

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May kindly
See
On
22/8

O.A. No.

206/2001 & M.A. No. 272/2001

200

T.A. No.

~~H.M.C.~~

~~X2~~

~~VC 22/8~~

DATE OF DECISION _____

Bhanwar Lal Jajoria

Petitioner

Mr. C.B.Sharma

Advocate for the Petitioner(s)

Versus

UOI and three others.

Respondent

Mr. Arun Chaturvedi.

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

(A.K. Bhandari)
Administrative Member.

(G.L. Gupta)
Vice Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

O.A. No. 206/2001 & M.A. No. 272/2001

Date of decision.: 22.09.02

Bhanwar Lal Jajoria, S/o late Shri Nathu Lal, aged about 27 years, resident of village and post Keshopura, via Bhankrota, Jaipur, last employed on the post of Extra Departmental Branch Post Master, Keshopura, Extra Departmental Branch Post Offices.

: Applicant.

VERSUS.

1. Union of India, through its Secretary to the Government of India, Department of Posts, Ministry of Communications, New Delhi 110 001.
2. Chief Post Master General Rajasthan Circle, Jaipur. 302 007
3. Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur 302 006
4. Shri Mohan Lal Balai, S/o Shri Prabhati Lal Balai, EDBP, Keshopura, EDB, via Bhankrota, Jaipur and resident of village Chamand Ka Mad, post Sayapura, Tehsil, Jamwaramgarh, Dist: Jaipur.

: Respondents.

Mr.C.B. Sharma: Counsel for the applicant.

Mr. Arun Chaturvedi: Counsel for the official respondents.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.



O R D E R

Per Mr. Justice G.L.Gupta:

The post of Extra Departmental Branch Post Master (EDBPM for short), Keshopura, fell vacant. The applicant was asked to work on the post on 27.02.99 on a provisional basis. Thereafter, applications were invited by the respondents vide notification dated 23.04.99. The applicant also applied for the post. Vide Memo dated 26.11.99, the respondent No. 3 selected one Shri Ram Dhan Mourya. However, his services came to be terminated on 17.08.2000. After sometime, the applicant was again asked to work as EDBPM Keshopura, on 28.08.2000 on provisional basis. In the meanwhile a notification for selection was issued on 25.08.2000. The applicant again applied for the post. Respondent No. 4 was given appointment vide order dated 23.03.2001.

2. The case for the applicant is that he fulfilled all the eligibility conditions and he was more meritorious candidate, yet the respondent No. 3 has selected the private respondent Shri Mohan Lal Balai (R.4). It is prayed that the order Annex. A.1, dated 23.03.2001 appointing R.4 be quashed and the respondents be directed to pay the pay and allowances to the applicant from the date R.4 was appointed as EDBPM, Keshopura.

3. In the counter, the respondents admit that the applicant was more meritorious candidate. It is stated that the applicant was not given appointment because he did not indicate the source of income in his application and that the income certificate filed by him along with his application was not certified by the competent authority. It is averred that the applicant did not have adequate means of livelihood from the landed property which is mandatory and essential condition among other prescribed conditions for selection for the post of EDBPM.



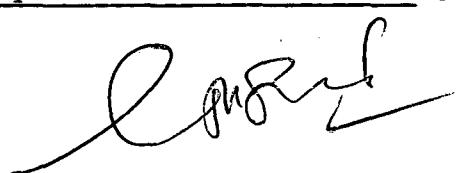
3.1 Private respondent No. 4 has not filed reply despite service.

4. We have heard the learned counsel for the parties and perused the documents placed on record. As already stated, it is admitted position of the parties that the applicant was more meritorious than the private respondent who has been given appointment on the post. It is admitted that the percentage of marks of the applicant in the secondary examination was higher than that of the private respondent.

5. The respondents denied the appointment to the applicant on the ground that he had not stated in his application the source of income and also the income certificate filed by him was not certified by the competent authority.

6. A copy of the application of the applicant and that of R.4 submitted to R.3 have been placed on record by the official respondents. It is seen that in the application of the applicant it was clearly stated that the applicant was earning Rs.1250/- per month and he used to do light fitting work. It is further stated in the application that he had landed property 'patta' of which was annexed. The learned counsel for the official respondents was not in a position to state as to in what respect the applicant was lacking. It is seen that the income certificate was issued by the Tahsildar on 19.05.99, which showed the annual income of the applicant as Rs.15,000/- per annum. Along with the application, a copy of the registered sale deed of the house was also filed and also the allotment letter issued by the Panchayat Samiti. In our opinion, the respondent No. 3 had erred when he ignored the claim of the applicant and gave appointment to the private respondent.

7. Even on assuming that the documents of the applicant were not complete, he could not be denied appointment. In the case of K.G. Jayasankar vs. WCI and ors [2002 (3) ATJ 325], it has been held that the



question of income or ownership of property or adequate means of livelihood arises only after the person takes over the agency i.e. after the selection. It was observed that the non-selection of a person who was more meritorious on the ground that he did not prove that he had got income, was not justified. It was further observed that a citizen cannot be discriminated for being considered for appointment to a post merely on the basis of income or property and the non selection of the meritorious candidate would offend Art. 14 and 16 of the Constitution of India. The ratio of the case is the person who is more meritorious cannot be denied selection on the ground that he did not prove income.

7.1 In the case of P. Josephine Amudha vs. Union of India [2000 (3) A.T.J. 639] also a Division Bench of this Tribunal held that the element of financial status of an individual should not mix up with the process of selection and merit alone should be the deciding factor in the matter of selection. It was observed that some time may be given to the selected candidate to fulfil the property/income condition.

8. In view of the law laid down by the Division Benches of this Tribunal, it has to be held that the respondent No. 3 had erred in not selecting the applicant for the post.

9. The case of Union of India vs. Premchand (Civil Writ Petition No. 15356 of 1997 decided on 23.03.98, by a Division Bench of the Punjab and Haryana High Court) relied on by the learned counsel for the official respondents, does not assist the respondents as in the instant case, the applicant had satisfied the property condition as well as income condition.

9.1 Apart from that, the decision of a Bench of this Tribunal shall have to be preferred to the decision rendered by a Division Bench of the



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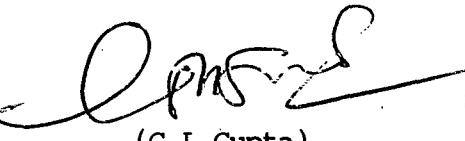
High Court of Punjab and Haryana, more so when the learned counsel for the official respondents did not state during the course of arguments that the administration has challenged the order of the Madras Bench of this Tribunal in K.G. Jayasankar (supra)

10. The result, therefore, is that the respondent No. 3 had erred when he gave appointment to R.4 vide order Annex. A.1 ignoring the claim of the applicant. The order Annex. A.1 is, therefore liable to be quashed.

11. Consequently, the order Annex. A.1 is hereby quashed. The respondents are directed to give appointment to the applicant on the post of EDBPM Keshopura, within a period of one month from the date of receipt of a copy of this order. The applicant shall get costs Rs.1000/- from the official respondents. In view of the order passed in O.A. no orders are necessary on M.A.No. 272/2001.


(A.K. Bhandari)

Administrative Member.


(G.L. Gupta)

Vice Chairman.

jsv.