

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

O.A.NO.: 155/96

DATE OF DECISION : 26-JULY-2000.

Surendra Kumar Choudhary, son of Shri Ram Pratap Choudhary, resident of village : Raghapur, Via : Surauli, Police Station : Vibhutipur, District : Samastipur.

.....APPLICANT.

By Advocate :- Mr. J.K.Karn.

Vs.

1. The Union of India, through the Secretary-cum-Director General, Department of Posts, Dak Bhavan, New Delhi-1.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. The Superintendent of Post Offices, Samastipur Division.
5. Shri Chandra Kishore Thakur, son of Shri Jagnnath Thakur, resident of Gram Khas Tabhka Tola, Raghapur, at present posted as EDBPM, Raghapur EDBO in account with Narhan S.O., District : Samastipur.

.....RESPONDENTS.

By Advocate :- Mr. V.M.K.Sinha, SSC.

Mr.N.P.Sinha [For Respn. No.5].

CORAM :- HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.
HON'BLE MR. L.R.K.PRASAD, MEMBER [A].

OPEN COURT ORDER

JUSTICE S.NARAYAN, V.C.:- The applicant herein has impugned an order dated, 23rd April, 1993, of the official respondents, whereby, the private respondent no.5 was appointed to the post of Extra-Departmental Branch Post Master [for short, EDBPM], Raghapur EDBO, within Samastipur Postal Division. It has been prayed for to direct the respondents to consider the appointment of the applicant on the said post on the ground of his being most suitable candidate for the same.

2. Admittedly, the applicant and the private respondent no.5, along with some others, were participants in the selection process, duly initiated by the official respondents through the Employment Exchange. The names of both of them had been sponsored by the Employment Exchange and, accordingly, they were under the zone of consideration during the selection process. On

conclusion of the selection process, it was the respondent no.5, who was selected to the post by the impugned order dated, 23rd April, 1993, and as such, the respondent no.5 joined the post and was still working there.

3. First, assuming that the applicant and the respondent no.5 both fulfilled the eligibility criteria, the question of final selection would most certainly depend on the marks obtained by them in the matriculation standard. On this score, it has been amply demonstrated on the record, without any objection raised, that it was the applicant who has an edge over the case of the respondent no.5. Whereas, the applicant had secured 566 marks, out of 900, in the matriculation standard, the respondent no.5 secured only 460. If we confine to this aspect alone, the authorities concerned ought to have selected the applicant for appointment.

4. However, the official respondents, in order to justify their stand for ignoring the candidature of the applicant, have raised solitary objection to the effect that the applicant was involved in a criminal case which has been registered for the offence under Sections 341/379/39 of the Indian Penal Code, as Mansoorchak P.S. Case No.35 of 1992, arising out of a complaint case, bearing no.709[c] of 1992, of the Court of Chief Judicial Magistrate, Begusarai.

5. The primary question, therefore, arises whether, the candidature of the applicant could be ignored and turned down for the simple reason of the aforesaid criminal case having been registered against him ?

6. On the above question, we would first like to mention that even in the First Information Report, or in the complaint lodged for registering Mansoor Chak P.S. case No.35 of 1992, the applicant was not therein a named

accused. The case had been registered against some other four named accused persons. Probably, it was during the course of investigation that the name of the applicant transpired. At what stage his name came into light is also not apparent on the record.

7. Secondly, even accepting that the applicant is involved in a particular case, as referred to above, we find that there was no criminal antecedent report obtained by the official respondents to which they may refer in the instant case. Had there been a criminal antecedent report, received from the Police, with reference to the applicant's conduct in the past, the same could have been gone into, but that is definitely wanting in the instant case.

