

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No.....23/2005..

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SECTION OFFICER (Judl.)

31/10/2017
31/10/2017

FORM NO. 4.

TELE. RULE 421

CENTRAL ADULT GUWAHATI BENCH

ORDER SHEET

23/05

Original Application No.

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicants: - Elias Rahman

Respondents: - U.O.I & O.P.S.

Advocates for the Applicant: - A. S. Choudhury, J. Hussain & R. Ali

Advocates of the Respondents: - C.G.S.C.

Notes of the Registry

Date

Order of the Tribunal

28.1.2005

Heard Mr. I. Hussain, learned counsel for the applicants.

The application is admitted, call for the records.

Issue notice to the parties, returnable within four weeks.

List on 1.3.2005 for orders.

This original application has been filed with I.P.O No. 206 117913 dated 27.1.05 for Rs. 50/-

Final before Hon'ble Court for orders.

N. S. Das
27.1.05
Section Officer (O)

Notice & order sent to D/Section for issuing resp Nos. 1, 2 & 3 by regd. A/D post and resp. No. 2 by Hand.

7/2/05.

28-2-05
5/2-2005

mb

Present : The Hon'ble Mr. K.V. Prahadan, Member (A).

Heard Mr. I. Hussain, learned counsel for the applicant and also Ms. U. Das, learned Addl. C.G.S.C. for the respondents.

Four weeks time is given to the respondents to file written statement. List on 6.4.2005 for orders.

K. V. Prahadan
Member (A)

31.3.05w/s filed by
the Respondents.5-4-05w/s has been filed
5/4 - awaited

5.4.2005 This case, O.A.27/2005 and O.A. 32/2005 are connected matters. It is submitted that the applicant in O.A. 32/2005 had already filed O.A.287/2003 which was dismissed. Ms. U. Das, learned Addl. C.G.S.C. submits that judgment in O.A.287/2003 has already been annexed to the written statement in O.A.32/2005.

In these circumstances post this O.A. together with O.A.27/2005 and O.A.32/2005 for admission on 12.4.05.

Signature
Vice-Chairman

bb

12.4.2005 Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

The Hon'ble Mr. K.V. Prahладан Member (A).

Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is disposed of.

Signature
Member (A)

Vice-Chairman

mb

D.U.C. → Memo No. HC XXI, 14, 491-95/204 dt'd
9.4.07 received from the Ass't. Registrar
(J.L.DT), Gauhati High Court, Gauhati 781001

The D.U.C. may kindly be seen.

WP(C) No 4477 of 2005 and WP(C)
No 6063 of 2005 were filed by the
applicants Elias Rahman and Johan
Ali respectively before the Hon'ble
Gauhati High Court against the
judgment and order dated 12-4-2005
passed by the Hon'ble Central Administrative
Tribunal, Gauhati Bench in OA
No 23/2005 and OA No. 27/2005 dismissing
the applications filed by the petitioners.
The Hon'ble High Court is pleased
to uphold the judgment and order of the
Hon'ble Tribunal on 23.2.2007 in
the above mentioned WP(C)s.

Submitted for favour of record
perusal.

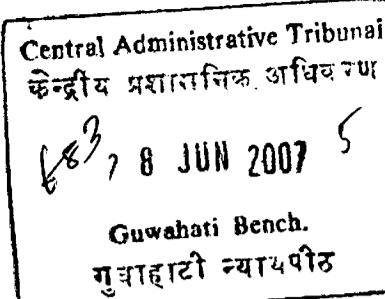
Ph.
18/7

(Signature)
S.O (S), 18/7/07.

BEGISTRAE

18/7

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IN THE GAUHATI HIGH COURT
(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

WP(C) NO 4477 OF 2005

The 30th Day of February, 2007

P R E S E N T
THE HON'BLE MR JUSTICE P G AGARWAL
THE HON'BLE MR JUSTICE H.N. SARMA

Petitioner:

Elias Rahman,
Son of Ebrahim Ali Sheikh,
Resident of village Chirakuti,
PO- Chirakuti, PS- Chapar,
Dist- Dhubri, Assam.

By Advocates:

Mr AS Choudhury, Sr Advocate,
Mr R Mazumdar,
Mr I Hussain,
Mr A Maleque,

Respondents:

1. Union of India,
Through the Secretary, Ministry of Communication
(Post), Govt. of India, New Delhi.
2. The Chief Post Master General,
Assam Region, Meghdoott Bhawan,
Guwahati- 1.
3. The Superintendent of Post Offices,
Goalpara Division, PO & Dist- Goalpara,
Assam.
4. Johan Ali,
Son of late Aburuddin Sk,
Resident of Ward No 4,
Gauripur Town,
PO- Gauripur,
Dist- Dhubri, Assam.
5. Abdul Rahman,
Son of Samad Ali,
Resident of village Chirakuti,

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27.6.07.
H.N. Sarma (H)
28/6/07

PO- Chirakuti, Dist- Dhubri, Assam.

6. The Central Administrative Tribunal,
Guwahati Bench, Rajgarh Road,
Guwahati- 6.

By Advocate:

Mr DC Chakravorty, Addl. CGSC.
Mr MU Mandal,
Mr MH Borbhuuya,
Mr A Hussain,

WP(C) NO 6063 OF 2005

Petitioner:

Johan Ali,
Son of late Aburuddin Sk,
Resident of Ward No 4,
Gauripur Town,
PO- Gauripur,
Dist- Dhubri, Assam.

By Advocates:

Mr MA Sheikh,
Ms A Begum,
Mr M Rahman,

Respondents:

1. Union of India,
Through the Secretary, Ministry of Communication
(Post), Govt. of India, New Delhi.
2. The Director of Postal Services, New Delhi.
3. The Chief Post Master General,
Assam Region, Meghdoott Bhawan,
Guwahati- 1.
4. The Superintendent of Post Offices,
Goalpara Division, PO & Dist- Goalpara,
Assam
5. Elias Rahman,
Son of Ebrahim Ali Sheikh,
Resident of village Chirakuti,
PO- Chirakuti, PS- Chapar,

2hr

Dist- Dhubri, Assam.

By Advocates:

Mr DC Chakravorty, Addl. CGSC.

THIS WRIT PETITION HAVING BEEN HEARD ON THE 20TH DAY OF FEBRUARY, 2007, THE COURT PASSED THE FOLLOWING —

JUDGMENT
(Sarma, J)

These two writ petitions are directed against the judgment and order dated 12.4.2005 passed by the learned Central Administrative Tribunal, Guwahati Bench, in OA No 23/2005 and OA No 27/2005 dismissing the applications filed by the petitioners.

2. We have heard the learned counsel for the parties and also perused the connected materials available before us.

3. In both the writ petitions, the petitioners have challenged the common order dated 12.4.2005 passed by the learned Central Administrative Tribunal, Guwahati Bench in OA No 23/2005 and OA No 27/2005. For the purpose of disposal of these writ petitions, we are stating the facts so far relatesto WP(C) No 4477/2005.

4. The Superintendent of Post Offices, Goalpara Division, respondent No 3 in WP(C) No 4477/2005 and respondent No 4 in WP(C) No 6063/2005, published an advertisement inviting applications for filling up the post of Branch Post Master at Chirakuti Branch Post Office. Pursuant to which the petitioners in both the writ petitions applied for the said post which was, however, cancelled by the authorities on 19.6.2003. Thereafter, vide another advertisement dated 20.6.2003, the said posts were again advertised. The petitioners in these writ petitions and 12

others applied for the said post. It is contended that the petitioners having found suitable called for interview and selection before the Selection Board on 18.9.2003, on which date the petitioners along with 12 others appeared before the Selection Board. After the aforesaid selection is over, the authorities without publishing the select list asked the petitioner in WP(C) No 4477/2005 along with another candidate, namely Rokibul Islam, to produce the land documents exclusively standing in their names vide communication dated 20.10.2003 and the petitioner in WP(C) No 4477/2005 stated to have complied with the said instruction and he was provisionally selected for the post of Branch Post Master. The authorities vide letter dated 10.12.2003 asked him to deposit cash security for Rs. 10,000.00 pledging to the department. Accordingly, the petitioner in WP(C) No 4477/2005 deposited cash security as directed by the authority. At that stage, one Abdur Rahim approached the Central Administrative Tribunal, Guwahati Bench, (for short the "Tribunal") in OA No 287/2003 challenging the select list prepared by the authority for appointment to the aforesaid post. Another candidate, namely, Jahan Ali has also filed TS No 581/2003 before the Civil Court at Dhubri praying for injunction restraining the opposite parties from appointing the petitioner in WP(C) No 4477/2005 to the aforesaid post. Along with other prayers, which was eventually dismissed. After dismissal of the said suit Jahan Ali approached the learned Tribunal by filing OA No 311/2004 praying for setting aside and quashing the select list so prepared by the authority. At that stage, the respondent authorities passed an order canceling the process of appointment to the post of Branch Post Master at Chirakuti including the selection of the petitioner in WP(C) No 4477/2005, Elias Rahman vide order dated 27.12.2004. After cancellation of the selection process, the authorities issued another notification dated 5.1.2005 calling for fresh application to the post. The aforesaid action of the respondent authorities was challenged before the learned Tribunal in OA No 23/2005. The learned Tribunal after hearing the parties

passed the common judgment and order dated 12.4.2005 dismissing OA Nos 23/2005, 27/2005 and 32/2005.

5. The grievance of the petitioner in WP(C) No 4477/2005 is that he was duly selected by the authority after having satisfied with his qualification and performance shown in the test and interview and the petitioner having complied with the necessary instructions such as deposit of cash security and other documents, the authority acted illegally, arbitrarily and whimsically in canceling the entire selection process including the selection of the petitioner and re-advertised the post.

6. We have considered the submissions made by the learned counsel for the parties. Upon going through the relevant advertisement inviting application for the post of Branch Post Master, it seen that a candidate has to enclose along with the application certain documents / certificates as per column VII of the application. That apart, the eligibility of the candidates has been provided in column 6(v) of the advertisement. Column 6(v) of and the column 7 of the advertisement are quoted hereinbelow:

6. ELIGIBILITY CONDITIONS:

- (i)
- (ii)
- (iii)
- (iv)
- (v) **INCOME AND PRIORITY:**

- (a) The candidate should have an independent source of income for his / her livelihood. Income certificate in candidate's own name (including clearly the source of income) issued by revenue / competent authority should be furnished in the enclosed proforma. Income in the name of guardians / others will not make the candidate eligible for the post. Only such candidates who fulfills this condition and all other eligibility conditions, will be eligible to apply for the post.
- (b) Preference will be given to those candidates who derive income from the landed property / immovable assets in their own name. A
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copy of the record of rights of property issued in respect of property in the name of candidate only should be enclosed. Joint property or hereditary property and transferred in the name of the candidate will not be considered as property in the name of the candidate. The landed property / immovable assets purchased / transferred in the name of the candidate subsequent to the submission of application but before the last date for receipt of applications, will be considered only if the copy of record of rights as mentioned above and income certificate issued by revenue / competent authority indicating the income from such property are submitted to reach the undersigned on or before the last date fixed for receipt of application.

