

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

DATE OF DECISION : 12-OCT-2000.

O.A.NO.: 248/96

Rabish Chandra Singh, son of Late Sheo Shankar Singh, aged about 30 years, resident of village Rabai, P.O. Rabai, in account with Sikandra S.O., P.S. Sikandra, District : Jamui.APPLICANT.

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

Vs.

1. Union of India through DG Post, Govt. of India, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Bihar Circle, Patna-1.
3. The Postmaster General, Northern Region, Muzaffarpur.
4. Director of Postal Services, Northern Region, Muzaffarpur.
5. Superintendent of Post Offices, Munger Division, Munger.
6. Sub-Divisional Inspector of Post Offices, Central Sub-Division, Munger.
7. Shri Ravindra Kumar Singh, son of Brij Nandan Singh, aged about 25 years, resident of village : Rabi, P.O. Rabai, via : Sikandra, District Jamui and, at present, posted as EDBPM Rabai EDBO in the Munger Postal Division.

....RESPONDENTS.

By Advocate : Shri V.M.K.Sinha, SSC.

Shri S.N.Tiwary [For Respn.No.7].

O.A.NO.: 366/96

Bidyā Bhushan Prasad Singh, son of Shri Kedar Nath Singh, aged about 34 years, resident of village : Rabai, P.O. Rabai via Sikandra, P.S. : Sikandra, District Jamui.

....APPLICANT.

By Advocate: Shri J.K.Karn.

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-1.
3. Postmaster General, Northern Region, Muzaffarpur.
4. Director of Postal Services, Northern Region, Muzaffarpur.
5. Superintendent of Post Offices, Munger Division, Munger.
6. The Sub-Divisional Inspector of Post Offices, Central Sub-Division, Munger.
7. Shri Ravindra Kumar Singh, son of Shri Brijnandan Singh, alias, Karu Singh, aged about 29 years, resident of village and PO Rabai, P.S. Sikandra,

District : Jamui, and at present posted as EDBPM Rabai
EDBO via Sikandra SO, in Munger Postal Division.

.....RESPONDENTS.

By Advocate : Shri V.M.K.Sinha, SSC
Shri S.N.Tiwary [For Respn. No.7].

C O R A M

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

O R D E R

JUSTICE S.NARAYAN, V.C.:- Both the cases, referred to above, relate to the selection process held for appointment to the post of Extra-Departmental Branch Postmaster [for short, EDBPM], Rabai Branch Office in account with Sikandra Sub-Office under Munger Division and hence, those have been taken-up together for hearing and disposal.

2. The two applicants of OAs No.248 & 366 of 1966, namely, Rabish Chandra Singh and Bicaya Bhushan Prasad Singh, have assailed the appointment of the respondent, Rabindra Kumar Singh, on the post of EDBPM, Rabai EDBO, as per appointment letter dated, 7th February, 1996, issued by the respondent no.5 i.e., the Superintendent of Post Offices, Munger Division. Both the applicants, as also the respondent, Rabindra Kumar Singh, were amongst the candidates whose names had been sponsored by the concerned Employment Exchange in response to the employment notice dated, 13th October, 1995, issued by the appointing authority asking the Employment Exchange, Munger, to sponsor the names of suitable candidates latest by 11th November, 1995, vide Annexures-A/1 & A/2 in OAs No.248 & 366 of 1996. The applicants and the respondent, Rabindra Kumar Singh, participated in the selection process and, as a result of verification held on 19th December, 1995, it was the respondent, Rabindra Kumar Singh, who was selected and, ultimately, appointed by the impugned order dated, 7th February,

1996.

3. At the very outset, be it recorded that as per established method of recruitment of EDBPM, if the candidates fulfil the minimum eligibility criteria on all counts, it was the marks obtained in the Matriculation standard or equivalent, which could be the deciding factor. The candidate having secured the highest marks among those who fulfilled the eligibility criteria, was to be selected for appointment. In this context, it was significant to note that in the Matriculation standard, the applicant, Rabish Chandra Singh, of OA 248 of 1996, had obtained the highest marks among the above named three claimants; and the marks obtained by him were 538 and as against that, the applicant, Bidya Bhushan Prasad Singh of OA No.366 of 1996 had obtained 497 marks and the marks obtained by the respondent ^{responsible} Rabinra Kumar Singh was the lowest, being 455. Thus, in case all these three claimants are found to have fulfilled the minimum eligibility criteria, it was the applicant of OA No.248 of 1996 who ought to have been selected and next to him was the applicant of OA No.366 of 1996. But, it has been seen above, that instead of these applicants it was the respondent, Rabinra Kumar Singh, securing the lowest marks, had been actually selected.

