

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No.: 445 of 1996.

(Patna, this Friday, the 2nd Day of April, 2004).

C O R A M

HON'BLE MRS. SHYAMA DOGRA, MEMBER (JUDICIAL).

HON'BLE MR. MANTRESHWAR JHA, MEMBER (ADMINISTRATIVE).

Nav Prabhat, son of Shri Vijay Kumar Singh, aged about 30 years, resident of Tola Bahuarba, P.O.: Uteshra via. Salkhua Bazar, P.S.: Salkhua, District : Saharsa. APPLICANT.

By Advocate :- Shri (I.D.Prasad.

Vs.

1. Union of India through Director General, Department of Post, Govt. of India, New Delhi-110 001.
2. Chief Postmaster General, Bihar Circle, Patna-800 001.
3. Postmaster General, Northern Region, Muzaffarpur.
4. Superintendent of Post offices, Saharsa Division, Saharsa.
5. Sub-Divisional Inspector of Post offices, Saharsa West Sub-Dm., Saharsa.
6. Shri Bhagirath Yadav, son of Shri Jageshwar Yadav, aged about 21 years, resident of village and PO : Uteshra via. Salkhua, District Saharsa, and at present posted as EDDA-cum-EDMC, Uteshra EDBO in account with Salkhua Bazar S.O. in Saharsa Postal Division.....RESPONDENTS.

By Advocate :- Shri S.C.Jha,
Addl. Standing Counsel.

Shri A.Kumar (For Res.No.6).

O R D E R

Shyama Dogra, M(J) :- This OA has been directed against the impugned order dated, the 20th July, 1995 (Annexure-A/3), whereby, respondent no.6 has been appointed against the post of EDDA-cum-EDMC, Uteshra EDBO in Saharsa Postal Division with further prayer for direction to the respondents to consider the case of the applicant on the said post on his being meritorious than respondent no.6 and also fulfilling all other requisite criteria as per notification issued by the respondents vide Annexure-A/1, dated, the 8th June, 1995.

2. Briefly, the facts of the case, as set out by the applicant, are that in pursuance of the notification issued by the respondents concerned for inviting the application for the above referred post of EDDA-cum-EDMC,

Uteshwar EDBO, he also applied for the said post through ordinary post since he was fulfilling all the requisite conditions as prescribed for the said notification. Thereafter, the applicant was directed to appear before respondent no.5 on 15th July, 1995, alongwith original educational certificates and other testimonials for verification vide Annexure-A/2. However, inspite of ~~the~~fact that the applicant had obtained higher marks than the respondent no.6, namely, Bhagirath Yadav, he was not appointed to the said post mainly on the ground that the applicant does not belong to the said post village for which that post has been advertised.

3. Before coming to this court the applicant had also approached the Civil Court of Munsiff, Saharsa, wherein, the respondents have also filed written statement, vide Annexure-A/8. However, since the said Court had no jurisdiction to entertain service matters after enactment of Administrative Tribunals Act, 1985; therefore, he withdrew that application and filed the present O.A.

4. The applicant has challenged the said order of appointment of the respondent no.6 on various counts; particularly, on the ground that the stand taken by the respondents in the above referred written statement filed ~~in~~ the Court of Munsiff, Saharsa, is different from the stand being taken by the respondents in the present OA.

5. Earlier, the respondents have taken the plea that since father of the respondent no.6 was working on the said post of EDDA-cum-MC; therefore, compassionate view has been taken while appointing respondent no.6 and the respondent no.6 used to work as substitute during the period when his father used to go on leave and, therefore, he had gained sufficient experience. The respondents have

 

also taken a plea that since the applicant did not send the application for appointment by registered post; therefore, the same being in violation of the notification (Annexure-A/1) and since the applicant belonged to another village, he was not appointed on the said post.

6. To rebut all these grounds being taken by the respondents to reject the case of the applicant it is submitted by the learned counsel for the applicant that sending the application through registered post was not a condition precedent or mandatory provision to not consider the case of the applicant though he was more meritorious as he has obtained higher marks (552/900) as against the respondent no.6 (420/900) and the applicant belongs to the same delivery jurisdiction of the postal village; therefore, the respondent no.6 has been appointed on extraneous grounds. Moreover, the ground being taken in earlier reply submitted before the Munsiff's Court are also not available to the respondents as for direct appointment candidate has to be appointed on the ground of his merits and not on the ground of any compassion or otherwise which would certainly amount to violation of Articles 14 & 16 of the Constitution of India.

7. The next contention being raised by the learned counsel for the applicant is that the respondents have violated their own notification issued on 06.12.1993 vide Annexure-A/12 while ignoring the genuine claim of the applicant being more meritorious on the grounds which were not available to the respondents.

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(8) The official respondents have filed written statement and so far as the factual position of the case is concerned, the same is not denied. However, it is submitted that since the particulars of the two candidates whose applications were considered by the SDI(P), Saharsa (West) were verified on receipt of their applications, the respondent no.6 was appointed on the said post and he has also joined as such on 27th July, 1995. However, in para 8 of the written statement it is submitted that no reason for appointment of respondent no.6 and rejection of candidature of the applicant has been recorded by the SDI(P) in the appointment file maintained by him though admittedly, the applicant has obtained higher marks in the matriculation as against the respondent no.6.

