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OAs 152/06 & 200/07

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 152 OF 2006

W I T H

O.A.NO.: 200 OF 2007

[Patna, this Friday, the 30th Day of May, 2008]

C O R A M

HON'BLE MR. SHANKAR PRASAD, MEMBER [ADMN.]
HON'BLE MS. SADHNA SRIVASTAVA, MEMBER [JUDL.]

1. O.A.NO.: 152 OF 2006

Vidya Sagar Singh, S/o Shri Shivrath Yadav, resident of village & P.O:- Sheoram, P.S.:
Bahera, District - Darbhanga. APPLICANT.

By Advocate :- Shri J.K.Karn.
Shri H.K.Karn.

Vs.

1. The Union of India through the Secretary-cum-Director General, Department of
Post, Lok Bhavan, New Delhi.

2. The Chief Postmaster General, Bihar Circle, Patna.

3. The Postmaster General, Northern Region, Muzaffarpur.

The Superintendent of Post Offices, Darbhanga Division, Darbhanga.

5. Shri R.K.Mishra, the Superintendent of Post Offices, Darbhanga Division,
transferred to Sr. Superintendent of Post Offices, Gaya Division, Gaya.

6. Smt. Rekha Devi, W/o Shri Dinesh Prasad, at present working as GDSBPM at
Sheoram GDS Branch Post Office in Darbhanga Postal Division, Darbhanga.

..... RESPONDENTS.

By Advocate :- Shri B.N.Gupta, ASC.
Shri S.K.Tiwary [For Res. No.5].

2. O.A.NO.: 200 OF 2007

Ram Naresh Prasad Alias Naresh Prasad, son of Shri Deo Narain Prasad, Ex-EDBPM of
Sheoram EDBO [Nehra] inaccount with Nehra S.D. District - Darbhanga.

..... APPLICANT.

By Advocate :- N o n e.

Vs.

1. The Union of India through the Secretary-cum-Director General, Department of Posts, Dak Bhavan, New Delhi.
 2. The Chief Postmaster General, Bihar Circle, Patna.
 3. The Postmaster General, Northern Region, Muzaffarpur.
 4. The Superintendent of Post Offices, Darbhanga Division, Darbhanga.
 5. Smt. Rekha Devi, wife of Shri Dinesh Prasad at present working as GDS BPM at Sheoram GDS B.O. District Darbhanga.
 6. Vidya Sagar Singh, son of Shri Shivnath Yadav, resident of village and P.O.: Sheoram, District – Darbhanga. RESPONDENTS.
- By Advocate :- Shri B.K.Prasad, ASC.
Shri J.K.Karn [For Res.No.6]

O R D E R

Shankar Prasad M[A] :- A common order will govern both these OAs as they both relate to appointment to the post of EDBPM of Sheoram EDPO in Darbhanga Postal Division. From the official respondents, the applicants and other private respondents are as under :-

<u>Sl. No.</u>	<u>OA No.</u>	<u>Name of Applicant</u>	<u>Name of Private Respondents.</u>
1.	152/06	Vidya Sagar Singh.	5. R.K.Mishra, then SPO, Darbhanga [in personal capacity]. 6. Smt. Rekha Devi, W/o Sri Dinesh Pd.
2.	200/07	Ram Naresh Prasad.	5. Smt. Rekha Devi, W/o Shri Dinesh Prasad. 6. Vidya Sagar Singh.

2. The facts of this highly contested case can be summarised as under :-

[a] The respondents Superintendent of Post Offices, Darbhanga Division invited applications for the above post in 1998. The first three candidates on the basis of marks were as under :-

1. Ms.Rekha Kumari.
2. Shri Vidya Sagar Singh.
3. Shri Ram Naresh Prasad.

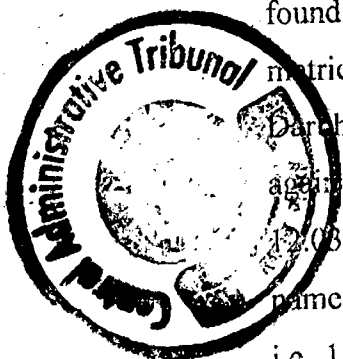
The respondents appointed Sri Ram Naresh Prasad [applicant of OA 200 of 2007] vide order dated 11.11.1998.

