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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

OA No. 340/1994

Date of order: 20.2.1998

Nemi Chand S/o Shri Hari Singh, resident of village & Post Baroli Ran, District Bharatpur.

.. Applicant

Versus

1. The Union of India through Secretary, Department of Posts, New Delhi.
2. Superintendent of Post Offices, Bharatpur Division, Bharatpur.

.. Respondents

Mr. K.L.Thawani, counsel for the applicant

Mr. K.N.Shrimal, counsel for the respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P.Sharma, Administrative Member

ORDER

For Hon'ble Mr. Gopal Krishna, Vice Chairman

Applicant, Nemi Chand, has challenged the order Ann. Al dated 18.7.1994 by which his selection and appointment to the post of Extra Departmental Branch Post Master (EDBPM) was cancelled.

2. We have heard the learned counsel for the parties. The records of the case have carefully been perused.

3. The case of the applicant is that he was duly selected for appointment as Extra Departmental Branch Post Master on the basis of the merit after his name was sponsored by the Employment Exchange. On 16.7.1994 he took charge of the post of Extra Departmental Branch Post Master, Baroli Ran Post Office vide Ann. A1 dated 16.7.1994. However, on 18.7.1994, the respondent No.2 cancelled his previous order dated 14.7.1984 and directed the applicant to handover the

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charge of the post held by him. The impugned action is assailed as being arbitrary since no opportunity of hearing was afforded to the applicant before cancelling his appointment. The respondents have stated that since the applicant's brother Shri Rajendra Singh is already working as EDMC/EDDA at Baroli Ran Post Office, a near relative could not be appointed as Extra Departmental Branch Post Master in the same Post Office in terms of the Director General, Post and Telegraph letter dated 17.10.1966. It is further stated that the applicant was only provisionaly selected and the concerned authority had ^{the} right to cancel it, if it was in contravention of the departmental instructions.

4. The learned counsel for the applicant cited AIR 1997 SUPREME COURT 637, Baliram Prasad, Appellant v. Union of India and others, Respondents, in which their Lordships had held at page 638 as follows:

"The decision of the authorities dated 17th October, 1996 reads as under:

"EMPLOYMENT of near relative in the same office to be avoided. Instances have come to light where very near relations have been appointed to work as ED. BPM, ED.DA or ED. Mail Carrier in the same office. As this is fraught with the risk of frauds, etc. this should be avoided."

It is difficult to appreciate how pursuant to the said decision the appellant could have been treated as not qualified to be appointed as Extra Department Branch Post Master in the Post Office. His cousin brother was working on a lower post of Extra Department Delivery Assistant. He would be performing manual work of effecting delivery of postal articles ^{Chukhe} to the addressees. Only because appellant's cousin

brother was working as a Peon in the said Post Office doing such manual work it passes our comprehension how the appellant could not be appointed as Extra Department Branch Post Master in the said Post Office. There is no rhyme or reason underlying such an approach on the part of the authorities. To say the least it would be totally arbitrary and irrational. Even if there may be any risk of fraud etc. even non-relative can be guilty of fraud while on the contrary relatives may not be prone to such frauds. But even if they are, appropriate procedure can be adopted for detecting such frauds and bringing the guilty to book or even for effectively checking such tendencies by having appropriate vigilance machinery. Put to refuse to appoint a more meritorious candidate only on the ground that his cousin brother was working in the same Post Office would, in our view, be totally an arbitrary exercise of power which cannot be countenanced on the touch-stone of Article 14 of the Constitution of India. We asked learned counsel for the appointing authority as to whether there is any other disqualification of the appellant save any except the ground of his cousin brother being working as Peon doing the manual work in the Post Office. He fairly stated that there is no other ground excepting this ground. In our view such a ground cannot be sustained from any viewpoint and must be held to be totally arbitrary and irrational. The Tribunal was not justified in non-suiting the appellant on merits only on this ground. Learned counsel for respondent No.7 submitted that even if the appellant has a good case on merits he should not be disturbed as he is working ~~Chikli~~ at his own residence as Extra Department Branch Post

Master since about four years and more. That is neither here nor there. Once it is found that the appellant was more meritorious as compared to respondent No.7 and deserves to be appointed on merits and his claim was not considered on a totally irrational and arbitrary ground the legal consequences resulting from the voiding of such an illegal exercise must follow."

5. It is true that no show cause notice was issued to the applicant before dis-engaging him from service on the post of Extra Departmental Branch Post Master. The rule that a near relative cannot be appointed in the same Post Office has not been upheld by Hon'ble the Supreme Court in the case cited supra. The impugned order at Ann.Al cancelling the appointment of the applicant on the post of Extra Departmental Branch Post Master is, therefore, set-aside. We direct the respondents to reinstate the applicant on the post of Extra Departmental Branch Post Master. If the place at which the applicant was posted as EDBPM is vacant, the applicant shall be posted at the same station on the same post. If, however, the post has been filled up by appointing someone else, the applicant may be offered appointment as EDEPM at the nearest possible place on the same post. Insofar as the conditions of appointment as originally laid down in Ann.R1 dated 14.7.1994 are concerned, they will of course have to be fulfilled by the applicant after his reinstatement

6. No order as to costs.

(O.P.Sharma)

Administrative Member

G.K.Khanna
(Gopal Krishna)

Vice Chairman