

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 648/1996

Date of Order: 7/1/97

Nutan Bala Sinha W/o Ashwani Kumar Sinha resident
of Village and P.O.- Pratappur Via-Athari, District-
Sitamarhi, Bihar,

..... Applicant.

- By Advocate Shri Amit Srivastava.

- Versus -

1. The Union of India, through Secretary, Department of Post, Dak Bhawan, New Delhi-1.
2. Chief Post Master General, Bihar Circle, G.P.O. Complex, Patna-1.
3. The Post Master General(North) Muzaffarpur.
4. Sub Divisional Inspector(Postal) District-Sitamarhi, Bihar.
5. Smt. Prema Kumari W/o Ram Naresh Sah, Village and Post- Pratappur, Via-Athari , District- Sitamarhi.

..... Respondents.

- By Advocate Shri H.P. Singh(Addl. Standing Counsel)
- By Advocate Shri I.D. Prasad for pvt. respondent.

C O R A M

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

HON'BLE SHRI MANTRESHWAR JHA, MEMBER(ADMINISTRATIVE)

O R D E R

By Mantreshwar Jha, Member(A):-

This Original Application has been filed by the applicant Smt. Nutan Bala Sinha for quashing and setting aside the appointment of respondent no. 5 Smt. Prema Kumari

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and consequently for direction to official respondents to appoint the applicant as EDBPM Pratappur Post Office w.e.f. 15.10.1996 with all consequential benefits.

2. The admitted position in the case is that the post of EDBPM, Pratappur Branch Office in account with Athari S.O. under Sitamarhi Division was advertised through the Employment Exchange, Sitamarhi which was asked to sponsor at least three suitable candidates for the appointment to the post. The Employment Exchange however sponsored only two candidates vide its letter no. CC/6/96 311 dated 6.6.1996. The vacancies were, therefore, advertised through open advertisement on 17.6.1996. A In pursuance of that advertisement both the applicant as well as respondent no. 5 applied for appointment to the said post. Both of them were eligible for appointment. Respondent no. 5 was, however, appointed as she had secured higher marks i.e. 544 out of 900 in the matriculation examination whereas the applicant had secured only 522 marks out of 900.

3. The case of the applicant is that she had appeared in the 10th paper also and as per her marksheet issued by the Bihar School Examination Board, Patna (Annexure-6) she had secured 565 marks including marks obtained by her in the 10th paper after deducting 30 marks from the 10th paper. According to the applicant the marks secured by her in the 10th paper had not been taken into account in determining interse merit of both the candidates. Therefore respondent no. 5 has been wrongly appointed.

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4. We have perused the written statement filed by pvt. respondent as well as official respondents and also rejoinder filed by the applicant. We have heard both the parties at length and carefully gone through the records. It has been submitted on behalf of official respondents as well as pvt. respondent no. 5 that inter-se seniority of all the candidates had to be determined on the basis of clarification issued by Chief Postmaster General, Bihar Circle, Patna dated 15.7.1996(Annexure A/10). This clarification was issued on the basis of clarification issued by the Director General(P) New Delhi letter no. 17-34/96-ED& Trg. dated 22.5.1996. The relevant portion of the clarification is reproduced below:-

"..... reference have been received from certain quarters seeking clarification whether the marks obtained in the second language/ additional subject taken in the SSC/High School Examination by the candidates may be taken into consideration for determining their interse merit for appointment as EDBPM etc. It is hereby clarified that the marks secured in the additional subject/second language should be ignored and the interse merit should be determined on the basis of marks secured in the compulsory/elective subjects taken in the matriculation examination "

5. On the basis of above clarification, it has been submitted on behalf of the respondents that interse seniority of applicant alongwith respondent no. 5 was determined on the basis of above Circular. Then respondent no. 5 obviously has secured higher marks and, therefore, her appointment is in order.



6. The learned counsel appearing for the applicant has contested this interpretation on the ground that since the process for appointment had been initiated before the issue of this clarification, her claim cannot be ignored on the basis of this clarification.

7. The learned counsel appearing for respondent no. 5 has contested this stand of the applicant on the ground that even she had appeared in the 10th paper and had secured 78 marks in the 10th paper and if that is taken into account she will still emerge as more meritorious candidate. It has also been contested on behalf of respondent no. 5 that similar matter have come up before this Tribunal in OA No. 788/98 and the Tribunal have come to the conclusion that respective merit of both the candidates have to be determined on the basis of marks obtained out of 900 marks only in view of the clarification issued.

8. The learned counsel for the applicant has referred to some judgements of the Hon'ble Apex Court to show that it was not open to the official respondents to change the criteria for selection thereby prejudice the case of the applicant as has happened, according to him, in this case. The contention of the applicant is that the original notification of vacancy was issued on 9.5.1999 through the Employment Exchange whereas the aforesaid clarification is of 22.5.1996. The respondents have, however, contended that they submitted her application with reference to the advertisement date 17.6.96(Annexure A/2) and Annexure A/3 and, therefore, on the reference date clarification had already been issued.

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9. On careful and close scrutiny of records as well as averments of both the parties, it is quite clear that on the reference date on which the applicant had applied, the clarification(Annexure A/10) had been issued and it was incumbent on the respondents to determine the interse seniority on the basis of the clarification. So far as the judgements of the Hon'ble Apex Court referred to by the learned counsel for the applicant is concerned, this will not be applicable in this case because the official respondents had not made any modification in respect of qualification and other eligible criteria of the candidate. What was issued on 15.7.1996(Annexure A/10) was only a clarification with regard to determining the interse merit of the candidates as different School Examination Board's have different number of papers for conducting the examination. Even the Bihar School Examination Board had different sets of paper in different years. The learned counsel for the applicant has referred to para-3p of Bihar School Examination Board Regulations 1964 to show that "Aggregate" means aggregate of the marks secured in the compulsory and three optional papers plus the marks obtained above 30 in the additional(tenth paper). This, however, would help the candidate for getting higher division in the examination so far as the results declared by Bihar School Examination Board is concerned. This would not automatically bestow on the applicant higher merit in relation to respondent no. 5 who has also appeared in the 10th paper and has secured 78 marks. The clarification issued by Department of Post is, therefore, well in time to ensure that there is uniformity in selection process of various appointments to determine inter-se seniority.

We have seen in large number of cases in the Tribunal in which contested candidates have contested the cases only on the basis of marks obtained out of 900. The applicant has not challenged the vires of the clarification issued by the Department of Post in this OA and, therefore, if the clarification survives that becomes binding on the official respondents for compliance in any selection process. The applicant has applied for the post only with reference to the advertisement dated 17.6.1996 which is clear from Annexure A/3 of the O.A. The clarification had been issued earlier to this date.

10. From the facts and circumstances of the case, we are satisfied that the applicant has failed to make out any case for interfering to the appointment of respondent no. 5, who had been working continuously for about 8 years on the basis of higher marks obtained in the matriculation examination out of 900.

11. That being so, the application is devoid of merit and is, therefore, dismissed with no costs.


(MANTRESHWAR JHA)

SRK/

MEMBER (A)


(SHYAMA DOGRA) 7/5/96
MEMBER (J)