7. DOCUMENTS TO BE ENCLOSED:

- Copies of the following certificates / documents should be enclosed to the application, invariably. If any of these enclosures listed below do not accompany the application, the application is liable to be rejected outright. The originals need not be sent. They may be produced for verification when called for.
 - (i) School leaving certificate / or certificate regarding date of birth.
 - (ii) Mark sheet of HSLC (any higher qualification if any)
 - (iii) Caste Certificate issued by DC / competent authority in the enclosed proforma. (in case of candidates belonging to SC/ST/OBC).
 - (iv) Record of rights of property (if property is in the name of the candidate only. If no such property exists, this enclosure is not insisted upon).
 - (v) Income certificate in the name of candidate issued by revenue / competent authority in the enclosed proforma.
 - (vi) Two character certificates issued by prominent persons of the locality.”

7. It is thus seen that amongst other documents a candidate has to submit along with his application the record of

Ans

rights of the landed property is a pre-condition for accepting candidature of an applicant. At this stage, we deem it appropriate to quote the stands of the respondents in their written statements, which are as follows:

"This case is regarding appointment for the post of GDSBPM of newly opened Chirakuti- I EDBO in a/c with Bilasipara SO. An advertisement for filling up the said post was made vide the office letter No B3/258/Chirakuti-I dated 20.6.2003 through employment Exchange and opened notification for submission of application to reach the office on or before 21.7.2003. In response, total 15(fifteen) applications were received within the specified time. All the candidates were asked to attend before the selection committee held on 18.10.2003 at the chamber of the Supdt of Post Offices, Goalpara Div. Dhubri. Out of 15, 14 candidates were appeared before selection committee held on 18.9.2003. All the applications were opened in presence of all the candidates and on scrutiny it was found that none of the candidates submitted register land deed to their own name. As such 4(four) candidates among them getting highest marks in HSLC Examination came to selection zone and those 4(four) candidates to submit land documents exclusively in their own names for final selection. Out of 4 candidates 2 candidates submitted registered land deed in their own name. The application Sri Jalan Ali submitted a land holding certificate in his own name but failed to submit registered land deed. So the name of Sri Jalan Ali was not figured in the selection list due to non-submission of registered land deed. Sri Elias Rahman fulfilled all the conditions and he was selected for the said post on 10.12.03 though his marks in the HSLC Examination was less than Sri Jahan Ali.".

8. It is the fact that none of the petitioners could submit any document of landed property standing in their names. Such requirements are necessary in terms of the policy of recruitment preferably in the department, which contains one of the pre-conditions for appointment. Post of Branch Post Master that is verification of properties and income. The authorities have also took note of the fact that a number of cases came to their light that such verification has been carried out only after appointment, This

Other

practice of verification after appointment is not in order and needs to be discontinued immediately, The particulars regarding property and private income should be verified before and not after the appointment, This should be brought to the notice of all appointing authorities for strict compliance (vide instruction as per letter No 43-198/85 dated 14.8.1985).

9. The authorities having found that the aforesaid requirement regarding submission of landed properties standing in the name of the applicants not furnished by any of the applicants, the authorities considered that the section process so far completed is vitiated and accordingly, cancelled the entire selection process including the selection of the petitioner and issued fresh advertisement for the post. On such consideration, the learned Tribunal rejected the claim of the petitioners further observing that they would be eligible to apply in terms of the subsequent advertisement made vide notification dated 5.11.2005.

10. We have considered the terms of the advertisement on the basis of which the petitioner applied for the post. The aforesaid terms read with instruction regarding method of recruitment clearly spells out such requirement of furnishing documents relating to landed property in the name of the applicant is one of the essential condition for an eligible candidate. None of the candidate having been fulfilled this basic criteria, the authorities thought it fit to cancel the selection process including the list so prepared and issued a fresh advertisement.

11. The learned counsel for the petitioners strenuously urged that the name of the petitioner having placed at serial No 1 of the select list, the said select list having been prepared after going through the selection process, the same cannot be cancelled even it is in violation of the condition of the advertisement.

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12. It is trite law that mere inclusion of the name in the select list does not confer any right of appointment to the candidate. That apart, in the instant case, the petitioners not having fulfilled the essential criteria in terms of the advertisement, it cannot be said that there was valid selection. Even if such an appointment is made such appointment would be illegal. The Apex Court in the case of A Umarani Vs Registrar, Cooperative Societies and others reported in (2004) 7 SCC 112, held that when appointments are made in contravention of the mandatory provisions of the Act and the statutory rules made thereunder and in ignorance of essential qualifications, the same would be illegal. The eligibility criteria of a candidate to hold the post is to be found out from the notification advertising the post. The department has already seized with the situation that verification done after the selection is illegal and departed from such practice. We are of the considered opinion that the selection of the petitioner for the post of Branch Post Master was made in violation of the essential requirements and essential terms of the advertisement and the authorities having detected the said defect has rightly cancelled the selection process and ^{re}advertised the post. The learned Tribunal has passed the impugned Judgment and order on the basis of the materials available on record and in compliance with the correct principle of law. Therefore, we do not find any reason to interfere with the same. Accordingly, these writ petitions stand dismissed.

Sd/-H.N. SARMA

Judge.

Sd/-P.G. AGARWAL

Judge.

(M)

Memo No. HC.XXI. 17/491-95 /R.M.Dtd. 9/4/02

Copy forwarded for information and necessary action to:-

1. Union of India, Through the Secretary, Ministry of Communication (Post), Govt. of India, New Delhi.
2. The Chief Post Master General, Assam Region, Meghdoot Bhawan, Guwahati-1.
3. The Superintendent of Post Offices, Goalpara Division, P.O. & Dist-Goalpara, Assam.
4. The Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Guwahati-5.
5. The Director of Postal Services, New Delhi.

By Order


Asstt. Registrar (Jud1)
Guwahati High Court, Guwahati.

3/5/02

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / Nos. 23/2005, 27/2005 & 32/2005

DATE OF DECISION 12.4.2005

1. Elias Rahman (O.A. No. 23/2005)

2. Jahan Ali (O.A. No. 27/2005)

3. Abdur Rahman (O.A. No. 32/2005), APPLICANT(S)

1. I. Hussain

2. M.A. Sheikh, ADVOCATE FOR THE
APPLICANT(S).

3. M.U. Mandal.

-VERSUS -

U.O.I. & Ors., RESPONDENT(S)

Ms. U. Das, Addl. C.G.S.C., ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the
judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the
Judgment ?

4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH**

Original Application Nos. 23/2005, 27/2005 and 32/2005

Date of Decision: This the 12th Day of April, 2005.

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Sri K.V. Prahladan, Administrative Member.

1. O.A. No. 23/2005

Elias Rahman
Village - Chirakuti
P.O. - Chirakuti
P.S. Chapar
District - Dhubri.

... Applicant

By Advocates Sri A.S. Choudhury, Mr. I. Hussain, Sri R. Ali.

Versus -

1. The Union of India,
Through the Secretary, Ministry of Communication (Post),
Government of India, New Delhi.
2. The Chief Post Master General,
Assam Region, Meghdoot Bhaban
Guwahati - 1.
3. The Superintendent of Post Offices,
Goalpara Division,
P.O. & District - Dhubri.

By Ms. U. Das, Addl. C.G.S.C.

2. O.A. No. 27/2005

Johan Ali
S/o Late Aburuddin Sk.
R/o Ward No. 4, Gauripur,
P.O. & P.S. Gauripur,
District - Dhubri (Assam).

... Applicant

By Advocates Sri M.A. Seikh, Sri M. Rahman, Sri I. Ahmed.

- Versus -

1. The Union of India, represented by the Secretary to the Government of India Department of Communication, New Delhi.
2. The Director of Postal Services, New Delhi.
3. The Chief Post Master General, Assam Circle, Meghdoot Bhaban, Guwahati.
4. The Supdt. of Post Officers, Goalpara, Division, Dhubri, District Dhubri (Assam).
5. Elias Rahman, son of Ibrahim Khalil Village & P.O. - Chirakuti, P.S. - Chapor, District - Dhubri (Assam).

... Respondents

By Ms. U. Das, Addl. C.G.S.C.

3. O.A. No. 32/2005

Abdur Rahim
 Son of Samad Ali
 Village - Chiracuta,
 P.O. - Ghirasuti,
 P.S. - Chapor,
 District - Dhubri, Assam

... Applicant

By Advocates Sri M.U. Mandal, Sri M.H. Barbhuyan,
 Sri Z. Hussain.

- Versus -

1. The Union of India, represented by the Secretary to the Govt. of India, Department of Communication, New Delhi.
2. The Director of Postal Services, The Post Master General, Assam, Meghdoot Bhawan, Guwahati.
3. The Superintendent of Post Office, Goalpara Division, Dhubri, District - Dhubri, Assam.

4. The Inspector of Posts,
Dhubri Sub-Division, Dhubri.

... Respondents.

My Ms. U. Das, Adl. C.G.S.C.

ORDER (ORAL)

SIVARAJAN, J. (V.C.)

Applicants in all the three O.As were applicants for the posts of GDS BPM of Chirakuti EDBO pursuant to the Notification No B3/350/Chirakuti dated 20.6.2003 (Annexure - 3 in O.A. No. 27/2005). Altogether there were 15 applicants. After conducting the selection process Mr. Elias Rahman, the applicant in O.A. No. 23/2005 (5th Respondent No. O.A. No. 27/2005) was selected and appointed as GDSBPM of Chirakuti EDBO as per order dated 10.12.2003, followed by order dated 17.12.2003 (vide Annexures 6 and 7 to O.A. No. 23/2005). This was challenged by Mr. Abdur Rahim the applicant in O.A. No. 32/2005 before this Tribunal by filing O.A. No. 287/2003. The applicant in O.A. No. 23/2005 was the 5th Respondent in the said O.A. whereas the applicant in O.A. No. 27/2005 was not party. He filed another O.A. No. 311/2004 challenging the very same order. A Division Bench of this Tribunal to which one of us (Hon'ble Sri K.V. Prahladan, Administrative Member) was a party dismissed O.A. No. 287/2003 by order dated 23.09.2004 (Annexure - 13) by upholding the selection and appointment of the applicant in O.A. No. 23/2005 and the order has become final.

2. While the matter stood thus the 4th Respondent in O.A. No. 27/2005 has decided to cancel the entire selection process and directed the 4th Respondent therein to implement the same vide Order dated 07.12.2004 (Annexure - 11).