(9) In parawise reply it is submitted by the respondents that since the applicant has not sent his application as per condition laid down in the advertisement and since the applicant's house is not nearer to the post office than that of the respondent no.6; therefore, he does not fulfill the requisite criteria for his appointment on the said post. However, in para 29 of the written statement it is submitted that the candidate belonging to post village was given preference than the the candidate belonging to delivery areas; therefore, it cannot be said to be done in violation of the notification. The respondents have also taken the plea that the applicant has not submitted current character certificate with his application as called for.

(10) The private respondent no.6 has also filed written statement and almost taken the same stand as has been taken by the official respondents in their written statement. In support of his contention he has also placed on record copy of his application submitted for the said post vide Annexure R/1, alongwith Annexure R/2, copies of voters

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list to submit that his appointment has been made as per instructions issued by the respondents through notification (Annexure-A/1); therefore, he has been appointed in accordance with law. It is also stated by the learned counsel for the private respondent that the private respondent no.6 has been working on the said post for the last more than eight years to the entire satisfaction of the respondents; therefore, he has got legitimate claim to retain that post.

(11) The applicant has filed rejoinder to the written statement filed by all the respondents and reiterated his claim as submitted in the OA.

(12) We have heard the learned counsel for the parties and carefully gone through the record. After perusal of Annexure-A/1, dated, the 8th September, 1995 i.e., the notification, it is found that this notification was issued while inviting applications by the public at large through registered post who have requisite qualifications with VIIIth Class passed. However, preference would be given to the matriculate or equivalent candidate having resident of Uteshra village or permanent resident of delivery area falling within the jurisdiction of Uteshra Branch Post Office.

(13) After careful consideration of the contents of this notification it is found that sending the application through registered post cannot be held to be mandatory provision as the respondents have not envisaged or clarified in the said notification that if the applications are not sent through the registered post the same would not be entertained at any cost.

(14) The statutory interpretation of mandatory provisions envisages that where consequence for non-compliance or particular order are also prescribed then



the compliance of said provisions are held to be mandatory and where no such consequences are prescribed, the provisions cannot be held to be mandatory. Bare perusal of the condition referred to hereinabove in the notification, it is evident that the respondents have not imposed any condition precedent of this nature that if the applications are not sent through registered A.D., the same would not be entertained; therefore, the said condition cannot be held to be mandatory.

15. Moreover, the respondents have called for the applicant for verification of his testimonials which clearly envisages that they have waived this condition to receive the application through registered post only, otherwise they would not have entertained the application of the application. For this, the principle of estoppel also applies in the present case.

16. So far as the residential condition being imposed by the respondents is concerned, it is not denied by them that the applicant resides within the delivery area of the said post office and since there is no such clause in the notification that preference would be given to only those persons who are residents of that village than to the candidates who are residents of delivery area of the said post office; therefore, that plea being raised by the respondents for rejection of the claim of the applicant is also not tenable.

17. While doing so, even the respondents have violated their own notification issued vide Annexure-A/11, dated, the 6th December, 1993, particularly, clause 2 which clearly clarifies that while making selection for appointment to the ED post, permanent residents in the village delivery jurisdiction of the ED Post Office need not be insisted upon as a pre-condition for appointment. However, it should be laid down as a condition of appointment that any candidate, who is selected, must before appointment to the post take



up his residence in the village/delivery jurisdiction of the ED Post office as the case may be.

(18.) It is a well settled law of the land that in the direct appointment of the post, merit is the sole criteria for such appointments. Admittedly, the applicant has obtained higher marks than the respondent no.6; therefore, as has been held by the Hon'ble Supreme Court in Indra Sahni's ^{case} ~~any~~ appointment made in contravention of the sole criteria being fixed as merits is in violation of Articles 14 & 16 of the Constitution of India.

(19.) Above all, the reply being filed by the respondents that while making appointment of respondent no.6 to the said post no reasons have been assigned by the SDI(P) i.e., the respondent no.5, for his selection inspite of the fact that he has obtained lesser marks than the applicant. Therefore, we find force in the contentions being raised by the applicant that the appointment of the respondent no.6 has been made on extraneous grounds which ~~would~~ otherwise not available to the respondents for such appointment. in view of their own documents.

(20.) So far as the plea taken by the private respondent for his being working on the said post for last more than eight years is concerned, the same is not tenable as his appointment is made on extraneous grounds and in contradiction of notification issued by the respondents while ignoring the applicant who was more meritorious. The respondent no.6 has been enjoying the fruits of that post illegally and, therefore, he is not entitled for continuing on that post. However, respondents ~~are~~ are at liberty to consider his candidature for future vacancy, if any, in the nearby vicinity if the respondent no.6 is otherwise found to be eligible for the said post.

(21.) In view of this overall discussion, as

above, we are of the considered opinion that the impugned order dated, the 20th July, 1995 (Annexure-A/5), since passed in contravention of the provisions of the notification as well as while ignoring the more meritorious candidate i.e., the applicant; therefore, the same is not sustainable in the eyes of law. Therefore, the appointment of respondent no.6 is hereby held to be illegal.

22. Resultantly, the impugned order dated, the 20th July, 1995 (Annexure-A/3), is hereby quashed and set aside with further directions to the respondents to consider the case of the applicant for his appointment on the said post of EDDA-cum-EDMC for the Uteshra EDBO in Saharsa Postal Division while passing appropriate orders to that effect within a period of one month from the date of receipt/production of a copy of this order. However, there shall be no order as to costs.

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(Mantraleshwar Jha)
Member (A)

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Shyama Dogra
(Shyama Dogra)
Member (J)