[b] [i] Sri Vidya Sagar Singh, applicant of OA 152 of 2006 and respondents of OA 200 of 2007 had preferred OA 775 of 1993 impleading Sri Ram Naresh Prasad also. The case of official respondents as summarised in para 4 of the judgment in OA 775 of 1998 was as under :-

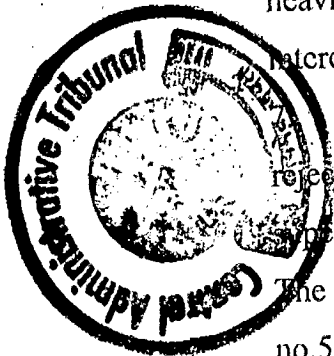
"4. The official respondents have also controverted the claim by the applicant. It has been admitted that the applicant has secured higher marks as claimed by him. However, his claim was rejected on the basis of complaint made by respondent no.5 which was enquired into and it was found that the applicant Shri Vidya Sagar Singh had appeared in the matriculation Examination first in the year 1990 from Raj High School, Darbhanga, whereas his date of birth was recorded as 11.03.1976 and then again in the year 1991 wherein his date of birth was recorded as 12.03.1976. It was also found during inquiry that the applicant has got two names i.e. Vidya Sagar and Vidya Sagar Singh as well as two dates of birth i.e. 11.03.1976 and 12.03.1976. Besides, it was also found that there was some cutting in the name of the applicant Vidya Sagar in the original land rent receipt. It has also been submitted that the applicant did not produce the mutation certificate of the land in his favour at the time of filing his application."

[ii] The Tribunal in its judgment dated 10.02.2005 held as under :-

"6. We have heard the Id. Counsel appearing for the contesting parties and also carefully gone through the records of the case. Admittedly, the applicant has passed the matriculation examination with higher marks and J."



there is no ambiguity in the matriculation certificate which was produced by him alongwith the mark sheet, according to which his name is Vidya Sagar Singh and his date of birth is 12.03.1976. It has also been admitted that he has secured higher marks than respondent no.5. It is also clear from the averments that if any one of the two contesting applicants has violated Regulation 15, then the blame will go to respondent no.5 who has appeared once in the Madhyama Examination and then again in Matriculation Examination. So far as property qualification is concerned, the applicant has produced sufficient proof regarding his property qualification including the mutation certificate to the land jointly along with his brother. Besides, this requirement has since been struck off as ultra vires by the Full Bench of Bangalore CAT and, therefore, is not applicable in deciding the case. The official respondents have relied heavily by a complain made by respondent no.5, who was always a interested party as he had already been selected for appointment.



In view of this, we are satisfied that the applicant's case has been rejected wrongly and respondent no.5 has been offered appointment superseding the claim of the applicant in violation of established norms. The application is, therefore, allowed. The appointment of pvt. Respondent no.5 is quashed and set aside and respondent Postal authorities are directed to offer appointment to the applicant to the post of EDBPM of Sheoram EDBO in account with Nehra S.O. in Darbhanga Postal Division within three months from the date of issue/production of this order. However, the respondents will be at liberty to offer any alternative appointment to the respondent no.5 that may be available in the vicinity, if he is otherwise found suitable for the same.

8. The O.A. succeeds and is allowed. No costs."

[iii] Sri Ram Naresh Prasad preferred CWJC 2910 of 2005. The order of the Tribunal was challenged on two grounds namely, [a] 1.

without mentioning documents the Tribunal has recorded that private respondent has produced documents relating to ownership, and [b] the private respondent had failed and again appeared in the examination. The Hon'ble High Court held as under :-

"Having heard learned counsel for the parties and perusal of the records we find that the relevant conditions for appointment are that the candidate should be Matriculate and he should possess landed property. In a case when there are several candidates then naturally higher marks will be one of the considerations while considering the question of appointment. In this case, the private respondent has secured higher marks but with regard to other criteria i.e. possession of landed property, the finding of the Tribunal is not according to law. The Tribunal has observed that the order of mutation was filed after filing of the application. It has not given details of any of the documents filed by the respondent showing his ownership of the land. On this ground alone, we are of the view that the matter requires reconsideration by the Central Administrative Tribunal. Accordingly, the impugned order is set aside and the matter is remitted to the Central Administrative Tribunal for reconsideration. The matter should be disposed of by the Tribunal within two months from the date of receipt/production of a copy of this order.

