

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.347/95

Date of order: 29/9/2000

Nand Kishore Bairwa, S/o Onkarlal, R/o Vill. & Post Khandewala,  
Tehsil Khandar, Distt.Sawai Madhopur working as EDBPM cum EDMC.

...Applicant.

Vs.

1. Union of India through the Secretary to the Govt. of India, Deptt. of Posts, Mini. of Communications, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Sawaimadhopur Divn, Sawaimadhopur.
4. Director Postal Services, Jaipur Region, Jaipur.
5. Sh.Ram Bharosh Jangid, S/o Hazarilal Jangid, Vill. & Post. Khandewala, Distt. Sawaimadhopur.

...Respondents.

Mr.K.L.Thawani - Counsel for applicant

Mr.K.N.Shrimal - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order Annx.A1 as violative of Articles 14, 16 and 19 of the Constitution of India and to direct the respondents to make fresh selection and to consider the applicant for appointment as Extra Departmental Branch Postmaster, Khandewala on regular basis giving due weightage of continuous service for more than 13 years as ED Agent including the service of 2 years as EDBPM Khandewala.

2. Facts of the case as stated by the applicant are that he was appointed as ED Mail Carrier (EDMC) Khandewala on 1.3.82. It is stated that due to the resignation of the regular EDBPM, the post of EDBPM fell vacant on 1.5.93 and the applicant was given charge of EDBPM Khandewala

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in addition to his own duties. Thereafter he is working sincerely on the post of EDBPM Khandewala alongwith EDMC post. It is stated that the Superintendent of Post Offices, Sawai Madhopur invited applications for the post of EDBPM Khandewala vide Memo dated 9.3.95 instead of issuing regular appointment order to the applicant. He also applied in response to the notification so issued but the Supdt. of Post Offices, Sawai Madhopur with extraneous consideration illegally made selection of Shri Ram Bharosh Jangid as EDBPM vide order No.AH 200/PF dated 5.6.95. It is stated that the applicant put in about 13 years of service and he fulfills all the requisite qualifications for the post of EDBPM but the Supdt. Post Offices, Sawai Madhopur in arbitrary, illegal and discriminatory manner selected Shri R.B.Jangid on the post. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that due to resignation tendered by Shri B.L.Balodia, working as EDBPM from 1.5.93, the applicant suo mottu took the charge from Balodia as at that relevant time the applicant was working as EDMC, Khandewala. It is stated that resignation of Shri B.L.Balodia accepted on 3.6.94 and thereafter charge of EDBPM remained with the applicant in addition to his own duties as EDMC but it was a stop gap arrangement only. Therefore, to fillup the post of EDBPM, Khandewala, the Employment Exchange, Sawai Madhopur was requested to sponsor the candidates and in pursuance to the request, the Employment Exchange Officer informed vide letter dated 17.7.93 that for the post of EDBPM no person has registered name with the Employment Exchange. Therefore, the vacancy was notified fixing the last date of receipt of the application as 9.4.97. Nine persons were applied including the applicant. One Shri R.B.Jangid was selected for the post of EDBPM as per the existing and prescribed norms/rules. It is stated that the applicant was awarded with a penalty of debarring him for appearing any departmental examination for a period of two years vide order dated 5.5.94 by Supdt. of Post Offices, Sub-Division, Sawaimadhopur, which was inforce on that date and thus over all

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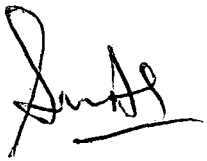
assessment of past services of the applicant it was not considered proper to offer him appointment on the post of EDBPM. It is also stated that the applicant failed to produce the requisite certificate supporting adequate means of livelihood as required under the rules. He also did not produce the mark sheet of his secondary education. It is also stated that after following the procedure established by law, respondent No.5, Shri R.B.Jangid was selected and was given appointment on the post of EDBPM and the applicant was put off from duty on 31.7.95. It is also stated that the applicant was a resident of Village Katar which is 2 Kms away from Khund Branch Post Office and the person who was selected belongs to the village Khandewala itself. Therefore, it is stated that there has not been any illegality, infirmity or arbitrariness in selecting Shri R.B.Jangid for the post of EDBPM and the applicant has no case for interference by this Tribunal. Therefore, the applicant is not entitled to any relief sought for.

4. Rejoinder has also filed which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant has argued that by ignoring the claim of the applicant being an SC candidate having 13 years of experience as EDMC and about 2 years as EDBPM, the respondents have selected S;hri Ram Bharosh Jangid, illegally with extraneous considerations. The counsel for the applicant has also argued that the post in question should have been filled up by transfer of the applicant rather than by recruitment.

7. On the other hand the learned counsel for the respondents while objecting the arguments of the counsel for the applicant, he took the preliminary objection that the applicant had earlier filed O.A No.256/95 Nand Kishore Vs. UOI, which was withdrawn by the counsel for the applicant and thereafter the applicant filed this O.A reagitating the same relief. Therefore, the present O.A is not maintainable as barred by the principle of resjudicata. In support of his contention, he has



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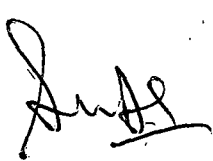
referred M/s Rajasthan Art Emporium, Jodhpur Vs. Rajasthan State Industrial & Investment Corpn. & Ors, decided by the Rajasthan High Court, Jodhpur, on 25.8.98 as reported in WLC Vol.1, 1999 page 16.