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Accordingly the 4th Respondent issued proceedings dated 27.12.2004 (Annexure - 12 in the said O.A.) canceling the selection.

3. When O.A. No. 311/2004 came up for consideration on 19.01.2005 the Tribunal noted the challenge made in O.A. No. 287/2003 and its dismissal as also the cancellation of the selection made as per the above two orders. It was thereafter observed that the applicant may have to challenge the decision to cancel the selection process for which the applicant will have a separate cause. It was further observed thus 'He may, if advised, file appropriate application in view of the cancellation of the selection process and we grant liberty for filing such application, in case, the applicant is so advised'. The application was disposed of with the above observation at the admission stage.

4. Pursuant to the cancellation of the selection as per order dated 27.12.2004, the respondent has issued a fresh notification No. B3/358/Chirakuti-1 dated 05.01.2005 (Annexure - 13 to O.A. No. 32/2005 inviting fresh applications to the notified post.

5. Applicants in O.A. No. 23/2005 and O.A. No. 27/2005 challenge the cancellation of the selection (vide order dated 27.12.2004) and the issuance of the fresh notification dated 05.01.2005. While the applicant in O.A. No. 27/2005 as a consequence seeks for direction to appoint him to the notified post, the applicant in O.A. No. 23/2005, on the strength of the Tribunal order dated 23.09.2004 in O.A. No. 287/2003, seeks for direction to permit him to join duty in the notified post based on his earlier appointment made on 10.12.2003 and 17.12.2003.

6. It is the case of the applicant in O.A. No. 23/2005 who was the 5th Respondent in O.A. No. 287/2003 that this Tribunal has upheld the selection and appointment of the applicant as per order in the said O.A. and therefore,

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cancellation of the selection and appointment order by the Respondents ignoring the order passed by this Tribunal is illegal and unjustified. The case of the applicant in O.A. No. 27/2005 is that he was not party in O.A. No. 287/2003 and therefore order passed therein will not bind him. It is his further case that earlier he filed O.A. No. 311/2004 and this Tribunal vide order dated 19.01.2005 noticing the fact that the selection earlier made has been cancelled by the authorities, disposed of the application with liberty to the applicant to file fresh application challenging the cancellation order and that it is in view of the above, the present application is filed. It is his further case that since he has secured maximum marks in the HSLC examination and also fulfilled the required conditions he was entitled to be selected and appointed to the said post in preference to the applicant in O.A. No. 23/2005. He also pointed out that the cancellation order was passed during the pendency of O.A. filed by him.

7. The case of the applicant in O.A. No. 32/2005 is that though his application O.A. No. 287/2003 challenging the selection and appointment of the applicant in O.A. No. 23/2005 was dismissed in view of the fact that the respondent themselves have cancelled the entire selection process including the appointment of the applicant in O.A. No. 23/2005 and in view of the fact that he had worked as Branch Postmaster of Zamduar Branch Post Office for five months in a temporary capacity, he must be posted in the notified vacancy on regular basis or provide him alternative employment. He had also, it is stated, filed a representation-dated 03.01.2005 (Annexure - 12 to his application) for the said relief. For the said purpose he wants the fresh notification dated 05.01.2005 to be quashed.

8. We have hear Mr. M.U. Mandal, learned counsel for the applicant in O.A. No. 32/2005, Mr. I. Hussain, learned counsel for the applicant in O.A. No.

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23/2005 and Mr. M.A. Seikh, learned counsel for the applicant in O.A. No. 27/2005 and Ms. U. Das, learned Addl. C.G.S.C. for the Respondents in all the three cases. They made their respective submissions. We will now deal with the said submissions.

9. We will first deal with the case of the applicant in O.A. No. 32/2005. He challenged the selection and appointment of the applicant in O.A. No. 23/2005 by filing O.A. No. 287/2003, which was dismissed. The said order as already stated has become final. However, the Respondents/Officers have cancelled the selection of the applicant in O.A. No. 23/2005 and a fresh notification dated 05.01.2005 was issued. The selection pursuant to the notification is yet to take place. He now wants the notification to be quashed for the purpose of giving him regular appointment in the said post. Here it must be noted that his case is that he had worked as a temporary Branch Postmaster for about 5 months prior to the first notification dated 27.01.2003 and therefore he must be regularly posted in the notified vacancy. This cannot be granted for the reason that he had not established his right with reference to any Rules or orders in that regard. That apart, such a claim was not raised any time prior to Annexure - 12 representation of January, 2005 though the vacancy was notified as early as 27.01.2003. He had also applied for the post and lost in the litigation. Hence there is no merit in the claim for appointment in the notified vacancy. It is, accordingly rejected. However, it is for the respondents to consider the applicant's other claim i.e., for alternate appointment and arrears of pay made in Annexure - 12 representation, if the same has already been received. Order will also be passed within a period of three months from the date of receipt of this order.

10. Now coming to the application Nos. 23/2005 and 27/2005, the applicant in O.A. No. 23/2005 heavily relies on the order in O.A. No. 287/2003 which is in

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his favour, whereas the applicant in O.A No. 27/2005 contends that he was not a party to the said O.A. and therefore the said order does not bind him. It is an admitted position that he secured highest marks 59.76% in the HSLC examination and therefore, the Tribunal in the earlier proceedings was not justified in holding that the applicant in O.A. No. 23/2005 has secured highest marks when he had secured only 56.50% marks. The counsel for the applicant in O.A. No. 23/2005 highlighted that in view of the decision in O.A. No. 287/2003 which has become final the respondents are bound by the same and consequently cancellation of the entire selection process and the appointment order in his favour was illegal. Counsel also highlighted that the applicant in O.A. No. 27/2005 apart from other defects, did not satisfy the residential requirement under the notification. On the other hand the contention of the counsel for the applicant in O.A. No. 27/2005 is that when the authorities have clearly found, as noted in the proceedings dated 07.12.2004, that the applicant had secured the highest mark in the HSLC Examination apart from fulfilling the conditions including property/income condition and had also produced a land holding certificate issued by the appropriate authority the insistence of land document and the rejection of the candidature of the applicant was not proper they were not justified in canceling the entire selection instead of selecting and appointing the applicant for the post. From the written statement filed on behalf of respondents No. 1 to 4 in O.A. No. 27/2005 the situation becomes clear. It is stated in paragraph 2 – statement of facts in the written statement thus :

“This case is regarding appointment for the post of GDSBPM of newly opened Chirakuti-I EDBO in a/c with Bilasipara S.O. An advertisement for filling up the said post was made vide the office letter No. B3/258/Chirakuti-I dated 20.06.2003 through employment Exchange, and opened notification for submission of application to reach the office on or before 21.07.2003. In response, total 15(fifteen) applications were received within the specified date.

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All the candidates were asked to attend before the selection committee held on 18.09.2003 at the chamber of the Spud. Of Post Offices, Goalpara Div. Dhubri. Out of 15, 14 candidates were appeared before selection committee held on 18.9.03. All the applications were opened in presence of all the candidates and on scrutiny it was found that none of the candidates submitted register land deed to their own name. As such 4 (four) candidates among them getting highest marks in HSLC Examination came to selection zone and those 4(four) candidates to submit land documents exclusively in their own name for final selection. Out of 4 candidates 2 candidates submitted registered land deed in their own name. The application Sri Jalan Ali submitted a land holding certificate in his own name but failed to submit registered land deed. So the name of Sri Jalan Ali was not figured in the selection list due to non-submission of registered land deed. Sri Elias Rahman fulfilled all the conditions and he was selected for the said post on 10.12.03 though his marks in the HSLC Examination was less than Sri Jahan Ali.

11. In the notification inviting applications for the notified post eligibility condition No. V- Income and property clause (a) clearly provides that candidate should have an independent source of income for his livelihood, income certificate in own name issued by the competent authority should be furnished. It is also provided that preference will be given to those candidates who derive income from the landed property immovable property in their own name. A copy of the record of rights of property issued in respect of property in the name of candidate only should be enclosed. It is further stated that such documents will be considered only if they are submitted before the last date fixed for receipt of the application. Condition No. 7 specified the documents to be enclosed alongwith the application. Item No. IV is record of rights of property (if property is in the name of candidate only).

12. In the application No. 27/2005 in para 4.6 it is stated that the 4th respondent issued a letter dated 20.10.2003 directing the applicant and another to produce land document exclusively in their names and para 4.7 it is stated that

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the applicant submitted a land holding certificate dated 04.11.2003 (Annexure - 8).

13. Thus from the written statement of respondents 2 to 4 extracted above it is clear that none of the applicants submitted register land deed to their own name. The applicant has been produced the land holding certificate in his own name only after a direction issued by the 4th respondent. These are contrary to the terms and conditions contained in clause V(b) of the advertisement. Thus, the applicant in O.A. No. 27/2005 is not correct in stating that he satisfied all the conditions specified in the notification.

14. Admittedly none of the candidates have produced register land deed, which was a requirement. In view of clause V(b) and 7 the respondents were not justified in affording opportunity to any of the applicants for producing the document subsequently. Though the selection and appointment of the applicant in O.A. No. 23/2005 was upheld in O.A. No. 287/2003 the same was on the premise that he had secured highest mark in the HSLC examination, which is incorrect. The applicant in O.A. No. 27/2005 secured the highest mark. Further he was not a party in O.A. No. 287/2003. As such, the decision in the said case will not bind him. Notwithstanding the illegality if the selection and appointment of the applicant in O.A. No. 23/2005 is upheld it will amount to ignoring the claim of a more meritorious Candidate. In these circumstances, the cancellation proceedings dated 07.12.2004 and 27.12.2004 of Respondents No. 3 and 4 respectively are upheld.

15. Having regard to the facts that the respondents have advertised the vacancy again by notification dated 05.01.2005, all the applicants are getting one more opportunity to apply for the post fulfilling all the conditions in the said notification. It is seen that the selection meeting was scheduled to be held on

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10.03.2005 as per letter dated 16.02.2005, and same was cancelled due to some unavoidable reasons as per proceedings dated 28.02.2005 (Annexure - 3 to the written statement of Respondents 1 to 4 in O.A. No. 27/2005). Though Ms. U. Das, learned Addl. C.G.S.C. for the respondents has submitted that notification dated 05.01.2005 itself has been cancelled by the said letter it does not follow from the Annexure - 3. It is only the meeting scheduled to 10.03.2005 that is cancelled. The respondents 1 to 4 in O.A. No. 27/2005 are directed to conduct the selection to the notified post strictly in accordance with the terms and conditions of the notification dated 05.01.2005 expeditiously.

In the result O.A. Nos. 23/2005 and 27/2005 are dismissed with above observation. O.A. No. 32/2005 is disposed of in terms of para 9 of this order.

