

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No.: 620 of 1996

(Patna, this _____, the ~~10th~~ Day of February, 2004).

C O R A M

Hon'ble Mrs. Shyama Dogra, Member (Judicial).

Hon'ble Mr. Mantreshwar Jha, Member (Administrative).

Zafir Alam Zafar, son of Late Anish Ahmad, resident of village & P.O.: Sapneri via. Khizar Sarai, P.S.: Khizar Sarai District : Gaya. APPLICANT.

By Advocate :- Shri S.N.Tiwary.

Vs.

1. The Union of India through the Secretary, Govt. of India, Ministry of Communication, Deptt. of Posts, New Delhi-cum-The Director General, Deptt. of Posts, India, Dak Bhavan, New Delhi-110 001.
2. The Chief Postmaster General, Bihar Circle, Patna-1.
3. The Director of Postal Services, Patna Region, Patna.
4. The Sr. Superintendent of Post Offices, Gaya Division, Gaya.
5. The Sub-Divisional Inspector (Postal), Gaya Central Sub Division, Gaya.
6. Shri Ram Singh, son of Late Shyam Bihari Mehta, EDBPM, Sapneri EDBO, resident of village, P.O.: Sapneri Via. Khizar Sarai, P.S.: Khizar Sarai District Gaya.

..... RESPONDENTS.

By Advocate :- Mr. V.M.K.Sinha
Sr. Standing Counsel.
Mr. J.K.Karn (For Res.No.6)

O R D E R

Mantreshwar Jha, Member(A) :- This OA has been filed for quashing of appointment of respondent no.6, Shri Ram Singh, on the post of EDBPM, Sapneri EDBO from 26.04.1996 ordered vide memo No. PF/EDBPM/Sapneri, dated, the 3rd July, 1996, issued by the Sr. Superintendent of Post Offices, Gaya Division, and direction for appointment of the applicant on the same post.

2. We have heard the learned counsel for the parties appearing on behalf of the applicant as well as official respondents and private respondent no.6 and gone through the averments made on behalf of both the sides.

3. The admitted position in this case

is that pursuant to vacancy of EDBPM in Sapneri EDBD, district Gaya, the applicant applied for the said post alongwith respondent no.6 and several others. After usual verification of papers and documents, respondent no.6 was appointed to the said post vide order dated, the 3rd July, 1996, w.e.f. 26.04.1996. The case of the applicant is that even though he has obtained higher marks in the matriculation examination and has fulfilled all the conditions prescribed in the advertisement against the said post, his case was erroneously rejected and respondent no.6 was appointed to the said post.

4. It has been submitted on behalf of the respondents, both through their written statement as also through arguments, that 12 candidates had applied for the post, but one of them, Shri Ramzan Ali, did not appear at the time of verification and other Sohail Akhtar, who had secured highest marks did not produce the original marksheet and, therefore, these cases were not considered for appointment. The case of Zafir Alam Zafar, who is applicant in this case, was rejected as he had no landed property as per report of the Sub-Divisional Inspector of Post Offices. He also did not have any suitable accommodation for the post office. His case was rejected also on the ground that there was a criminal case pending against him i.e., Khizar Sarai P.S. Case No. 117 of 1989 in which he had also been put in jail for three days although he had been acquitted subsequently. It has, however, been admitted that the applicant has obtained 582 marks, whereas, the respondent no.6, eventually appointed on the said post, has secured only 541 marks in the matriculation examination. Another candidate, Smt. Renu Kumari, who has secured 569 marks in the matriculation examination was also not considered for appointment as she had not furnished income certi-



certificate at the time of verification, nor any proof of landed property.

5. These contentions of respondents have been contested by the applicant through ~~xxxx~~ rejoinder filed on 26.03.1998 as well as on 02.09.1999. It was also argued on behalf of the applicant that he possesses 50 Decimals of land and his annual income is Rs.8000/- and he also possesses suitable accommodation in the post village to accommodate the post office. According to the applicant's counsel, applicant has right entitle over 50 decimals of land through Jamabandi No. 52 and rent receipt No. 070844, dated 31.03.1995 and 353166, dated, 18.06.1996 which have been filed on Annexures- A/7 & A/8 to the rejoinder, dated 02.09.1999. It has also been submitted that these records were verified by SDI(P), Gaya Division on 23.06.1995 and have been verified. Only a copy of mutation order was furnished on 21.09.1996 as tthe certified copy was issued only on 21.09.1996. A judgment of the Court of Fifth Additional Sessions Judge, Gaya, dated, 26.08.1989 has already been furnished to communicate that there was no case against the applicant on the date of advertisement of the vacancy or verification of documents or the date of appointment of respondent no.6.

6. On going through the averments and submissions made by both the parties, it is quite clear to us that the case of the applicant has been ignored for no apparent sound reason. It is an admitted position that the applicant had highest marks in the matriculation i.e., 582 as against 541 of respondent no.6. Being aggrieved by the rejection of his case, the applicant had also filed a representation to the Chief Postmaster General i.e., the respondent no.2 on 24.04.1996. This representation had also been forwarded to the then Minister of Communication and others. In the representation the

applicant had made similar claims about his case, but nothing seems to have been done on his representation till date.

7. On going through the case record, we are of the considered opinion that meritorious candidates are being ignored in appointment on one pretext or other. Even though it has been repeatedly held that the merit has to be the primary concern in offering appointment of EDBPM. So far as the question of landed property is concerned, even^{NS} it is assumed that the documents submitted by the applicant were not full-proof, as alleged, although we do not find any substance in making that assumption. Our attention has been drawn to the Full Bench Judgement of CAT in O.As.No. 1792/2000; 813/2001 and 963/2001, decided on 02.12.2002; reported in 2003(1) ATC 277 (H. Lakshmana & Ors. Vs. The Supdt. of Post Offices, Bellary & Ors.); which is briefly reproduced below :-


"We have no hesitation in concluding that the condition so imposed pertaining to adequate means of livelihood in the circular of 06.12.1993 must be held to be invalid. We hold accordingly.

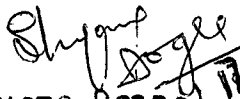
....."Possessing of adequate means of livelihood in terms of Circular dated 6.12.93 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the abovesaid post."

The above judgment of Full Bench Bangalore of CAT is quite clear in respect of property qualification and this has been now incorporated in the revised circular issued by the Postal authorities. It was submitted on behalf of the private respondent that the judgment delivered by Full Bench could not be made applicable retrospectively. However, we are not convinced with this argument. If a provision has been declared ultravires, it becomes inoperative at least in respect of all

cases which are pending adjudication. That being so, we can only have sympathy for respondent no.6 for quashing his appointment. However, it is for the official respondents to take into consideration the fact that come what may the respondent no.6 has been in service for over seven years as EDBPM, Sapneri EDBO in Gaya Division and if his appointment is quashed, his case for appointment afresh in any vacancy in which he may be eligible in a post office in the vicinity, the same may be considered in accordance with law.

8. However, so far as the case of the applicant is concerned, we are satisfied that in view of the facts and circumstances of the case, the applicant has been wrongly ignored in his appointment as EDBPM, Sapneri EDBO in Gaya Division and, therefore, he is fit to be appointment forthwith. The appointment of respondent no.6 is, therefore, quashed and the OA is allowed. There shall be no order as to costs.


(Mantrachwar Jha)
Member (A)


(Shyama Dogra) 18/2/04
Member (J)

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