

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A.No. 63 of 1996

Date of decision : 1-FEB-2001.

Umesh Paswan, son of Shri Nageshwar Paswan, aged about 23 years, residence of village : Rajauli, P.O. Rajauli via. Hajipur, District : Vaishali.

....APPLICANT.

By Advocates : Shri N.P.Singh with Shri I.D.Prasad.

Vs.

1. Union of India through Director General, Department of Posts, Govt. of India, New Delhi-110 001.
2. Chief Postmaster General, Bihar Circle, Patna-800 001.
3. Director of Postal Services, Patna Region, Patna-800 001.
4. Superintendent of Post Offices, Vaishali Division Hajipur.
5. Asstt. Superintendent of Post Offices, Eastern Sub-Division, Hajipur.
6. Shri Rajesh Kumar, son of Shri Ramashish Prasad Singh, aged about 26 years, resident of village Rajauli via. Hajipur, District Vaishali, and at present EDBPM Rajauli EDBO in Vaishali Postal Division.

....RESPONDENTS.

By Advocates : Shri V.M.K.Sinha,
Mr. Standing Counsel.

Shri S.N.Tiwarey (For Respn. No.6)

C O R A M

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

O R D E R

JUSTICE S.NARAYAN, V.C.:- The applicant herein has prayed for quashing and setting-aside an appointment order dated, 23rd January, 1996 (Annexure-A/6), issued by the respondent no.4 appointing the private respondent no.6 (Rajesh Kumar) on the post of Extra Departmental Branch Postmaster (for short, EDBPM), Rajauli B.O. in Vaishali — Postal Division, with direction to consider his (the applicant) case for appointment on the said post on the basis of the

first employment notice dated, 17th August, 1995 (Annexure-A/1), issued by the official respondents. In this context, a declaration is also sought for that the second employment notice dated, 21st November, 1995 (Annexure-A/4), issued by the respondent no.4 inviting application directly from the candidates while superseding the first employment notice dated, 17th August, 1995, issued to the concerned Employment Exchange as arbitrary, illegal and mala-fide action of the respondent no.4.

2. Since the post of EDBPM, Rajauli EDBO, was going to be vacant in November, 1995, the Superintendent of Post Offices, Hajipur (Vaishali Respondent no.4), issued an employment notice dated, 17th August, 1995 (Annexure-A/1), to the Employment Exchange, Hajipur, asking to sponsor names of eligible candidates along with their applications in original with photostat copies of requisite papers and documents latest by 15th September, 1995. In response to this notice, the Employment Exchange, Hajipur sponsored as many as eight candidates, including the applicant and the private respondent no.6 (Rajesh Kumar); and as a result of the verification, the respondent no.4 took a decision that none of the candidates fulfilled the eligibility criteria for selection to the post. Thereupon, a public notice of employment dated, 21st November, 1995, was issued inviting applications, togetherwith requisite certificates, latest by 20th December, 1995 vide Annexure-A/4. This time again, the applicant and the respondent no.6 (Rajesh Kumar), togetherwith some others, filed applications for selection to



the post and as a result of the verification held during the selection process, it was the respondent no.6 (Rajesh Kumar), who was selected and was also appointed to the post by an order dated, 21st March, 1996 (Annexure-A/6), issued by the respondent no.4.

3. Being aggrieved with the aforesaid appointment of respondent no.6 (Rajesh Kumar), the applicant has come-up with the instant O.A. seeking a declaration that the issuance of second employment notice is arbitrary, illegal and invalid and, therefore any appointment made thereon was liable to be quashed. In this context, it was urged on behalf of the applicant that since the private respondent no.6 (Rajesh Kumar) did not fulfill the eligibility criteria on the cut-off date, whereas, he (the applicant) did fulfill, the respondent no.4 did not choose to appoint any candidate on the basis of the first notification and issued a second notification so as to accommodate the private respondent no.6.

4. As against the above plea, it was contended, inter-alia, by the official respondents as also the private respondent, that none of the candidates sponsored by the Employment Exchange fulfilled the eligibility criteria on the cut-off date i.e., on 15th September, 1995, i.e., the last date of making application before the Employment Exchange as per the employment notice dated, 17th August, 1995 (Annexure-A/1), there was the necessity to issue a fresh employment notice inviting application from the general public.



5. Therefore, in the light of the controversy raised, the crux of the matter is whether, the second employment notice dated, 21st November, 1996

was a valid one or not ? The validity of the second employment notice was, of course, dependent on the fact whether, any candidate sponsored by the Employment Exchange pursuant to the first notice dated, 17th ^{then} August, 1995 (Annexure-A/1), fulfilled the eligibility criteria or not ?

6. Even though the official respondents did assert categorically that none of the candidates sponsored by the Employment Exchange, including the applicant and the private respondent no.6, ^{then} fulfilled the eligibility criteria, the real contest on the issue was in between the applicant and the private respondent no.6. There was no controversy that the private respondent no.6 did not fulfill the eligibility criteria on the cut-off date as per the first employment notice dated, 17th August, 1995, and, therefore, it remains to be examined whether the applicant also did not fulfil the eligibility criteria on the said cut-off date.

