candidates in the field. This being the position, the official respondents have not raised any issue as to the supremacy of the candidature of the applicant for the purpose of selection. However, it was only because that a relative of the applicant was already working as EDDA in the same Branch Post Office that his candidature has been ignored. This could be revealed only when an official respondent made a communication to this effect by a letter dated, 26th September, 1995, vide Annexure-A/17, wherein, the solitary reason for non-selection of the applicant was assigned in the following terms :

"In this connection it is to intimate that the above allegations were examined at this end and it was found that "Cousin" brother has been defined as near relative for the purpose of the above appointment and appointment of near relative in the same B.O. is prohibited. Your eligibility to the aforesaid post was as such not considered due to reasons explained above."

3. Therefore, the short question which falls for consideration in the instant O.A. was only this much that whether, on account of the relationship, as pointed out above, the candidature of the applicant could be ignored altogether ?

4. In context of the issue, as identified above, our attention was first drawn by the learned counsel appearing on behalf of the official respondents

to an instruction of the Director General [Posts] as contained in his letter no.17-125/93-ED&Trg., dated the 25th February, 1997. Paragraph no.4 of the said letter would be relevant and, accordingly, it is extracted as herein below with emphasis supplied :

"The Tribunal in a few cases brought before it have adversely commented on the way this Office letter No.43-36/64-Pen., dated 17.10.1966 has been worded inasmuch as the same has left much scope for misinterpretation. The contents thereof have been reviewed. It has now been decided that the "near relations" as defined above should not be appointed in the same office in future. In exceptional cases, where appointment of "near relations" in the same office becomes unavoidable, prior approval of the PMG [Region] or the Chief PMG concerned will be taken. While according such approval, the PMG/CPMG concerned will satisfy himself and give reasons for according such approval."

5. As against the above circular of the department, which was, of course, subsequent to the appointment in question before us, learned counsel appearing on behalf of the applicant has drawn our attention to a decision of the Supreme Court which would squarely guide the point in issue before us. The decision of the Supreme Court on the point was available in the case of Baliram Prasad Vrs. Union of India & Ors., reported in 1997 SCC [L&S] 468. In terms of the decision taken by the Supreme Court it was held as noted herein below :

"The Tribunal has itself noted that as compared to the respondent the applicant was more meritorious. He had obtained 546 marks in the first division in Matriculation examination as

compared to the respondent who had passed in third division and got 404 marks. In Class VII examination the appellant had got 468 marks while the respondent had got 220 marks. The appellant's annual income was Rs.17,000/- while the respondent's annual income was Rs.7500/-. Only because the appellant's cousin brother was working as a Peon in the Post Office concerned it could not be said that the appellant could not be appointed as Extra Departmental Branch Postmaster in the said Post Office. To say the least it would be totally arbitrary and irrational. To refuse to appoint a more meritorious candidate only on the ground that his cousin brother was working in the same Post Office would be totally an arbitrary exercise of power which can not be countenanced on the touchstone of Article 14 of the Constitution of India. Since no other disqualifications of the appellant could be pointed out, the authorities are directed to appoint the appellant as Extra Department Branch Postmaster in the place of the respondent." [Emphasis supplied]

6. The two citations, referred to above, of course, run contrary to each other. We would, however, go by the decision taken by the Supreme Court wherein due regard has been extended to the provision contained in Article 14 of the Constitution of India. While putting reliance on the decision of the Supreme Court, we are constrained to observe that mere subsequent circular, issued by the department with whatsoever authenticity, could not take away the effect of a judicial decision and, that too, by ^{the} Apex body like the Supreme Court.

7. Hence, if we place reliance on the decision of the Supreme Court, referred to above, we find no alternative than to say that the objection

raised against the candidature of the applicant was unwarranted under law and it can not be allowed to subsist. Be it also recorded here that ^{the} relationship of the applicant, namely, Jai Prakash, happened to be his first cousin and we fail to appreciate as to how reasonably it can stand in the way of discharging the duty of EDBPM by the applicant, if selected to the post.

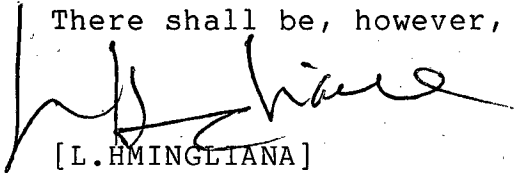
8. Learned counsel appearing on behalf of the private respondent no.7 [Smt. Sita Kumari], could simply urge before us that the said respondent happened to be a female and also that a Court of Law ought not to over-look the socio-economic justice in the terms of providing appointment to each family. On logic, we may appreciate ^{it} in first blush of the matter, but we are doubtful that such a plea can hold good while taking decision on a constitutional issue with reference to the Article 14 of the Constitution of India. Therefore, the respondent no.7 may deserve sympathy of the departmental authorities for being provided with an appointment, but not to the post for which a suitable and better candidate was already available. The plea as raised on behalf of the private respondent no.7 was thus, not acceptable so as to defeat the claim of the applicant.

In the premise, this O.A. must succeed and, accordingly, it is allowed. The appointment of respondent no.7, as per order dated, 30th May, 1994 [Annexure-8] is, therefore, quashed togetherwith the decision taken by the official respondents in their letter dated, 26th September, 1995 [Annexure-A/17]. It is further directed that the official respondents should issue an appropriate order of appointment of the

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applicant in the light of the observation made above.

There shall be, however, no order as to costs.



[L. HMINGLIANA]
MEMBER [A]



[S. NARAYAN]
VICE-CHAIRMAN.