KV Prahadan
(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER

G. Sivarajan
(G. SIVARAJAN)
VICE CHAIRMAN

/mb/

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संघीय प्रशासन न्याय नियमित
Central Administrative Tribunal

27 JAN 2005

गुवाहाटी न्यायालय

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BRANCH

GUWAHATI.

(An application Under section 19 of the Central Administrative
Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 23 /2005

BETWEEN

Elias Rahman Applicant

AND

The Union of India & Ors., .. Respondents

SYNOPSIS

A Notification dated 20.6.03 was published by the Superintendent of Post offices, Goalpara Division, Dhubri inviting applications for the post of Gramin Dak Sevak (GDS) Branch post Master (BPM) for Chirakuti Branch Post office (B.P.O) District Dhubri and the applicant was selected for the said post through a selection process. The applicant submitted all the relevant documents and also deposited Rs.10,000/- as security deposite and appointment letter was issued accordingly. But all of a sudden the whole process of selection as well as appointment of applicant were cancelled without any reason or issuing any notice etc. (vide annexure No.13).

Subsequently fresh notification dated 5.1.05 issued for the aforesaid post by the authorities (vide annexure-14)

Being aggrieved, the applicant has filed this application praying for setting aside and quashing the impugned order/notification etc. and for a direction the respondents to allow the applicant to join in the post for which he was already selected and appointment letter was issued.

(Details as per paragraph 8 of the application)

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LIST OF DATES

Sl.No.	Dates	Particulars	Annexure No. Page No.
1.	27.01.03	Notification issued by Supdt. of Post Offices, Goalpara Division, Dhubri for post of G.D.S. B.P.M. Chivakuti B.O.	
2.	19.06.03	Cancellation of Notification.	
3.	20.06.03	Fresh Notification dtd. 20.6.03 inviting application for the said post.	Annexure No.3 Page-18 to 21
4.	27.08.03	Interview call letter to appear on 18.9.03.	Annexure No.4 Page-22.
5.	19.09.03	Letter of Supdt. direct- ing the applicant to submit land documents in his name.	Annexure No.5 Page-23.
6.	10.12.03	Letter of Supdt. regarding provisional appointment of the applicant and direction to submit necessary documents and to deposit security of Rs. 10,000/-.	Annexure No.6 Page-24.

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Sl.No.	Dates	Particulars	<u>Annexure No.</u> <u>Page No.</u>
7.	17.12.03	Provisional appointment letter of the applicant.	<u>Annexure No.7</u> <u>Page-27.</u>
8.	23.12.03	Submission of pass book showing depositing of Rs. 10,000/- pledged to Supdt.	<u>Annexure No.8</u> <u>Page-28</u>
9.	23.09.04	Order passed by the Hon'ble Tribunal dismissing the O.A. No. 287/03 filed by an unsuccessful candidate A. Rahim.	<u>Annexure No.9</u> <u>Page-27 to 31</u>
10.	30.4.04	Order passed by ld. Civil Judge (Jr. Div.) No. 1 Dhubri dismissing the, T. S. No. 581/03 & Misc. (J) Case No. 407/ 03 filed by another candidate Jahan Ali.	
11.	9.8.04	Order dtd. 9.8.04 passed by Ld. Civil Judge (Sr. Div.) Dhubri dismissing the Misc. (J) No. 14/04 filed by Jahan Ali.	<u>Annexure No. 10</u> <u>Page-32 to 37.</u>

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Sl.No.	Dates	Particulars	Annexure No. Page No.
11.	9.8.04	Judgment passed by Lt. Civil Judge (Sr. Div.) Dhubri dismissing the Misc. Appeal No. 15/04 filed by Jahan Ali.	<u>Annexure No. 11</u> Page-38 to 44
12.	16.8.04	Legal Opinion furnished by departmental Counsel expressing opinion in favour of the applicant.	<u>Annexure No. 12</u> Page-45.
13.		O.A. No. 311/04 filed by Jahan Ali in this Hon'ble Tribunal supressing the fact of dismissal of the T.S. and appeal cases by Civil Judges praying cancellation of appointment of the present applicant which is pending disposal.	
14.	27.12.04	Impugned order passed by the Supdt. cancelling the appointment of the applicant without any reason or notice.	<u>Annexure No. 13</u> Page-46
15.	5.1.05	Impugned Notification issued by the Supdt. inviting fresh applications for the same post.	<u>Annexure-14</u> Page-47 to 50

I. Hussain
Filed by - I. Hussain,
Advocate.

I. Hussain

2 JAN 2005

- E -

Guwahati Bench

In the Central Administrative Tribunal, Guwahati Bench,
at Guwahati.

(An application under Section 19 of Central Administrative
Tribunal Act, 1985).

ORIGINAL APPLICATION NO. 23 /2005

BETWEEN

ELIAS RAHMAN Applicant.

- Vrs -

THE UNION OF INDIA
AND OTHERS. Respondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Annexure No.</u>	<u>Page No.</u>
1.	Application with Verification. -	-	1 to 15
2.	Birth Certificate -	1	16
3.	H. S. L. C. Pass certificate -	2	17
4.	Notification dtd. 20.6.03 inviting applications. -	3	18 to 21
5.	Interview call letter dtd. 27.8.03	-	
6.	Letter dt. 19.9.03 of Supdt. -	4	22
7.	Letter dtd. 10.12.03 of Supdt. regarding selection of of the applicant. -	5	23
8.	Letter dt. 17.12.03 of Inspector of Posts, Dhubri regarding apptt. of the applicant & to submit pass book. -	6	24
		7	25.

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<u>Sl.No.</u>	<u>Particulars</u>	<u>Annexure No.</u>	<u>Page No.</u>
9.	Photocopy of pass book -	8	26
10.	Order dt. 23.9.04 passed in O.A. No. 287/03. -	9	27 to 31.
11.	Order dt. 9.8.04 passed in Misc.(J) Case No. 14/04 filed by Jahan Ali. -	10	32 to 37
12.	Judgment dtd. 9.8.04 passed in Misc. Appeal No. 15/05 filed by Jahan Ali. -	11	38 to 44
13.	Legal Opinion. -	12	45
14.	Impugned order dtd. 27.12.04 passed by Supdt. cancelling the selection process. -	13	46
15.	Impugned Notification dtd. 5.1.05 issued by Supdt. inviting fresh application. -	14	47 to 50
16.	Vakalatnama.		
17.	Notice.		

I Hussain

Filed by : (I. HUSSAIN)
ADVOCATE.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

(An application under Section 19 of the Central Administrative
Tribunal Act, 1985).

ORIGINAL APPLICATION NO. /2005

BETWEEN :-

ELIAS RAHMAN

APPLICANT

- AND -

THE UNION OF INDIA

AND OTHERS.

RESPONDENTS.

DETAILS OF THE APPLICANT :-

1. NAME AND ADDRESS
OF THE APPLICANT : - ELIAS RAHMAN
son of Ebrahim Khalil Sk.
village- Chirakuti,
P.O- Chirakuti.
P.S- Chapar.
District- Dhubri.

2. DESIGNATION : - Selected candidate for Gramin
Dak Devak Branch Post Master.
(G.D.S B.P.M.) Chirakuti,
Branch Post Office (B.P.O)
District- Dhubri, Assam.

PARTICULARS OF RESPONDENTS :-

Name and Designation of the:- 1. The Union of India,
respondents. through the Secretary
Ministry of Communication
(Post) Govt. of India,
New Delhi.

2. ...

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Filed by the Applicant
ELIAS RAHMAN
through
S. Hossain
Dak
27.1.05

Ebrahim

2. The Chief Post Master General,
Assam Region, Meghdoott Bhaban
Guwahati- 1.
3. The Superintendent of Post Offices,
Goalpara Division, P.O and
District- Dhubri.

**1. PARTICULARS OF THE ORDERS AGAINST WHICH
APPLICATION IS MADE :-**

1. The application has been filed against the impugned Order vide Memo No.B3/358/Chirakuti dated Dhubri the 27.12.2004 issued by the Superintendent of Post Offices, Goalpara Division, Dhubri in pursuance of direction of the Chief Post Master General Assam, Guwahati's cancelling the whole process of appointment for Gramin Dak Sevak, Branch Post Master hereinafter referred to as G.D.S B.P.M., Chirakuti B.O as well as selection of the applicant in the said post (vide Annexure No.13).

2. The impugned Notification No.B 3/358/ Chirakuti dated Dhubri the 05.01.2005 issued by the Superintendent of Post offices, Goalpara Division, Dhubri inviting applications for the post of G.D.S- BPM Chirakuti, B.O. for which the applicant was earlier selected through due selection process (Vide annexure No.14)

W. B. D. M.

2. JURISDICTION OF THE TRIBUNAL :-

The applicant declares that the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :-

The applicant declares that the application is filed before this Hon'ble Tribunal within time limit prescribed under Sec. 21 of Administrative Tribunal Act, 1983.

4. FACTS OF THE CASE :-

4.1. That the applicant is a citizen of India and is a permanent resident of village Chirakuti, P.O and P.S- Chirakuti, District- Dhubri.

The translated copy of Birth certificate is annexed herewith and marked as ANNEXURE No.1.

4.2. That, the applicant passed H.S.L.C. Examination in the year 2001 with IInd Division.

The copy of H.S.L.C. Examination marksheet is annexed herewith and marked as ANNEXURE No.2.

4.3 That, the applicant states that, the respondent No.3 issued a notification dated 27.10.2003 inviting applications to the post of Branch Post Master (BPM) for Chirakuti-I

Branch

W. R. Dhar

Branch office in Dhubri District of Assam. Accordingly the applicant applied for the same. However, the aforesaid notification was cancelled on 19.6.03 and a fresh notification dated 20.6.03 was issued inviting applications. The detail terms and conditions were mentioned in the notification. As the applicant fulfills the same, he again applied alongwith some other candidates.

The copy of notification dated 20.6.03 issued by respondent No.3 inviting application is annexed herewith and marked as ANNEXURE No.3.

4.4) That, the applicant applied for the post alongwith all necessary particulars, documents and certificates like land holding certificate, character certificates, Health certificate, income certificate etc. The applicant is in possession of copies of all the aforesaid documents and has not annexed the same for sake of brevity and shall produce the same before the Hon'ble Tribunal if so directed.

4.5) That the applicant states that, thereafter, the respondent No.3 vide a letter dated 27.8.03 directed applicant to attend selection committee meeting for ~~xx~~ selection for the post on 18.9.03 at 1200 Hrs. at his office at Dhubri. The applicant appeared for the selection process and fared well.

The copy of interview call letter dated 18.9.03 is annexed herewith and marked as ANNEXURE No.4.