7. In regard to the eligibility criteria of the applicant with reference to the first notice (Annexure-A/1), it is worthy of notice that the said employment notice (Annexure-A/1), addressed to the Employment Exchange, spelt-out in no uncertain terms as given below :-


"It is, therefore, requested to please sponsor names of at least three candidates who fulfil the following eligibility conditions/ qualifications by 15.09.1995 along with their applications in original with photostat copies of the requisite paper/documents.

x x x x x

Any application received after 15.9.95 in this office will not be entertained and considered for appointment."

8. From the above directions in the notice (Annexure-A/1), it is abundantly clear that the cut-off date to judge the eligibility criteria of a particular candidate was 15th September, 1995. It is true that the official respondents thereafter, issued a notice dated, 20th September, 1995 (Annexure-A/2), only to the sponsored candidates asking to fill-in application on prescribed proforma with photostat copies of all documents within a week. Hence, the second notice addressed only to the sponsored candidates, in our opinion, was not by way of extension of the cut-off date as notified in the employment notice (Annexure-A/1), which, infact, was supposed to be the cut-off date.

9. Having seen above, that the cut-off date as per first notice was 15th September, 1995, we find on the record that in regard to the criteria of income and landed property, on the basis of which the applicant was seeking his appointment, a rent receipt being dated, 26th September, 1995 (Annexure-A/10), and the income certificate issued by the Revenue authority, being dated, 30th September, 1995 (Annexure-A/11), were produced during the course of the selection process. A copy of the rent receipt (Annexure-A/10) and that of the income certificate (Annexure-A/11) were produced by the applicant along with the O.A. also. Obviously, these two documents were of the dates subsequent to the cut-off date being 15th September, 1995. The land and the rent receipts (Annexure-A/10) had been acquired by the applicant through a sale-deed executed by none-else than his father only on 12th September, 1995, i.e., three days prior to the cut-off date, vide Annexure-A/11. Obviously, therefore, on the cut-off date the applicant had no independent annual



source of income; and the land under sale was mutated with grant of rent receipt on 26th September, 1995, i.e., subsequent to the cut-off date.

10. In this context, we may refer to the guideline issued by the Chief Postmaster General, Bihar Circle, Patna on 23rd April, 1991 (Annexure-A/17), which require that the candidates must have adequate means of livelihood and it should be in the own name of the applicant for which attested or photostat copies of requisite documents, namely, khatiyan, mutation paper and rent receipt should be submitted togetherwith the application.

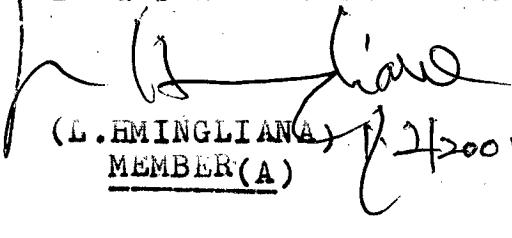
11. Thus, so far the applicant was concerned, he did not fulfil the eligibility criteria on the cut-off date in context of the first employment notice dated, 17th August, 1995. In regard to the other sponsored candidates against the said notice, the official respondents did assert that they also did not fulfil the eligibility criteria on the cut-off date and there is no material or reason assigned as to why the assertion on behalf of the respondents as such, be not accepted to be true.

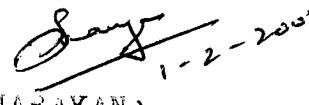
12. Before we switch over to the second employment notice dated, 21st November, 1995 (Annexure-A/4), we may again refer to the aforesaid guideline, as contained in Annexure-A/17, ^{which was} very much relied upon by the applicant. It speaks that in case less than three candidates are sponsored, or the nomination of the candidates is not received within the stipulated period of 30 days or if none of the candidates sponsored are found suitable, applications from outside candidates may be invited. It was obviously, pursuant to this guideline



that the second employment notice (Annexure-A/4) appears to have been issued by the official respondents. The applicant offered his candidature this time again, of course, it is said that the applicant filed application against the second employment notice under protest while refuting cancellation of the earlier notice. Be that as it may, the fact remains that the applicant's candidature was considered vis-a-vis, the private respondent no.6, as per the second notice as well. Here, it would not be out of place to mention — that even assuming that the applicant and the respondent no.6, both did fulfil the eligibility criteria on the cut-off date as per the second notice (Annexure-A/4), the deciding factor was the marks obtained by them in the matriculation standard. There is no dispute raised that it was the private respondent no.6, who had obtained higher marks in the matriculation standard as compared to the applicant. Whereas, the respondent no.6 has obtained 474 marks in the matriculation standard, the applicant had obtained only 444 marks. That being the position, there was nothing wrong on the part of the official respondents to have selected the respondent no.6 as the most suitable candidate for appointment to the post in question.

13. As a result of the discussion above, we arrive at a definite conclusion that the instant OA, on the basis of the materials available on the record, was bound to fail and, accordingly, it is dismissed. There shall be no order as to the costs.


(L. HMINGLIANA)
MEMBER(A)


(S. NARAYAN)
VICE-CHAIRMAN