Before parting with this order, we may mention that either the mutation order or the rent receipt is not a document of title and possession. Mutation orders are made only for the purpose of collecting revenue from one among the several claimants. The documents concerning title and possession are sale deed, gift deed, entry in the khatiyān and other documents."

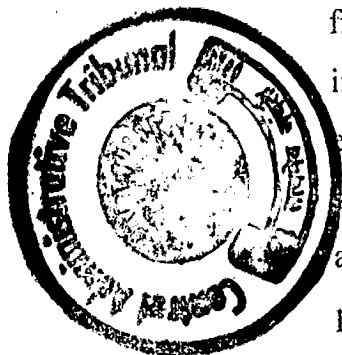
[iv]

On remand the Tribunal held as under :-

"16. Therefore, this 1993 OM would supersede the 1991 direction in which property in exclusive name was a condition. This 1993 OM makes it []



clear that the adequate means of livelihood should not be quantified but preference might be given to those candidates whose adequate means of livelihood was derived from landed property or immovable asset. This nowhere states that the condition of the property in the exclusive name of the successful candidate would be a necessary criteria. It also shows that it was only a preferential qualification, not a basic qualification. The only exclusion made in the 1993 OM is that the independent source of income should not come from the property in the name of guardian. This is quite understandable, as if the property is in the name of guardian, he would be free to dispose it off at any time and there may be a large number of inheritors in future, or that the guardian might chose to utilize the income exclusively for himself or for some person/persons other than the successful candidate. Therefore, if the advertisement for the post required adequate source of income preferably derived from the immovable property in the exclusive name of the successful candidate, that was against the 1993 OM and an unnecessary condition. If the adequate property is owned by the successful candidate, jointly with any person, brother in this case, then it cannot be said that he had no landed or immovable property in his name and natural inference would be that he equally shared the income derived from that property. This is further supported by the certificate granted by the Circle Officer concerned who had assessed the yearly income of the applicant to be Rs.25,000/-. Therefore, even if the property criteria is to be considered, it must be held that the applicant had fulfilled the property criteria and had in his possession registered sale-deeds to prove that.



.....

19. Therefore, in view of the decisions quoted above, including that of the Apex Court and that of the Kerala High Court as well 1993 OM, it is clear that the criteria of having property in exclusive name cannot be ..

treated to be a criteria for appointment nor legally can be sustained. The different decisions precisely appear to be the reason that the Department of Posts through their office letter bearing No. GI Dept. of Posts, Lr. No.22-12/2001-GDS, dated 17.09.2003 have completely done away with the immovable property criteria which, however, will be applicable prospectively. However, if the property criteria is to be considered, the applicant has shown that there was immovable property in his name, though jointly with his brother.

20. In that view of the matter, the applicant being more meritorious than respondent no.5, the appointment of respondent no.5 to the post aforesaid cannot be legally sustained.

21. In the result, this application is allowed and the appointment of respondent no.5, Ram Naresh Prasad, through Annexure-A/5 is hereby quashed. The respondents are directed to take decision about appointment of the most suitable candidate to the post of EDBPM of Sheoram EDBO in A/c with Nehra SO in Darbhanga Postal Division keeping in view the findings of the Tribunal in this order. No costs."

[v] It appears from para 7 of OA 200 of 2007 that the said Shri Ram Naresh Prasad filed CWJC 12023 of 2005, which was withdrawn on 29.11.2006.

[c] [i] One Rekha Kumari preferred OA 02/06. The OA was allowed to be withdrawn vide order dated 03.01.2006. The order reads as -

"Heard the learned counsel for the parties. During the course of argument, the learned counsel for the applicant prayed for permission to withdraw the case. The OA is, therefore, dismissed as withdrawn."