8. For the aforesaid two reasons, we do not think that simply because the applicant happens to be involved in the criminal case during the course of the investigation, his case can be totally ignored. In this context, we would prefer to place reliance on the decision of the Principal Bench of this Tribunal in the case of Girish Bhardwaj Vs. Union of India & Ors.; reported in 1990 [13] ACT 178. It was held therein that mere involvement in a criminal case can not be a ground for denial of appointment. It was further observed that the Government is at liberty to take appropriate action if conviction results. It has been further rightly observed that the appointment could be given to an incumbent subject to outcome of the criminal case. We would add here, that if at all there was something in the mind of the official respondents against the applicant, with regard to the aforesaid criminal case, a remedy was still available with them to proceed against him after watching

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the result of the criminal case. If the criminal case happens to end in conviction of the applicant, it was certainly open for the official respondents to do the needful in accordance with law.

9. Before we part with our discussion on the above point, it would be further significant to note that the aforesaid criminal case had been filed much after the employment notice issued or even after the name of the applicant was sponsored by the Employment Exchange. Even on the date of first verification by the official respondents on 14th September, 1992, the criminal case was not in existence. It was only in the month of December, 1992, that the criminal case came into light.

10. Much emphasis was put on behalf of the respondents on the point of limitation. Of course, at first impulse we also thought that the point of limitation stands in the way of the applicant, but going deep into the matter we have taken note of particular feature of the case. The appointment in question given to the pvt. respondent no.5^{was} by an order dated, 23rd April, 1993. The instant case was filed on 30th January, 1996, i.e., after about a little less than three years.

Therefore, there was the necessity to go behind the reason, inasmuch as, the applicant was very much assertive in para-3 of the OA that he was well within the time.

11. We find on the record, that soon after the appointment of the respondent no.5, the applicant filed a representation before the official respondents. It was further significant to note that the representation as such, received due consideration of the official


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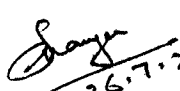
respondents and, in fact, at one particular stage i.e., in the month of February, 1995, the Supdt. of Post Offices, Samastipur [Respondent no.4], addressed a letter to the Postmaster General, Northern Region, Muzaffarpur, on 17th February, 1995, as at Annexure-A/4, wherein, some objection was raised against the suitability and eligibility criteria of the respondent no.5 [the appointee]. In furtherance of that, a show cause notice dated, 19th April, 1995, was issued by the Superintendent of Post Offices, Samastipur, to the respondent no.5 asking as to why his appointment be not terminated, vide Annexure-R/8. In response thereof, the respondent no.5 filed a show cause reply, as at Annexure-R/9, and ultimately, the official respondents took decision through the letter dated, 17th May, 1995 [Annexure-R/10], to the effect that the objection raised against the appointment of respondent no.5 was not sustainable in law. Be that as it may, we further find that the applicant asserted in para 4.14 that only at a very late stage i.e., in the month of December, 1995, the representation of the applicant was rejected. Of course, a copy of the rejection order is not available on the record as it was not actually made over to him, as submitted by the counsel for the applicant. There was no denial in this regard in the written statement of the official respondents. In any view of the matter, we get an impression that the representation of the applicant was rejected in December, 1995. This being the position, we come to a conclusion that the case was not barred by limitation.

12. For the foregoing reasons, we are of the view that the applicant's case definitely stood at a better footing as compared to the respondent no.5 and

banking upon the comparative marks obtained by them, even assuming that both of them were eligible to the post, it was the applicant who should have been first offered the appointment. Insofar as the antecedent of the applicant was concerned, we would certainly say that the official respondents were entitled to be satisfied on that point, but, in this context, instead of acting solely upon the criminal case, referred to above, they should have asked for antecedent report from the Police.

13. Thus, this OA is allowed. The official respondents are directed to issue an appropriate order after ascertaining antecedent of the applicant for the relevant period. The appointment of respondent no.5 would be deemed to be provisional and it may continue till an appropriate order is passed by the official respondents in the light of the direction, as above. There shall be, however, no order as to costs.


[L.R.K.PRASAD]
MEMBER [A]


[S.NARAYAN]
VICE-CHAIRMAN

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