4.6) That after the selection process, the respondent No.3 vide a letter dated 19.9.03 asked the applicant to submit land documents in his own name before 10.11.03 for getting selection for the post. Accordingly, the applicant also submitted the land document which was in his own name.

The typed copy of letter dated 17.9.03 of respondent No.3 for submission of land documents is annexed herewith and marked as ANNEXURE No.5.

4.7) That, the applicant was provisionally selected for the post of GDS BPM and as such the respondent No.3 vide a letter dated 10.12.2003 informed the ~~applicant~~ applicant about his selection and asked to submit cash ~~security~~ security amounting to Rs. 10,000/- pledged the department and other documents as per details given in the letter.

The copy of letter dated 10.12.2003 of Respondent No.2 informing the applicant about his selection and to produce the necessary documents is annexed herewith and marked as ANNEXURE No.6.

4.8) That, thereafter the Inspector of Posts, Dhubri Sub.Division passed an order for taking over charge by the applicant as BPM of Chirakuti EDBO and

relieved

SRB/BS

relieved Sri Abdul Kalam Sk. of Kadamtola EDBO who was also holding the post BPO Chirakuti EDBPO.

The copy of letter dated 17.12.03 of Inspector of Posts. Dhubri Sub-Division is annexed herewith and marked as ANNEXURE No.7.

4.9) That, in the meantime, the applicant deposited an amount of Rs. 10,000/- at Dhubri post office pledged to the respondent No.3 on 23.12.03 as directed along with other documents.

The copy of pass Book issued by the Dhubri post office is annexed herewith and marked as ANNEXURE No.8.

4.10) That the applicant states that, when everything was complete to appoint the applicant, one Sri Abdur Rahim who was also a candidate for the post approached the Hon'ble Central Administrative Tribunal, at Guwahati vide O.A No.287/03 praying inter alia for setting aside and quashing the select list and appointment letter issued by in favour of the present applicant (who was impleaded as respondent No.4) and to appoint him (Applicant of O.A No.287/03). In the said application the applicant Sri Abdur Rahman in paragraph 4.5 made some unfounded allegations against the present applicant stating that, he is a man of bad character and was involved in many notorious

activities

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activities like immoral living without any supporting documents just to malign the present applicant. The Hon'ble Tribunal took a very serious view in the matter which is reflected in the Order dated 23.9.04 by which the said application was dismissed with cost.

The copy of Order dated 23.9.04 passed in O.A. No.287/2003 is annexed herewith and marked as ANNEXURE No.9.

4.11) That the applicant states that, another candidate Jahan Ali, preferred a Civil Suit vide T.S. No.581/03 before the learned Civil Judge (Junior Division) No.1, Dhubri alongwith Misc.(J) Case No.407/03 for granting temporary injunction restraining the opposite parties from appointing the present applicant (Elias Rahman) and also for granting permanent injunction etc. along with other prayers. The aforesaid case was dismissed by the learned Civil Judge (Jr. Div.) No.1 Dhubri vide an Order dated 30.4.04. Thereafter Jahan Ali filed Misc. Appeal No.15/04 alongwith Misc.(J) Case No.14/04 before the learned Civil Judge (Sr. Div) Dhubri against the Order of Court below. Both the cases were dismissed by the learned Civil Judge (Sr. Div) vide Orders dated 9.8.04 holding the appeal without any merit and affirmed the order of the learned Civil Judge (Jr. Div.)

The copy of Order dated 9.8.04 passed by the learned Civil Judge (Sr. Div) Dhubri in Misc.(J) Case No.14/04 is annexed herewith and marked as ANNEXURE No.10.

Elias Rahman The

The copy of Judgment dated 9.8.04 passed by the learnrd Civil Judge (Sr. Div), Dhubri in Misc. Appeal No.15/04 is annexed herewith and marked as ANNEXURE No.11.

4.12) That the applicant states that, the Advocate for the department also sent his legal opinion dated 16.8.04 stating that, there is no impediment against appointment, joining and functioning of Elias Rahman in the post of B.P.M. Chirakuti Branch post office in connection with the aforesaid cases.

The copy of legal opinion dated 16.8.04 is annexed herewith and marked as ANNEXURE No.12.

4.13) That the applicant states that, on failure to get any relief, Jahan Ali preferred O.A. No.311/2004 in this Hon'ble Tribunal to set aside and quash the select list and appointment letter made by the Superintendent of Post Offices, Goalpara Division, Dhubri made in favour of the present applicant and to appoint him (Jahan Ali) in the post and the O.A. No.311/04 is pending disposal and interim order has been passed by this Hon'ble Tribunal. In the O.A. the present applicant was impleaded as respondent No.5 and he is in receipt of the notice of the same. It is pertinent to mention that, Jahan Ali, applicant in O.A. No.311/04 made a false statement in paragraph 7 that he filed Title Suit No.581/02 before the learned Civil Judge (Jr. Division), Dhubri on the same subject matter and the same was subsequently

Subhankar withdrawn ,....

withdrawn as 14.10.04 and no other case was filed.

But, as per records the T.S. was dismissed but not withdrawn and against the same Misc. Appeal No.15/04 alongwith Misc.(J) Case No.14/04 were filed befor the learned Civil Judge (Sr. Division), Dhubri. Ultimately both the cases were dismissed by the Court vide seperate orders dated 9.8.04 which are already annexed as Annexure Nos. 10 and 11 of the present application.

4.14) That the applicant states that, when everything was complete, the respondent No.3 issued the impugned order dated 27.12.04 purportedly as per direction of the respondent No.2 dated 7.12.04 and cancelled the whole process of appointment for G.D.S. BPM, Chirakuti, B.O. made by his order dated 29.01.03 and accordingly cancelled the appointment of the applicant in the said post.

The copy of impugned order dated 27.12.2004 passed by the respondent No.3 is annexed herewith and marked as ANNEXURE No.13.

4.15) That the respondent No.3 again issued a notification dated 05.01.2005 inviting applications for the post of BPM/Chirakuti, B.O. which are to be reached his office on or before ~~05.02.2005~~ 05.02.2005. The terms and conditions remained same as was in earlier notification.

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The copy of impugned notification dated 05.01.2005 issued by the respondent No.3 inviting applications for the post of B.P.M, Chirakuti-1 B.O. is annexed herewith and marked as ANNEXURE No.14.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION :-

5.1) For that, the applicant being eligible and selected for the post of BPM after due procedure and rules and there was no infirmity in his selection and appointment for the said post. The respondents were duty bound to allow the applicant to join and to serve accordingly in the post.

5.2) For that, there was no cause of action for issuance of impugned order dated 27.12.2004 by the respondent No.3 cancelling the whole process of selection of appointment of GDS BPM, Chirakuti as well as selection of the applicant for the said post that too without any notice whatsoever. The action of the respondents in doing so is illegal, arbitrary and against the principle of equity, good conscience and administrative fairness and as such the impugned order is liable to be set aside and quashed.

5.2) For that, there was no cause of action to file any case/application by the unselected candidates against the selection and appointment of the applicant

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applicant which unnecessary delayed the appointment of the appointment process which culminated in cancellation of the whole process of selection and thus depriving the applicant from his legitimate right of serving the department in a most arbitrary manner ^{which} requires interference of this Hon'ble Tribunal.

5.3) For that, the respondents have violated the act, rules, guidelines while cancelling the selection process without any reason whatsoever depriving the applicant of his fundamental rights.

5.4) For that, the respondents ~~ought~~ have formally allowed the applicant to join and to continue in service without any difficulties as he was eligible for the post and was ~~only~~ duly selected.

5.5) For that, the action of the respondents in publishing fresh notification dated 5.1.05 inviting application for the same post is illegal, arbitrary and is liable to be set aside and quashed.

5.6) For that, the Hon'ble Supreme Court in Civil Appeal No.5321/2003, ~~divided on 28.8.03 reported in (2003) 7 S.C.C 285 held that, -~~ Union of India and others. Vs. - Rajesh P.U. Puthuvalni and Kather and another ^{and} divided on 30.7.03 reported in (2003) 7 S.C.C 285 held that, -

there

there was no justification to deny appointment to selected candidates whose selection was not vitiated in any manner and cancellation of selection in their entirety by authority. Absence of any specific or categorical finding of wide spread infirmities of all pervasive nature unduring the selection process- Held, the competent authority mis-directed itself in taking such an extreme and unreasonable decision cancellation of the selection of untainted candidate held, not justified. The Hon'ble Supreme Court dismissed the appeal and directed the authorities to appoint the selected candidates within 60 days without any delay. As there was no ~~an~~ irregularities in appointment of the present applicant, this Hon'ble Tribunal may be pleased to direct the respondents to allow the applicant to join in his service and continue as such.

In another case, Civil Appeal No.3297/2000

J. Singh - Vs.- State of M.P and others decided on 8.5.2000 reported in (2002) 9 S.C.C- 700 the Hon'ble Supreme Court held that appointment of appellants cancelled without any opportunity of hearing to them cancellation order is set aside. As the respondents have not given any opportunity of hearing before passing of the impugned order he deserves similar benefits in the interest of justice.

6. DETAILS OF REMEDIES EXHAUSTED :-

The applicant approached the respondent No.3 for allowing him to join and serve in the post

W.H.W. but

but instead cancelled the selection process and issued fresh notification inviting application for the post. As such the applicant has been compelled to approach this Hon'ble Tribunal for proper and expeditious relief.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT.

The applicant, declares that, he has not filed any suit, writ petition or any other application/petition etc. in any court of law and no case is pending before ⁱⁿ any court or Tribunal.

8. RELIERS SOUGHT FOR :-

Under the facts and circumstances, as stated above, the applicant prays that the application be admitted, records called for and notices be issued to the respondents to show cause & so as to why the relief sought for should not be granted and after hearing the parties and on perusal of the records, be pleased to grant the following reliefs :-

8.1) To set aside and quash the impugned order dated 27.12.2004 passed by the Superintendent of post offices, Goalpara Division, Dhubri (respondent No.3) cancelling the whole process of appointment for BPM, Chirakuti B.O in A/C Bilashipara S.O as well as cancellation of appointment of the applicant in the aforesaid post (vide Annexure No.13 to this application).

8.2

Subm

8.2) To set aside and quash the impugned Notification dated 5.1.05 issued by the Superintendent of Post offices, Goalpara Division, Dhubri (Respondent No.3) inviting fresh application for the post of BPM, Chirakuti B.O. (Vide Annexure No.14 to this application)

8.2) To direct the respondents to allow the applicant to join and to serve as BPM of Chirakuti B.O. as per the selection process made in pursuance of advertisement dated 20.6.03 and to pay his salary etc. and to give all service benefit as per rule with retrospective effect i.e. from 7.12.03 (vide Annexure No.7 to this application).

