

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Dated of order: 9.10.2003

OA No.463/2002

Mukesh Kumar Bairagi s/o Shri Fedhey Shyam Bairagi r/o
Village Gurakheda Teh. Jhalra Patan, Distt. Jhalawar.

.. Applicant

Versus

1. Union of India through the Postmaster General,
Post Office, Ajmer (Southern Region, Ajmer).
2. Sr. Superintendent of Post Offices, Kota
Division, Kota.
3. Asstt. Superintendent/Inspector of Post Office,
Head Post Office, Distt. Jhalawar.

.. Respondents

Mr. Shalini Sheoran, proxy counsel to Mr. Rajendra Soni,
counsel for the applicant.

Mr. B.N.Sandu, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

This application has been filed against the advertisement dated 26.9.2002 issued by the respondent No.2 for filling the post of GDS BPM at Village Gurakheda, Tehsil Jhalrapatan, Distt. Jhalawar as according to the applicant he was already selected for the aforesaid post vide the earlier advertisement dated 4.1.02 (Ann.A6). In relief, he has prayed that the impugned advertisement dated 26.9.2002 (Ann.A1) be quashed and set-aside and the respondents be further directed to give appointment to the applicant on the post of GDS BPM at Village Gurakheda,

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: 2 :

Teh. Jhalapatan, Distt. Jhalawar for which the applicant was earlier selected and his appointment was duly approved by the respondents, with all consequential benefits.

2. The respondents have filed counter. In their counter the respondents have submitted that one post of GDS/BPM became vacant on 9.4.2000 on account of retirement of the incumbent. It is further stated that on 28.4.2000, applications for the said post were invited and in pursuance to the advertisement as many as 13 applications were received. However, nobody was selected as none of them had property in their own name and independent source of income which was a condition precedent for appointment on that post. Again, on 8.2.2001 applications for the said post were invited and 8 persons applied in pursuance to the advertisement. However, none of the applicants could be selected and, therefore a fresh advertisement was issued on 4.1.02 in pursuance to which 3 persons applied including the applicant, out of whom the applicant's name was approved later on.

2.1 It is further stated in the counter that before issuance of the appointment order to the applicant, one of the person who has submitted his application in pursuance of the earlier advertisement dated 8.2.01, made a complaint to the respondents that though he applied in pursuance of the advertisement dated 8.2.01 but no information of advertisement dated 4.1.02 was given to him and hence he could not apply for the post. Upon this, an inquiry was conducted, which revealed that copy of the advertisement dated 4.1.02 had been sent only to GDS/BPM Gurakheda (Jhalrapatan City) and the copies meant for

6

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Sarpanch and the Headmaster were not despatched. It is further stated that as per circular/instructions dated 19.1.1968, it has been provided that whenever it is proposed to appoint an ED Agent, due publicity should be given. This may be done by displaying a notice giving particulars of the appointment to be made and the allowances and other conditions attached to it at the concerned Post Office, the Police Station, the Panchayat Office and any other public place considered suitable. Copies of these documents have been placed on record as Ann.R2 to R10.

2.2 It is alleged that it was in the background of these facts that a fresh advertisement dated 26.9.2002 has been issued in the interest of justice. The fact that the name of the applicant was approved for selection but the appointment process was not completed and the matter was during the verification of the documents stage only had not been denied by the respondents. The respondents have also placed on record documents to show that advertisement issued on 4.1.2002 was not given due publicity and the said document was not displayed on notice boards at suitable places.

3. The applicant has filed rejoinder thereby stating that the documents annexed with the reply has been prepared behind the back of the applicant without any opportunity of being heard and it is submitted that even some of the documents submitted by the respondents particularly the order dated 7.11.2002 clearly shows that there was no occasion to re-advertise the post and the order of re-advertisement is totally malafide one. The applicant has also annexed a copy of the letter dated

6

12.5.03 written by the Sarpanch stating that the statement obtained by the Asstt. Superintendent Post Office, Jhalawar Sub Division, Jhalawar on 13.9.2002 regarding the advertisement dated 4.1.2002 is factually incorrect and her signatures were taken on the pretext that Dak is being distributed from time to time.

4. We have considered the submissions made by the learned counsel for the parties and gone through the material placed on record.

4.1 The sole question which requires our consideration is whether a candidate selected to the post in question has indefeasible right to claim appointment. Further question which may require our consideration is whether action of the respondents in re-advertising the post is arbitrary or unjust.

4.2 The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established ~~date~~ ^{by} judicial precedent. Even if vacancies exist, it is open to the concerned authority to decide how many appointments should be made. However, the selected candidates have a right to compel the authorities - (i) not to make appointments by travelling outside the list and (ii) to make selection for appointment strictly in the order the candidates have been placed in the list. The Apex Court has also placed two further restrictions on the exercise of power by the appointing authority namely that the appointments to the vacancies must be made in accordance with the rules, if any, relating to reservations and also that the appointing authority cannot scrap the panel of selected candidates during the period of its validity, except for well founded

reasons. State of Haryana v. Subash Chandra Marwah, 1974 (3) SCC 220; F.S.Mittal vs. Union of India, 1995 Suppl. 2 SCC 230, Asha Paul vs. State of J&K, 1993 (3) SCC 573, Sharikarsar Das vs. Union of India 1991 (3) SCC 47, Rani Laxmibai Kshetriya vs. Chand Behari Kapoor, 1998 (7) SCC 469. Viewing the matter from this angle in the light of the aforesaid legal provisions, let us examine whether the applicant has made out any case for our interference.

4.3 It is admitted case between the parties that the applicant was selected pursuant to the advertisement dated 4.1.2002 issued vide Ann.A6 but he was not given appointment on the ground mentioned by the respondents in the reply affidavit viz. that the copy of the advertisement dated 4.1.2002 had not been sent to the Sarpanch and the Headmaster as required as per circular dated 19.1.68. On account of this lapse, a complaint was made by the affected person who had earlier applied pursuant to the advertisement dated 8.2.2001 but he could not apply again pursuant to the advertisement dated 4.1.2002 as no information regarding the said advertisement was given to him. According to us, there is no infirmity in the decision of the respondents whereby the panel so prepared in which the applicant was selected was scrapped and not given effect to due to some lapses. The respondents have given justifiable reasons for cancelling the select list and re-advertising the post afresh vide the impugned order dated 26.9.2002. The respondents have also placed on record certain documents alongwith report of the Sr.Superintendent of Post Office, Kota Division, Kota thereby recommending that the post should be re-advertised afresh as the advertisement dated 4.1.2002 was not advertised properly.

62

4.4 The applicant could not satisfy this Tribunal about the fact that the reasons stated by the respondents for cancelling the earlier selection and re-advertising the post are not well founded and the post is being re-advertised for extraneous considerations or for some other mala-fide reasons. As already stated above, selected candidates do not have any right to appointment even if vacancies exist, is well established judicial precedent.

5. For the foregoing reasons, the present OA is devoid of merit, which is hereby dismissed with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)