4. In order to justify the selection/appointment of respondent, Rabinra Kumar Singh, the official respondents joining hands with said respondent [Rabinra Kumar Singh], have come-up with a plea that the candidature of the applicant, Rabish Chandra Singh, though having secured highest marks in the Matriculation examination, had no landed property in his exclusive name and that he submitted the title deed and rent receipt for 83 decimal of land in the joint name of three persons, including himself, and hence, he was not considered fit.

Sang.

5. In regard to the candidature of Bic̄ya Bhushan Prasad Singh of OA No.366/96, it was alleged that he produced rent receipt with respect to 4.25 acres of land in his exclusive name, but he could not submit any mutation paper on the date of verification and instead he submitted the mutation paper on 21st December, 1995. Apart from this, the said applicant was also an accused in Sikandra P.S. Case No.6/94 against whom the Police had submitted chargesheet on 19th April, 1995. For these reasons, the appointing authority turned down his candidature. The official respondents, however, tried to justify the candidature of respondent, Rabindra Kumar Singh, on the plea that he did produce deed of gift and the rent receipt [Annexures-R/1 & R/2] in respect of the land existing in his own name. Be it recorded here, that as per admitted case, the respondent, Rabindra Kumar Singh, had obtained lesser marks in the Matriculation standard as compared to both the candidates. It may also be pointed out here that the applicants have also contended, inter alia, that the selection of Rabindra Kumar Singh was manipulated violating the established norms to avoid appointment of ED Agents in a particular Branch where his relation was already working. It was alleged that one Birendra Singh, being the Uncle of the respondent, Rabindra Kumar Singh, was already working as EDDA in the same EDBO and because of his influence the appointment was managed.

6. It would thus, be first necessary to examine the points for which the candidature of the two applicants, named above, was turned down by the official respondents.

7. In regard to the applicant, Bic̄ya Bhushan

Prasad Singh [OA No.366/96], it was alleged that he was involved in Sikandra P.S.Case No.6/94 and that a chargesheet had been submitted against him in that case. No paper, whatsoever, was produced on behalf of the official respondents in this context. The said applicant, however, did not deny the fact rather, disclosed the truth by submitting an order dated, 4th January, 1996, passed by the Judicial Magistrate, Jamui, in G.R.Case No.337 of 1994 [probably relating to Sikandra P.S.Case No.6/94], vide Annexure-A/13. This order would depict on the record, with reference to the pleadings of the parties, that the applicant, Bicya Bhushan Prasad Singh, along with some others, was proceeded against in a summons trial by explaining substance of accusation under Sections 143, 341 & 323 of the IPC. Obviously, none of those offences were of serious nature, nor even of moral turpitude. Apart from this, we would confidently say that ^{an} appointment can not be denied merely because a criminal case was pending against an aspiring candidate for appointment. It is not known as to when the criminal case will conclude and it is quite probable that the case may be ultimately found to be false. That being as such, mere pendency of trial for certain offence will not render a candidate ineligible for appointment. In this context, we have preferred to place reliance on the decision of this Tribunal from Principal Bench in the case of Girish Bharadwaj Vs. Union of India & Ors., reported in 1989 [4] CAT 945, as also from this Bench in OA No.155 of 1996 [Surendra Kumar Chowdhury Vs. Union of India & Ors.]

8. Thus, the ground as to pendency of a criminal case against the applicant, Bicya Bhushan Prasad Singh, was not sustainable in law. His candidature can not be turned down on that ground instead it was open for the appointing authority to proceed against him in accordance

with law in the event of his conviction. It would not be out of place also to mention that if this applicant is found to fulfil all the eligibility criteria and also having secured highest marks among the candidates fulfilling the eligibility criteria, his appointment would always be subject to a Police report on the count of criminal antecedent. But, for the solitary instance of the aforesaid summons trial case with minor offences, his candidature can not be cancelled.

9. Yet another objection raised against the candidature of Bicya Bhushan Prasad Singh [OA No.366/96] was that he submitted his mutation paper before the respondents authority on 21st December, 1995, i.e., two days after the verification. In this context, the official respondents, however, made candid admission in paragraph no.10 of their written statement that he did submit rent receipt with regard to 4.25 acres of land in his name. If the rent receipt in the exclusive name of the applicant had been submitted at the time of verification and if there was no counter allegation or material to contradict the same, we are of the view that the rent receipt ought to have been accepted in ^{presence} of exclusive possession over the land in question. The rent receipt dated, 8th November, 1995, in the name of the said applicant has been made available on the record of OA 366/96 as Annexure-A/10 and the genuineness of the said receipt has nowhere been disputed. This was in respect of 4.25 acres of land. The mutation order dated, 11th October, 1995, passed by the Circle Officer, Sikandra, was shown to us at the time of hearing and it is in quite conformity with the rent receipt [Annexure-A/10]. Be it also pointed out that the employment notice did not ask for production of mutation

Sarkar

order in itself. The grant of rent receipt is a natural outcome of the mutation order duly passed by the concerned authority. Therefore, even this ground also was not sustainable so as to cancel the candidature of the applicant, Bidyā Bhushan Prasād Singh.