8.3) Not to appoint any other persons except the applicant.

8.4) To grant any other relief to which the applicant is entitled to.

9. INTERIM RELIEF PRAYED FOR :-

The applicant prays that, pending disposal of the application-

1) The operation of the impugned order vide Memo No.B.3/358/Chirakuti Dated Dhubri passed by the Superintendent of Post offices, Goalpara Division, Dhubri (respondent No.3) cancelling the whole process of appointment for BPM, Chirakuti, B.O in A/C Bilashipara S.O as well as cancellation of appointment of the applicant in the aforesaid post (vide Annexure No.1) may remain stayed suspended and -

2) the operation of the impugned notification dated 05.01.2005 issued by the respondent No.3 inviting applications for 'the post of B.P.M. Chirakuti, B.O. (Vide Annexure No.14) may remain stayed/suspended.

3) The applicant may be allowed to join as GDS BPM in Chirakuti B.O. Dist.- Dhubri in pursuance of selection held earlier.

4) Not to appoint any other persons in the said post except the applicant.

10. DETAILS OF POSTAL ORDER :-

Postal Order No. 206-117913 for Rs. 50/-

Date of issue :- 27/1/2005.

Issued from :- G.P.O. Guwahati.

Payable at Guwahati.

11. LIST OF ENCLUSES :-

As per Index.

VERIFICATION

I, Elias Rahman, son of Ebrahim Khalil Sk. aged about 21. years resident of vill and P.O- Chirakuti, P.S- Chaper, Dist.- Dhubri do hereby verify that the contents in paragraphs 1, 2, 3, 4, 6, 7, 10 and 11 and are my personal knowledge and paragraphs 5, 8 and 9 are believed to be true as legal advice and I have not suppressed any material fact.

Elias Rahman
SIGNATURE OF APPLICANT

Date :- 21/1/2005

Place :- Guwahati.

Translated from Assamese

Govt. of Assam
Public Health Department
Certificate of Birth

This is to certify that, the following particulars have been collected from the register of Chapar Primary Health Centre under Chapar Salkocha Block, Mouza-Salkocha District-Dhubri, Assam.

Name - Md. Ilias Rahman

Registration No.

Boy/Girl - Boy

103 (one hundred and three)

Date of birth - 1.4.84

Date of Registration

Place of birth -Chirakuta

12.4.84

Name of father/mother - Md. Ibrahim Khalil Sk.

Signature and address
of the official

Permanent address of
father/mother -

Sd/- Illigible
Senior Medical and Health Officer
Chapra -30
Beded Rural Hospital
12.7.87.

Village-Chirakuta

P.O. Hakama

District-Dhubri, Assam.

Sd/-
Signature of
Principal Registrar.

Certified to be
true Copy
Advocate

MARKS-SHEET

Date: JUNE 19th 2001

013239

This is to certify that

ELIAS ROHMAN

- 17 -

ROLL No. 047

No. 0234

013239

of ROKAKHATA HIGHER SECONDARY SCHOOL, HAKAMA

ANX. NO. 2

has secured marks as detailed below in the High School Leaving Certificate Examination, 2001.

Subjects	First Language				Lang. in lieu of 1st Lang.	Second Language	General Science			General Mathematics	Social Studies
	Group A	Group B/C	Total	Group A			Group A	Group B	Total		
Full Marks	75	25	100	50	50	100	30	70	100	100	100
Pass Marks	—	—	30	15	15	30	—	—	30	30	30
Marks Obtained	39	11	50			48	16	34	50	83	47
ELLECTIVE											
ADV-MATHS.											
Subjects	Without Practical			With Practical			Grand Total : 600			Subjects	
	Without Practical	Theory	Practical	Total	Work Experience	Grade	1st Div. : 360 & Above	2nd Div. : 270—359	3rd Div. : 180—269	Eligible for Promotion	Improvement
Full Marks	100			100							
Pass Marks	30	—	—	30							
Marks Obtained	61			339	B	II					

DANCE/MUSIC/FINE ARTS

Theory = Full Marks

Practical = Pass Marks

Practical = Full Marks

Pass Marks

CRAFTS

20

9

70

21

AGRICULTURE

50

15

50

15

HOME SCIENCE

60

18

40

12

COMPUTER SCIENCE

70

21

30

9

DANCING

39

12

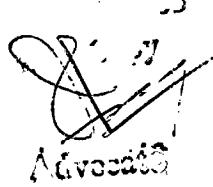
60

18

(Passing in Theory and Practical independently is compulsory)

Grade denotes :
 A-Excellent
 B-Good
 C-Poor
 D-Average
 E-Poor (need
 improvement)

Controller of Examinations



Controller of Examinations

DEPARTMENT OF POSTS.

Office of the ~~Postmaster~~
Postmaster
Goalpara Division
Cox's-Bazar-783301

No. D-307/Chirakut

Dated at Chirakut on 10/6/83

NOTIFICATION

Subject: Appointment to the post of ~~6s AS B.P.~~

Applications in the enclosed proforma are invited for the above post from the intending candidates fulfilling the following conditions. The applications complete in all respects should reach the office of the undersigned on or before 21/7/83. The application should be submitted in closed covers only, duly superscribed in bold letters as **APPLICATION FOR THE POST OF BPM/EDSPM Chirakut BO/EDSO**. Incomplete applications, applications without prescribed enclosures and applications received after the due date will not be entertained.

2. The vacancy is reserved for OC / ~~not reserved~~ community.
(Score out whichever is not applicable)
3. In case the minimum number of three eligible candidates do not offer their candidature, the vacancy will be re-notified.
4. The appointment is purely temporary and in the nature of a contract to be terminated by the competent authority at any time with one month's prior notice. The work is part time for a period of 3 to 5 hours a day and the appointment will not confer any right on the candidate to claim any regular full-time post in the department. The post carries time related continuity allowance of Rs. 12.80/- plus admissible DA.
5. Any kind of influence brought by the candidates regarding appointment, will be considered as a disqualification. No correspondence attempting to influence the selection process will be entertained.

Certified to be
true Copy

Advocate

ELIGIBILITY CONDITIONS:(i) AGE:

About 18 years and below 62 years of age as on the last date for receipt of applications.

(ii) MINIMUM EDUCATIONAL QUALIFICATION:

HSLC/ X standard pass.

No weightage is given for higher qualification. However this does not bar the candidates with higher qualification from applying for the post.

(iii) RESIDENCE:

Candidate belonging to places other than Post Office village, can also apply for the post and such candidate should shift the residence to PO village in the event of his/her selection. The selected candidate should produce a proof to that effect within the date prescribed by the undersigned, after selection.

(iv) ACCOMMODATION:

The candidate selected should provide free accommodation to house the Post Office.

(v) INCOME AND PROPERTY:

(a) *The candidate should have an independent source of income for his/her livelihood. Income certificate in candidate's own name (indicating clearly the source of income) issued by Revenue/competent authority should be furnished in the enclosed proforma. Income in the name of guardian/others will not make the candidate eligible for the post. Only such candidates who fulfills this condition and, all other eligibility conditions, will be eligible to apply for the post.*

(b) *Preference will be given to those candidates who derive income from the landed property/immovable assets in their own name. A copy of the record of rights of property issued in respect of property in the name of candidate only should be enclosed. Joint property or hereditary property not transferred in the name of the candidate will not be considered as property in the name of the candidate. The landed property/immovable assets purchased/transferred in the name of the candidate subsequent to the submission of application, but*

before the last date for receipt of applications, will be considered only if the copy of record of rights as mentioned above and income certificate issued by Revenue/competent authority indicating the income from such property, are submitted to reach the undersigned on or before the last date fixed for receipt of applications.

- (vi) The candidate should not be an elected member of the panchayat/other statutory bodies.
- (vii) The candidate should not be an agent of LIC or other insurance/finance companies.

7. DOCUMENTS TO BE ENCLOSED

Copies of the following certificates/documents should be enclosed to the application, invariably. If any of these enclosures listed below do not accompany the application, the application is liable to be rejected outright. The originals need not be sent. They may be produced for verification when called for.

- (i) School leaving certificate/or certificate regarding date of birth.
- (ii) Marks sheet of HSLC (any higher qualification if any).
- (iii) Caste Certificate issued by DC/competent authority in the enclosed proforma. (in case of candidates belonging to SC/ST/OBC).
- (iv) Record of rights of property (if property is in the name of candidate only. If no such property exists, this enclosure is not insisted upon).
- (v) Income certificate in the name of candidate issued by Revenue/competent authority in the enclosed proforma.
- (vi) Two character certificates issued by prominent persons of the locality.

8. SELECTION PROCESS:

Selection will be made on merit among the candidates who fulfill all the prescribed eligibility conditions. The closed covers containing applications will be opened in this office by the undersigned on _____ in the presence of all such candidates who may be present. All the candidates may participate in this process personally and their representatives will not be allowed. Before opening the covers/applications, the candidates present, will be explained about the eligibility conditions/prefential condition/selection process once again. The selection would be finalised in

presence of candidates and the name of selected candidate would be finalized then and there and the letter of selection would be issued to the selected candidate. Thereafter the other pre-appointment formalities such as verification of documents, medical examination, collection of pre-appointment papers etc. would be completed. The selection/appointment would be provisional till completion of police verification and also subject to the conditions as mentioned in provisional appointment letter/order.

9. If any information furnished in this application by the candidate is found to be false at a later date, the selection/appointment is liable to be terminated apart from criminal prosecution.

Encs: 1. Proforma of application.
 2. Proforma of caste certificate. (wherever applicable)
 3. Proforma of income certificate.

Signature

Designation

प्रधानपात्र पात्र

Goalpara Division

पुलिस धनबाद-783301

Copy to (Regd AD),

1. The President, Gaon Panchayat
 2. The Head Master, Govt. Primary/High School
 3. BPM
 4. SPM (Sub Divisional Account Office)
 5. The ASPOs/IC/SDI(P) Sub Division.

(for display on the notice board and for wide publicity)

Signature

Designation

प्रधानपात्र

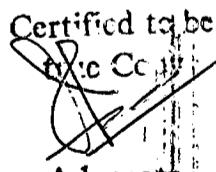
पुलिस धनबाद

पात्र

Goalpara Division

पुलिस धनबाद-783301

Certified to be


Advocate

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES
GOALPARA DIVISION :: DHUBRI - 783301.

-22-

Recd. by

ANX. NO.4

To,

Shri ... Elias Rakanan ...
C/O ...
Vill ... Chirakuti ...
P.O. ... Chirakuti ...
Via - BILASIPARA.
Dist. - Dhubri.

No. B3 / 358 / Chirakuti.

Dated at Dhubri the 27-08-2003.

Sub :- Selection Meeting for the post of GDS BPM, Chirakuti B.O. in account with Bilasipara S.O.