[ii] This Rekha Kumari has been appointed as EDBPM vide order dated 17.02.2006 provisionally. She has joined as Teacher in a School in Sheoram on 12.02.2007

3. [a] [i] The applicant of OA 152 of 2006, who had earlier preferred J.,



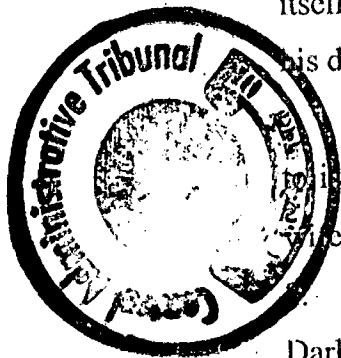
OA 755 of 1998 has stated that respondent no.6 is sister in law of Shri Ram Naresh Prasad. Her application had been submitted just to counter his application and the candidature was withdrawn to facilitate his appointment [as per Annexure-A/5 of the OA this letter is dated 02.11.1998]. Her request dated 09.09.2005 to consider her case is on record [Annexure-A/6]. Even after quashing of the order by the Tribunal Shri Ram Naresh Prasad was allowed to continue pending final decision of High Court. The father of applicant, a Govt. servant, had met the then SPO, Darbhanga, Shri R.K.Mishra and was told that Rekha Kumari was to be appointed. A lawyer's notice dated 05.11.2005 was sent to PMG [N] on 05.11.2005. The relevant part of this notice reads as follows :-

"7. But, the order of Hon'ble CAT Patna Bench dtd. 02.08.2005, passed in OA 775 of 1998 is being interpreted by the Superintendent of Post Offices, Darbhanga Division Shri R.K.Mishra, in his own way which is unknown to law. Firstly, despite the fact that the appointment order of Ram Naresh Prasad @ Naresh Bhagat has been quashed on 29.08.2005 itself by the Hon'ble CAT Patna Bench but he is being allowed to perform his duties as GDSBPM of Sheoram B.O. till date.

Further, the applicant has learnt that Shri R.K.Mishra is intending to issue offer of appointment to Rekha Devi, who now happens to be the wife of the brother of Shri Ram Naresh Prasad @ Naresh Bhagat.

The action of Shri R.K.Mishra, the Superintendent of Post Offices, Darbhanga Division, in allowing Shri Ram Naresh Prasad @ Naresh Bhagat on the strength of an appointment order which has been quashed on 29.08.2005 itself and his proposed action of issuing appointment order in favour of Rekha Devi, ignoring the findings of Hon'ble CAT Patna Bench made in para 20, as incorporated above, is nothing but an attempt to defy and disobey the order of the Hon'ble Court willfully and as such the same amounts to Criminal Contempt.

9. It has to be bear in mind that the matter went upto Hon'ble High Court Patna i.e. to an appellate forum and thereafter the matter was



remitted to the Hon'ble Tribunal for reconsideration with certain observations. The matter remained between Vidya Sagar Singh and Shri Ram Naresh Prasad @ Naresh Bhagat, before the Hon'ble Courts.

10. The order dated 29th August, 2005, passed by the Hon'ble CAT Patna Bench, is as explicit as it could be. There is no scope of any confusion or misinterpretation, if the order dtd 10.02.2005 passed by Hon'ble CAT, order dated 11.03.2005 passed by Hon'ble Patna High Court as well as order dtd 29.08.2005 passed by Hon'ble CAT is perused with open mind.

It is, therefore, suggested that the order of Hon'ble CAT Patna Bench dtd 29th August, 2005, must be complied in its letter and spirit at the earliest to avoid further unwarranted litigation."

[ii] The appointment of Shri Ram Naresh Prasad was terminated. Shri Ram Naresh Prasad had approached SPO to appoint respondent no.6 the wife of his younger brother now.

[iii] Even though the then SPO has been impleaded by name, the selected candidate impleaded, Shri Ram Naresh Prasad is not impleaded even though allegations are made against him.

[b] No reply is filed by Smt. Rekha Kumari.

[c] The then SPO, who has been impleaded by name, has stated in his reply as under :-

[i] He had acted in his official capacity and was not required to be joined. Referring to the selection process it was stated that the then SDI instead of verifying the marks obtained the statement of Rekha Kumari that she was going to join a better post and hence her candidature was rejected. The SDI has obtained such information on his own accord illegally with some ill motive.