8. We have given anxious consideration to the rival contentions of both the parties and perused the whole record.

9. As regards the first contention of the counsel for the applicant is concerned, in D.M.Nagesh & Ors. Vs. Asstt.Supt. of Post Offices, Bangalore South, Bangalore & Ors, 2000(2) ATJ (Full Bench) Bangalore 259 it was held that no weightage can be given for the work done by the applicant as provisional E.D.Agent in the absence of any recruitment rules. Candidate appointed as E.D.Agent on ad hoc basis or on provisional basis or by way of stop gap arrangement are not entitled to any weightage of experience at the time of recruitment of E.D.Agent. The notification issued for the selection of EDBPM, Khandewala, did not provide any preference for SC/ST category while making selection. It is not the case of the applicant that there was no proper representation of SC/ST candidate in the department, therefore, merely the applicant belongs to SC category does not make him entitle for the selection in preference to others. No arbitrariness or extraneous consideration against the respondents could be established by the applicant. Therefore, on the basis of above all, we do not find any infirmity/illegality in selecting Shri Ram Bharosh Jangid for the post of EDBPM, Khandewala.

10. As regards the second contention of the counsel for the applicant, we may say that the department has a sole discretion whether the post will be filledup by direct recruitment or by transfer of EDMC. The counsel for the applicant also referred the instructions as mentioned in Swamy's Compilation of Service Rules for Postal E.D staff. We have perused those instructions but in our considered view those instructions also do not support the contention of the counsel for the applicant. Whether the post will be filledup by direct recruitment or transfer of EDMC, the applicant has no right of appointment on the post of EDBPM.

11. Para 5(3) of the reply filed by the respondents makes it very clear that the applicant was penalised with a penalty of debarring him



for appearing in the departmental examination for a period of two years vide memo dated 5.5.94 and in the order so passed it was observed as under:

"अतः मैं अंतिम रूप से इस निष्कर्ष पर पहुंचा हूं कि नंद किशोर बैरवा ने ई डी एम सी/ ई डी डी ए के पद पर कार्य करते हुए अपनी इयूटी को भली प्रकार से अंजाम नहीं दिया, जिसकी वजह से जन परिवार पैदा हुआ। व डाक विभाग की छवि धूमिल हुई। डाक सेवाओं में व्यवधान भी पैदा किया जाना माना जा सकता है, जो कर्मचारी जन सेवाओं के लिए नियुक्त किया गया है, यदि समुचित ढंग से विभाग की व जनता की सेवा नहीं करता है तो ऐसा कर्मचारी कठोर दंड का भागी होता है। यद्यपि मैं कर्मचारी कार्य के प्रति लापरवाई को देखते हुए कठोर दंड दिया जाने के पक्ष में हूं। परंतु कर्मचारी की पूर्व की सेवाएं देखते हुए व कर्मचारी की पारिवारिक आर्थिक स्थिति को देखते हुए मैं कर्मचारी के प्रति नरम रूख अपनाते हुए इस बार कर्मचारी को पोस्टमैन की परीक्षा में दो वर्ष तक नहीं बैठने देने के लिए डिज्जर करता हूं। आशा करता हूं कर्मचारी इस दंड से प्रेरणा लेकर भविष्य में अपना कार्य तत्परता से करेगा व भविष्य में ऐसा कोई अवसर नहीं आने देगा।

11. In view of the above all, we are of the opinion that by not taking a decision to fill the vacancy by transfer, the department has not used its discretion arbitrarily and the applicant has no case for interference by this Tribunal on this count.

12. As regards the contention of the learned counsel for the respondents, it is clear that the applicant has earlier filed O.A No.256/95, Nand Kishore Vs. UOI & Ors, which was withdrawn by the counsel for the applicant and thereafter the applicant again filed this O.A for reagitating the same relief. The order passed on 26.6.95 in O.A No.256/95 after withdrawal of the O.A is as follows:

"Sh.K.L.Thawani - Counsel for the applicant.

After we heard the case in detail, the learned counsel for the applicant sought permission to withdraw the O.A. Prayer is granted.

The O.A is dismissed as withdrawn."

13. The learned counsel for the respondents in support of his argument


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has referred the judgment of the Rajasthan High Court (supra). This judgment of the Hon'ble Rajasthan High Court is based upon the view taken by the Hon'ble Supreme Court in Avinash Nagra Vs. Navodaya Vidyalaya Samiti & Ors, reported in 1997(2) SCC 534, wherein it has been specifically said that where the first writ petition challenging the order of termination of service was withdrawn without granting the liberty by the Court to file a second writ petition, the second writ petition for that very purpose is barred by principle of constructive res judicata, therefore not maintainable.

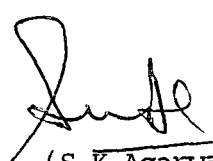
14. The above view of the Apex Court and the view taken by the Rajasthan High Court applicable to the instant case, it becomes abundantly clear that O.A No.256/95 was withdrawn without granting a liberty to file a fresh O.A and the present O.A No.347/95 was filed by the applicant reagitating the same relief, therefore, this O.A is not maintainable on the basis of principle of constructive res judicata.

15. In view of above all, we are of the considered opinion that the applicant is not entitled to any relief sought for.

16. We, therefore, dismiss the O.A having no merits with no order as to costs.

  
(N.P.Nawani)

Member (A).

  
(S.K.Agarwal)

Member (J).