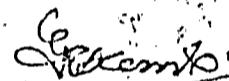
Sir,

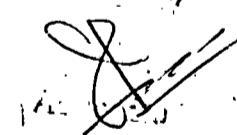
Please attend in the selection committee meeting for selection of GDS BPM for Chirakuti B.O. in account with Bilasipara S.O. on 18.09.03 at 1200 hours in the chamber of the undersigned.

No representative on behalf of the candidate will be allowed to attend the selection committee meeting.

No TA / DA will be allowed.

Yours faithfully;


(G. C. Hazarika) 27-8-2003
Supdt. of Post Offices
Goalpara Divn, Dhubri
3301



DEPARTMENT OF POST, INDIA.

Annexure-5

From

Superintendent of Post offices
Gosipara Division
Dhubri -783301

To

- 1) Shri Elias Rahman
Village & P.O. Chirakuti
Via-Bilasipara
- 2) Shri Ashad Ali Ahmed
C/O Abdus Sattar
Vill-& P.O. Chirakuti
Via- Bilasipara.

No. B./358/Chirakuti Dated at Dhubri the 19.9.03

BPM

Sub - Regarding selection of GDS for Chirakuti B.O in
a/c with Bilasipara S.O.

Ref :- Your application for the post of BPM/Chirakuti

Sir,

please refer to your application U/R
you are hereby requested to submit land documents
exclusively ⁱⁿ your own name within a period of 20 (twenty)
days on or before 10.11.2003 for getting selection to the
post of GDS BPM/Chirakuti B.O.

Yours faithfully

Sd /- Illegible

Superintendent of Post offices
Goalpara-Division, Dhubri-783301

Certified to be

True Copy

Advocate

24

ANX No. 6

DEPARTMENT OF POSTS, INDIA

From :-
Supt. Of Post Offices
Goalpara Divn, Dhubri
783301

126
Md. Elias Rahman
S/O Ibrahim Khalil
Vill+PO- Chirakuti
Via- Bilasipara, Dist- Dhubri.

No. B3/358/Chirakuti-I

Dated at Dhubri the 10-12-2003.

Sub :- Selection of GDSBPM of Chirakuti EDBO in a/c with Bilasipara S.O. under Dhubri H.O.

This is to inform you that you are provisionally appointed as GDSBPM of Chirakuti EDBO in a/c with Bilasipara S.O. under Dhubri H.O. purely on temporary basis.

You are therefore, requested to submit the following documents/Certificates etc. to this office through the SDI(P)/Dhubri within 15(Fifteen) days from the date of receipt of this letter.

- (i) Cash Security amounting to Rs. 10,000/- (Rupees Ten thousand) only in the Post Office security deposit account duly plodged to the President of India and on his behalf accepted by the Superintendent of Post Offices, Goalpara Division, Dhubri.
- (ii) Two Character Certificates from two Gazetted Officers or MLAs.
- (iii) List of property duly filled in (Form enclosed).
- (iv) Description particulars (Form enclosed).
- (v) Attestation form (Form enclosed).
- (vi) Service Roll (Form enclosed).
- (vii) Health Certificate (Form enclosed).

Incl : - As above.

G. C. Hazarika 10-12-03
(G. C. Hazarika)
Supdt. Of Post Offices
Goalpara Divn, Dhubri.

783301

Copy to :-

1. The Postmaster, Dhubri H.O. for information and necessary action.
2. The SDI(P), Dhubri. He will please hand over the charge of GDSBPM/Chirakuti-I EDBO to the selected candidate with 3(Three) days training on postal works and collect and forward all the above mentioned documents and Security Deposit Pass book to this Office.
3. The SPM/ Bilasipara S.O. for information.
4. The GDSBPM/Chirakuti-I EDBO for information.
5. Office copy.
6. Spare.

G. C. Hazarika
(G. C. Hazarika)
Supdt. Of Post Offices
Goalpara Divn, Dhubri.

783301

Certified to be

Advocate

DEPARTMENT OF POSTS :: INDIA

OFFICE OF THE INSPECTOR OF POSTS :: DHUBRI SUB-DIVISION

DHUBRI - 783301

5
ANX NO. 7

Memo No.-A-2 /Chirakuti/1

Dhubri dated 17-12-03

Whereas Md. Elias Rahman S/o. Ibrahim Khalil, VIII P.O. Chirakuti/1 via Bilasipara Dist. Dhubri has provisionally been appointed as GDS BPM, Chirakuti/1 EDBO in account with Bilasipara S.O. under Dhubri H.O. on purely temporary basis vide SPOS, Dhubri Memo No. 13/358/Chirakuti-1 dated 10-12-03, the arrangement for holding the charge of BPM Chirakuti/1 EDBO made by this office memo of even no. dated 27-5-03 is here by terminated from the date of joining of Sri Elias Rahman.

Sri Abul Kalam Sk (who is now holding the charge of BPM Chirakuti/1 EDBO) on being relieved by Sri Elias Rahman, will join to his original post i.e. GDS MD Kadamtola EDBO.

sd/-
Inspector of Posts
Dhubri Sub-Division
Dhubri-783301.

To the:

1. SPOS, Dhubri for information with reference to Divisional office memo no. 13/358/Chirakuti-1 dated 10-12-03.
2. Postmaster, Dhubri H.O. for information and necessary action.
3. SPM, Bilasipara S.O. for information.
4. Sri Abu Selim Hussain O/o mails, Dhubri who is directed to arrange to handover the charge of BPM Chirakuti/1 EDBO to Sri Elias Rahman from Sri Abul Kalam Sk, after observing all the formalities. He will also impart 3 day's training to the new EDBPM on postal works. He will also collect Medical fitness certificate, security pass book for Rs. 10,000/- and other documents from Sri Elias Rahman at time of his joining.
5. Sri Elias Rahman S/o. Ibrahim Khalil, VIII P.O. Chirakuti/1 via Bilasipara Dist. Dhubri for information. He is asked to submit the pass book, Medical fitness certificate etc. to the office of undersigned through O/o mails Dhubri immediately.
6. Sri Abul Kalam Sk GDS MD, Kadamtola EDBO now working as BPM Chirakuti/1 EDBO for information.
7. Personal of Sri Abul Kalam Sk.
8. Establishment file of Chirakuti/1 EDBO.
9. Office copy.

M. P. K. A.
Inspector of Posts
Dhubri Sub-Division
Dhubri-783301.

Advocates

Annexure No. 9

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 287 of 2003.

Date of Order : This, the 23rd Day of September, 2003.

THE HON'BLE SHRI JUSTICE R. K. BATTAA, VICE CHAIRMAN.

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Abdur Rahim
S/o Samad Ali
Vill: Chiracuti, P.O:Chiracuti
P.S: Chapor, Dist: Dhubri
Assam.

..... Applicant.

By Advocates Mr.H.R.A.Choudhury, Mr.M.U.Mandal &
Mr. Z.Hussain.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Department of Communication
New Delhi.
2. The Director of Postal Services
New Delhi.
3. The Post Master General, Assam
Meghdoott Bhawan, Guwahati.
4. The Superintendent of Post Offices
Goalpara Division, Dhubri
Dist: Dhubri, Assam.

5. Elias Rahman
Son of Ebrahim Khalil
Vill. & P.O: Chir-cutti
B.S: Chapor
Dist: Dhubri
Assam.

..... Respondents.

By Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R (ORAL)

BATTA, J.(V.C.)

The applicant applied for the post of Branch Post Master at Chirakata Branch Post Office pursuant to notification dated 20.6.2003. Interview was held on 18.9.2003. According to the applicant, letters dated 19.9.2003 and 20.10.2003 were issued to four candidates contrary to the notification. The applicant says that he did well in the interview, but the Selection list was not notified.

Q
Contd./2

C-1003

true Copy

Advocates

According to the applicant, he is fully qualified for the said post and the letters written on 19.9.2003 and 20.10.2003 to respondent no.5 to submit land document are contrary to the selection process contemplated in the said notification. According to him, respondent no.5 had not fulfilled all the terms and conditions of the said notification and as such his appointment, if any, is required to be quashed and further directions are sought to select the applicant and appoint him to the said post.

2. Respondents have filed reply stating that when the applications were opened in presence of the candidates for scrutiny, it was found that none of the candidates submitted land documents exclusively in their own name on account of which, selection of the candidates could not be done on that day. However, four candidates having higher marks in H.S.L.C. examination were asked to submit land documents exclusively in their own name for final selection. Out of the said four candidates, two candidates including respondent no.5 submitted registered land deed in their own name and between the said two candidates respondent no.5 having higher marks was appointed to the said post vide letter dated 10.12.2003.

3. We have heard Mr. M. U. Mandal, learned counsel for the applicant as well as Mr. A. Deb Roy, learned Sr. C. G. S. C. for the respondents.

4. Learned counsel for the applicant has argued that the selection process mentioned in the notification dated 20.6.2003 contemplates that the selection has to be finalised on the date on which the applications are scrutinised ^{even if} i.e. 18.9.2003, and though none of the candidates had filed land documents, no further time could be given and the selection process could not be deferred for the purpose of produc-

29

document in view of the said notifications. In his contention, learned counsel for the applicant has relied upon judgment of the Apex Court in Maharashtra State Electricity Supply Corporation and Ors. -vs- Rajendra Bilmrao Mandve and others reported in AIR 2002 SC 224 and has particularly placed reliance at paragraph 5 of the said judgment.

5. Mr. A. Deb Roy, learned Sr.C.C.S.C. appearing for the respondents, has stated that since no candidates had produced land documents in their name on 18.9.2003, as such, four candidates having higher marks were given opportunity to produce land documents. It is further contended that the applicant had secured only 32.3% marks in H.S.L.C. examination whereas respondent no.5 had secured 56% marks and as respondent no.5 had better marks, he was selected. In further reply learned counsel for the applicant has stated that the applicant had, in fact, submitted all required documents including land holding certificate.

6. A close scrutiny of notification dated 20.6.2003, and especially Paragraph 8 of which deals with selection process, shows that the selection will be made on merit among the candidates, who fulfill all the prescribed eligibility conditions. It is, no doubt, true that the notification speaks of the selection on the date on which the applications are scrutinised. However, it is pertinent to note that selection is required to be made on merit and, in our view, merit cannot be sacrificed at the altar of procedural aspects. The Selection Committee found that respondent no.5 had more marks since he had secured 56% marks in H.S.L.C. examination, whereas the applicant had secured only 32.3% marks. In view of the huge disparity between marks of the two candidates, the Selection Committee thought it fit to give an opportunity to the candidates who had higher marks to produce land documents on subsequent date. This was done so that a meritorious candidate gets ^{appointment} and the procedural requirement was relaxed in respect of production of land documents.