10. Now, we switch over to the candidature of the applicant, Rabish Chandra Singh, who had secured the highest marks in the Matriculation standard among the three claimants before us. The solitary ground to turn down his candidature was ^{with regard to} the land. This applicant is asserted to have 4 acres 1 decimal of land allotted to his share by a family arrangement dated, 25th April, 1995. The relevant unregistered deed of partition was produced on the record as Annexure -A/9 of OA 248/96. It would be relevant to point out that the guideline with regard to income and landed property was introduced in case of appointment of ED Agents with the purpose behind that he should have an independent income from sources other than the appointment as ED Agents. In case the income was from landed property, it was required that the incumbent should be in exclusive possession of the land. It has now been an admitted practice, as also adopted in the selection process of the instant case, that the candidates were required to satisfy the appointing authority that he had landed property in his exclusive name and possession and, for that, they were required to produce revenue/rent receipt which is deemed to be a proof of exclusive possession, if not otherwise controverted. Admittedly, the applicant, Rabish Chandra Singh, did not produce any rent receipt in his exclusive name in regard to the land said to be in his exclusive possession. Obviously, since there was no mutation order, no rent receipt could have been granted. The un-registered deed of partition [Panchnama]

may be acceptable for any other co-lateral purposes, but so far the appointing authorities ~~were~~ concerned, they appear to have rightly exercised their discretion not to act merely on that un-registered Panchnama and instead insisted for rent receipt as done in the case of some other claimants. This being the position, we would prefer to concur with the stand taken by the official respondents while refusing the candidature of this applicant for the reason ~~of~~ the land being in joint name of this applicant with two others. The case, as pleaded by this applicant in OA 248/96, was thus, not tenable.

11. Coming to the candidature of the respondent, Rabindra Kumar Singh, we would again point out, with no risk of repetition, that he had obtained only 455 marks in the Matriculation examination which was comparatively lower than the two other applicants i.e., the applicants of OAs 248 & 366 of 1966. Hence, in case the candidates securing higher marks, as compared to him, fulfil~~s~~ the ^{they} eligibility criteria are entitled to be selected in preference to this respondent.

12. The applicants in both the cases have, however, raised yet another point with regard to suitability of the respondent, Rabindra Kumar Singh, for the appointment. It was contended that his Uncle, namely, Birendra Singh, as demonstrated by the Zoological Table [Annexure-A/5 series], was working as EDDA in the same Branch where he [the respondent] was appointed. This was said to be against the established norms of appointment. It is true that the guidelines of the Postal Department ~~do~~ indicate that such appointments should be avoided in normal course. This guideline was, however, not absolute in nature rather, it was just to be avoided for certain

cogent reasons. A decision of the Supreme Court on the point was available in the case of Balram Prasad Vs. Union of India & Ors., reported in 1997 SCC [L&S] 468. It was held that to refuse the appointment of more meritorious candidate only on the ground that his cousin brother is working on 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. Therefore, for this reason, we would say that the contention raised by and on behalf of the applicants before us was not acceptable. Be that as it may, the candidature of the respondent, Rabindra Kumar Singh, was bound to fall on the ground on the score of lesser marks obtained by him in the Matriculation standard in comparison to the other two claimants i.e., the applicants before us.

13. For the reasons, aforesaid, we hold that, whereas, OA No.366 of 1996, filed by the applicant, Bidya Bhushan Prasad Singh, was bound to succeed, the OA No.248 of 1996, filed by the applicant, Rabish Chandra Singh, was to fail. The OA No.366 of 1996 is thus, allowed and, accordingly, the impugned order of appointment dated, 7th February, 1996, of the respondent, Rabindra Kumar Singh, is hereby quashed and set-aside. The official respondents are directed to re-consider the case of applicant, Bidya Bhushan Prasad Singh, and to pass an appropriate order for his appointment to the post of EDBPM, Rabai EDBO in the Munger Postal Division, at the earliest possible. The OA No.248 of 1996 is, however, dismissed. There shall be no order as to costs in both the cases.

12.10.2008
 [L.R.K.PRASAD]
 MEMBER [A]

12.10.2008
 [S.NARAYAN]
 VICE-CHAIRMAN