[ii] That after the passing of above mentioned orders in the OA 755 of 1998 Smt. Rekha Devi represented that as she did not get

appointment in another place her case may be considered. She also filed OA 2 of 2006. Legal opinion of the Central Govt. Counsel was obtained, who advised that best candidate be selected [The copy of statement of facts submitted by the department to the counsel and his opinion are not brought on record]. The private respondent was appointed as she was the most meritorious.

[iii] The appointment of Ram Naresh Prasad was cancelled after correspondence with PMG [N]:

[iv] With regard to allegations made in the letter dated 05.11.2005 it is stated that allegation have been levelled with malafide intention. The policy as laid down in department's letter dated 19.05.1991 is produced as annexure.

[d] [i] The official respondents in their reply have stated that SDI carried out the verification on 23.09.1998. He had verified the register II maintained by Halka Karmachari and found that name of applicant was not mutated. He had issued notice to all. Smt. Rekha Kumari who had secured highest marks, was unwilling to work. Hence, Shri Ram Naresh Prasad was appointed.

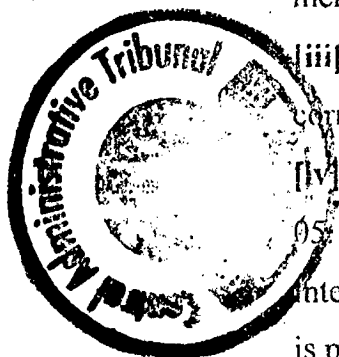
[ii] The entire case was referred to Shri S.N.Pathak, Additional Standing Counsel for his legal opinion, who advised that the most suitable candidate be appointed. Smt. Rekha Kumari was accordingly appointed.

[iii] There is nothing on record to show that respondent no.6 is sister in law of Shri Ram Naresh Prasad. She had withdrawn her candidature in 1998 as she was going to join a better post and not in favour of Ram Naresh Prasad.

[iv] Shri Ram Naresh Prasad was allowed to continue pending final decision in writ petition.

[v] With reference to para 4.9, which is legal notice to the department, it is stated that no comments are required.

4. [a] Shri Ram Naresh Prasad has filed OA 200 of 2007 on 09.02.2007. The defects are removed on 11.04.2007. The applicant sought quashing of his termination.



order and subsequent appointment of respondent no.5, Rekha Devi. It was asserted that tribunal's order in OA 775 of 1998 is misinterpreted. It is asserted that though respondent no.6 had secured higher marks, the applicant is much more qualified. The private respondent no.5 had withdrawn her candidature.

[b] The private respondent no.5 has not filed any reply.

[c] The official respondents in their reply have stated as under :-

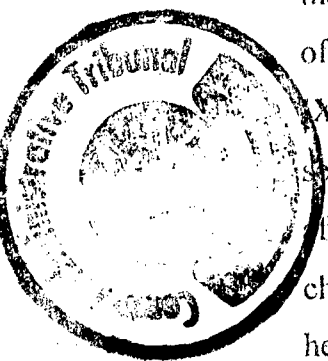
“.....Smt. Rekha Kumari a candidate for the post of GDS BPM Sheoram who had withdrawn her candidature earlier immediately after the order of Hon'ble CAT Patna Bench quashing the appointment of Sri Ram Naresh Prasad represented that she has been the best candidate for the said post and when appointment is made, her candidature should also be considered. It was considered that the withdrawal of candidature by Smt. Rekha Kumari was not having logical and legal force. She did not withdraw her candidature on the day of verification of papers by SDI rather it was obtained by the said SDI later on. Virtually, she would have been served with the appointment letter to the post of GDS BPM Sheoram earlier and after receipt of the same had she refused to work on the post it would have the correct refusal by her. Thus, she was not given proper appointment and as such she was denied justice.”

[d] The private respondent, who is applicant of OA 152 of 2006, has stated that OA is misconceived. He has also stated as under in the reply :-

[VII] On the other hand, in collision with the respondents authorities, the applicant tried to get appointment order in favour of Smt. Rekha Devi [the respondent no.5 in this OA] who is wife of his younger brother, on the ground that she withdrew her candidature only on the condition that Sri Ram Naresh Prasad [the applicant] would be appointed, none else. Since the appointment of the applicant, pursuant to the condition of withdrawal of candidature of the said Rekha Devi was set aside, her claim of appointment against the said post would revive.



[X] It is important to submit here that the appointment of the applicant was quashed vide order dated 29.08.2005 passed in OA 775 of 1998. The applicant challenged the order in CWJC No. 12023 of 2005 before the Hon'ble High Court. During pendency of his writ petition, Smt. Rekha Devi was appointed on the post in question on 17.02.2006. The applicant did not challenge her appointment till February, 2007, rather he withdrew his CWJC No. 12023 of 2005 on 29.11.2006, meaning thereby that he has accepted the order passed by this Hon'ble Court in OA No. 775 of 1998.



[XI] What happened thereafter that Smt. Rekha Devi has been selected on the post of Teacher and she joined the post on 12.02.2007, after resigning from the post of EDBPM of Sheoram EDBO. The applicant challenged her appointment on the post of EDBPM after nearly one year of her appointment on the post and just 2-3 days before her resigning the post, pursuant to her appointment on the post of Teacher.”

[c] This reply of private respondent was filed on 10.07.2007. The official respondents had filed their reply on 26.09.2007 but have not stated anything about this aspect in the reply.

[f] No rejoinder is filed.

5. We have also called for records of OA 02 of 2006. OA 02 of 2006 was filed on 15.12.2005. The applicant had amongst enclosed here letter dated 02.11.1998, representation dt. 09.09.2005 extracts of 1991 OM of the Department and order dated 07.12.2005 terminating appointment of Ram Naresh Prasad. The applicant had stated in para 4.4 of the OA that she had written the letter dated 02.11.1998 on dictation of SDI. Such statement was taken by the said SDI with mala fide intention to give undue favour to somebody else. The applicant sought a direction to consider her name for appointment as GDSBPM and a declaration that the letter dated 02.11.1998 is non est in the eyes of law and be quashed. Interim relief of staying the appointment on the post of GDSBPM was {

also sought for. This OA was subsequently withdrawn.

6. We have heard the learned counsels.

7. Coming to the facts of this case it is noticed that candidature is withdrawn on 02.11.1998 resulting in the employment of Shri Ram Naresh Prasad. Rekha Kumari keeps mum for seven years. The appointment of said Shri Prasad is terminated in December, 2005 and OA 02 of 2006 is filed by Rekha Kumari near about the same time saying that she signed this letter under dictation of SDI who was acting with malafide intention. As per reply of Shri Vidya Sagar Singh in OA 200 of 2007 Smt. Rekha Kumari has joined another post on 12.02.2007. OA 200 of 2007 was filed near about the same time and defects removed in April, 2007.

8. The statement of facts sent to learned Central Central Govt. Standing Counsel and his advice are not brought on record. We cannot, therefore, satisfy ourselves if all the facts have been brought to the notice of learned counsel.

9. [a] We note that para 4.8 & 4.9 of OA 152 of 2006 is as under :-

"4.8 That, in October 2005, the father of the applicant who is a govt. employee met the respondent no.5 and requested compliance of the order of this Hon'ble Court but he was asked that one lady candidate, namely, Rekha Devi has secured highest marks and as such she would be appointed.

4.9 That, thereafter a letter/notice was sent to the respondents on behalf of the applicant on 05.11.2005, by the Counsel appearing for the applicant before this Hon'ble Court, explaining the correct proposition."

[b] The official respondents in their reply have stated that para 4.9 requires no comment. This was a letter addressed to PMG[N] and the department had a duty to explain the action taken by them. The then S.P.O., who had been implicated by name has stated that appointment of Sri Ram Naresh Prasad was terminated after obtaining orders of PMG[N].

[c] We also find that this private respondent no.5 has in reply to this paragraph taken shelter of Dept. of Posts letter of 1991. This reply was filed on 02.06.2006. The,



reply of official respondents is filed in January, 2007.

[d] In both the replies the statement regarding SDI acting with improper motive is made

10. A three Judge Bench of the Apex Court in Nagubai Ammal & Ors. Vs. B.Shama Rao & Ors.; AIR 1956 SC 593 held as under :-

"The ground of the decision is that when on the same facts, a person has the right to claim one of two beliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on the election and claim the alternative relief. The principle was thus stated by Bankes, L.J.:

"Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act".

The observations of Scrutton, L.J. On which the appellants reply as follows :

"A plaintiff is not permitted to 'approbate and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election – namely, that no party can accept and reject the same instrument: Ker v. Wauchope [1819] 1 Bligh 1 [21][E]; Douglas-Menzies v. Umphelby 1908 ACT 224 [232] [F]. The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction". It is clear from the above observations that maxim that a person cannot 'approbate and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is J.

thus stated in Halsbury's Laws of England. Volume XIII, p.454, para 512:

"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order [e.g. Payment of costs], be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".

A Three Judge Bench of the Apex Court in *Mamleshwar Prasad & Anr. v. Kanhaiya Lal [Dead] through LR's* [AIR 1975 SC 907] has held -

"A litigant cannot play fast and loose with the Court. His work to the Court is as good as his bond and the Court must without more ado, negatived the present shift in stand by and astute discovery of plea that earlier judgment was per incuriam.

12. We also note that the Tribunal in para 16 of the judgment had recorded a categorical finding that the 1991 circular is overruled by the 1993 circular of the Department of Posts.

13. When Smt. Rekha Kumari submitted her letter on 02.11.1998 the department acted thereon and offered appointment to Shri Ram Naresh Prasad. She remained silent for seven years and submits her application on 09.09.2005 that is ten days after the judgement in OA. The appointment of Ram Naresh Prasad is terminated on 07.12.2005 and OA 02 of 2006 is filed on 15.12.2005. She seeks a declaration that her letter dated 02.11.1998 is non est in eyes of law and be quashed. This OA was withdrawn. The official respondents as well as Shri R.K.Mishra, who was joined by name, take similar stand regarding the conduct of SDI, even though they themselves acted on this letter in 1998.

14. The principles enunciated in *B.Shama Rao* [supra] apply with full force.



regarding the conduct of Smt. Rekha Kumari. She cannot play fast and loose. The department too, cannot after seven years say that their earlier action of relying on SDI report was improper.

15. The Apex Court in APSRTC & Ors. Vs. G.Srinivas Reddy & Ors., 2006 SCC [L&S] 577 has held -

"17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to "consider" the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to "consider" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court."

16. The action of respondents in offering appointment to Smt. Rekha Kumari is bad in law. It is quashed and set aside. The applicant of OA 152 of 2006 was entitled to be appointed from the date Smt. Rekha Kumari was offered the appointment. The order appointing the applicant shall issue within a month of the receipt of the order. The application is allowed with cost quantified at Rupees Five Thousand only.

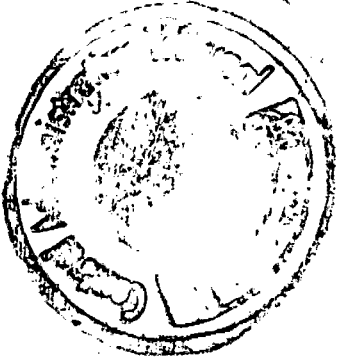
17. As far as OA 200 of 2007 is concerned, the applicant had contested the previous round of litigation. It was open to him to raise other pleas in the earlier round of litigation. Pleas not raised earlier are barred by principles of constructive resjudicata. This OA is an abuse of the process of law. It is dismissed Costs payable by the applicant quantified at Rupees Two Thousand only.

18. We also find that Shri R.K.Mishra, then SPO, Darbhanga had travelled beyond the orders of Tribunal. His successor in office had also advanced pleas that had been rejected. Their conduct seems to be obstructing the course of justice. A copy of the order be sent to Secretary, Department of Posts, CPMG, Bihar Circle for such further

action as they deem appropriate. OA is disposed off accordingly.

[Sadhna Srivastava]/M[A]

[Shankar Prasad]/M[A]



True Copy :

Certified that this is a true and accurate copy of the document/order as in the case file OA/RA/TA/CP/MA/PT No. 200/07, and that all the matters appearing therein have been legally and faithfully dealt with as per the original.

21/6/08

Deputy Registrar,
Central Administrative Tribunal,
Patna Bench, Patna.