R

(Signature)

Respondent no.5 produced land documents subsequently and he was appointed against the said post. In the circumstances, we are of the opinion that selection of the respondent no.5, who was having more marks than the applicant, cannot be faulted with.

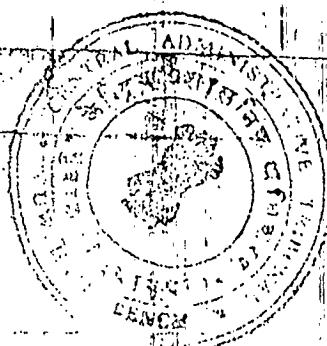
7. We are supported in respect of the view taken by us by two Full Bench judgments of Tribunal namely:- H. Lakshmana and Others -vs- The Superintendent of Post Offices, Bellary and Others reported in 2003 (1) ATJ 277 and Rana Ram -vs- Union of India and Others reported in 2004 (1) ATJ 10. In Rana Ram -vs- Union of India and others (supra) similar issue came up for consideration before the Full Bench, wherein, it was held that a candidate applying for the post of EDBPM need not submit the proof of income/property alongwith application, nor the said proof is required at the time of interview and the selection/appointment has to be made on the basis of marks obtained in the matriculation examination. Thereafter, the candidate selected can be given reasonable time to submit proof of income/property as per rules/instructions.

8. Reliance placed by the learned counsel for the applicant on the judgment of the Apex Court does not, in any manner, help the applicant's case since observations therein have been made in the context. In that case, posts of Drivers in Maharashtra State Road Transport Corporation were advertised in 1995. Selection process had started and driving test was held. However, when the selection process was in progress, a circular dated 24.6.1996 was issued by the Corporation fixing criteria for selection. This obviously could not be done and the same could not be applied to the ongoing selection and in this context the Apex Court has made the observations in paragraph 5 of

the judgment.

9. We may also point out at this stage that the applicant, in order to create prejudice against respondent no.5, made unfounded allegations in Paragraph 4.5 of the application stating that respondent no.5 is a man of bad character and he was involved in many notorious activities like immoral living. This statement has been verified by the applicant as true to his knowledge as can be seen from the verification. The applicant, however, did not place any materials whatsoever on record to substantiate his unfounded allegations and this, in our view, has been done by the applicant deliberately only to create prejudice against respondent no.5 so as to defeat his selection, which was otherwise done on merit.

In view of the above, we do not find any merit in this application and the application is hereby dismissed with costs.



Sd/ VICE-CHAIRMAN
Sd/ MEMBER (A)

Registration to be true copy
29/9/04
Section Officer (J)
C.A.T.C. (M) BANCH
Gurugram 122005

Advocates

Action for the Copy	Supplying the requisite number of Stamps and Folios	Date of delivery of the requisite Stamps and folios	Date on which the Copy was ready for delivery	Date of handing over the Copy to the applicant
✓	✓	✓	✓	✓

-32- ANX NO. 10

HIGH COURT FORM NO. (J) 13.A

Form of order sheet.

District: Dhubri.

Court of : Civil Judge (Sr. Divn) Dhubri.

Present: Sri. I. Ali

Misc (J) 14/04

Jahan Ali - Vs - Supdt. of Post Office,
& others.

Serial No.	Date of Order or proceeding	Order or other Proceeding	Signature of Court	Office action taken on order with date and dated signature of pleader and when necessary
1	2	3	4	5
9-8-04				

By this order, I would like to dispose of this Misc. case. I have already heard the learned advocate for the parties. Perused the materials on record. It appears that the learned Civil Judge (J.D.), No. 2-1, Dhubri has rejected the prayer of temporary injunction preferred by the plaintiff/petitioner in Misc. Case No. 407/03 which arose out of Title Suit No. 581/03. Against the aforesaid rejection order dated 30.4.04 the plaintiff/petitioner has preferred a Misc. Appeal No. 15/04 challenging the aforementioned order of the learned court below. Along with above mentioned Misc. Appeal the plaintiff/petitioner has also preferred this present Misc. Case by submitting a petition under Order 39 Rule 1 & 2 r/w Sec. 151 CPC praying for an order of temporary injunction direction the respondent / O.P. No. 1 to 5 to maintain status-quo over subject matter of the appeal in question.

By this Misc. Case the plaintiff/

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By this Misc. Case the plaintiff/petitioner further prayed for an order of temporary injunction restraining the defendant/O.P.No.5 from ~~xxxx~~ joining in the post of G.D.S.Brach Postmaster at Chirakuti Branch Office.

The contention of the plaintiff/petitioner is that the O.P./defendant with a view to appoint any eligible candidates for the post of G.D.S.Branch Postmaster at Chirakuti has invited applications through the Local Employment Exchange on 20-6-03. Accordingly, the plaintiff having requisite qualification applied for the above mentioned post. Thereafter, the plaintiff/petitioner has also appeared before the selection committee constituted for the ~~xxxx~~ purpose but the aforesaid committee violating the Rules of appointment has selected the defendant/O.P.No.5 illegally.

AGP. (VII F) 143 No. 66/2002-2003--3,00,000-14-2-2003.

CJ

MISC. (J) CASE NO. 14/04

ORDER

Being aggrieved by the said selection, the plaintiff/petitioner preferred the Title Suit No. 581/03 before the learned Court below. Along with the said T.S. the plaintiff/petitioner has also filed a petition Under Or. 39 Rule 1 & 2 r/w Sec. 151 CPC praying for grant of temporary injunction restraining the O.P./respondent from appointing the defendant No.5 in the post as mentioned above. In the said petition before the learned court below, the plaintiff/petitioner has also prayed for a mandatory injunction against the defendants to terminate the defendant No.5 if he joins the aforementioned post. The court below after hearing the parties was pleased to pass the impugned order. in Misc. Appeal No. 15/03 as stated above, I ^{have} already heard the learned counsels for the parties in this present Misc. Case. My findings and reasons thereof are given below :-

As per the records, the plaintiff has claimed that as per advertisement ^{was} made on 20-6-04 through the Employment Exchange for appointing any eligible candidates as G.D.S.Branch Post Master at Chirakuti office by the defendant. Accordingly the plaintiff/petitioner ^{applied} for the said post in the office of the defendant No. ~~xxx~~ 1 and attended before the selection committee constituted for the purpose of 18-9-03 alongwith other candidates. Further contention of the plaintiff/petitioner is that he secured 52% marks ^{in his} Matriculation ^{examination} which was held under the Board of Secondary Education, ^{Assam} The said marks obtained by him was the highest amongst all the candidates who appeared before the selection committee as above mentioned. The plaintiff/petitioner further claimed that he was a graduate in the ^{his} Science and has completed the graduation in the year 1995 from the B.N. College, Dhubri. Considering the documents submitted ^{by} the candidates ^{before} the selection committee, that defendant/O.P.no.5 was selected for the above mentioned post and accordingly, the defendant No.1 issued a letter dated 10-12-03. It is alleged by the plaintiff/petitioner he ^{was} having requisite qualification was not

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selected but the defendant No.1 was selected arbitrarily. Appointment letter was also issued ^{against the} though there was public allegation ~~of~~ defendant No.5.

The defendant No.5 contested the Misc. case by filing a written objection alleging inter alia that ^{the} process for the above mentioned post was done on the basis of departmental Rules and guidelines and accordingly finding him suitable, was selected ^{and} provisionally allowed to join in the aforementioned post. Thus, the O.P. also denied the allegations brought out by the plaintiff/petitioner and submitted that the petition in this Misc. case is not maintainable as the plaintiff/petitioner has neither any prima facie case nor he has any chance of having irreparable loss. Therefore, this opposite party prayed for dismissal of the Misc. Case.

Considering the ^{and the} rival contention of materials on record, it is seen that the selection committee after going into the selection process and on consideration/examination of the certificates, testimonials, necessary documents etc. found the defendant No.5 eligible and accordingly, selected him for the post of G.D.S. ~~mixing~~ Branch Postmaster at Chirakuti Branch Office. Had there been an illegal selection, the same is ~~an~~ a matter to be adjudicated in the main suit. The prima facie at this stage, nothing was shown as how the selection of defendant No.5 was illegal. The plaintiff/petitioner simply claimed that selection committee in violating the Rules of appointment has whimsically and arbitrarily deleted ~~of~~ the defendant No.5. If this contention of the plaintiff is accepted ^{the} process of selection ^{as} a whole stands tainted. In such ~~mix~~ circumstances, the plaintiff/petitioner who has not been selected had no right accrued in his favour for appointment. Now considering the matter relating to granting of temporary injunction, the same is regulated by the principle of prima facie case, balance of convenience and



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and irreparable loss. Hence, in this case, I find that the petitioner was a candidate for the post of G.D.S. Branch Postmaster at Chirakuti Branch Office and according to him he was the ^{best} suitable candidate for the post but the defendant No. 5 was selected arbitrarily and illegally by the selection committee. In finding out ^{as to whether} there is a prima facie, ^{Court} who has to look into the plaintiff's case, it reveals from his petition and affidavit at this stage, a court need not examine the merit of the case. The contention raised by the petitioner that he was the person to be selected by selection committee but the selection committee selected the defendant No. 5 arbitrarily definitely raised a substantial question which needs investigation and a decision on merit. Thus, applying the above, I find that a petition has a prima facie case to go for trial. But if the O.P./defendant No. 5 ^{is} not allowed to ^{join in his} new assignment, he will definitely suffer irreparable loss and in the event of the plaintiff/petitioner's case being failed, it will be ^{hard task} on the above of the defendant No. 5 to get back his post for which he was selected. In such circumstances, I am of the view that the O.P. No. 5 could be put into the greater inconveniences if the injunction in favour of the plaintiff/petitioner is allowed. Hence, I find that the balance of convenience is not in favour of the petitioner. Further, appointment of the aforementioned post was made in favour of the O.P. No. 5 after conducting selection process and therefore, it appears that it will cause irreparable injury to the defendant No. 5 if injunction at this stage granted. As no post will remain ^{vacant} in future if the O.P. ~~is~~ is not allowed to join his duty in the above mentioned post in the event of the plaintiff/petitioner failing to get a decree in the suit-in-question. On the other hand, if the petitioner get a decree in the suit in question there is remedy for ^{gaining} necessary relief of the plaintiff. Hence, no prejudice would be caused

upon the plaintiff if any temporary injunction has
prayed for is not granted for the reasons
discussed above, I am of the opinion that the
petitioner could not make out any case for grant of
an order of temporary injunction.

In the result, This Misc. Case is without
any merit and accordingly, the same stands dismissed
Considering the respective case of the parties, I award
no costs.

This Misc. case is disposed of on
contest without cost.

Dictated & Corrected by me

Sd/- Dr. Ali

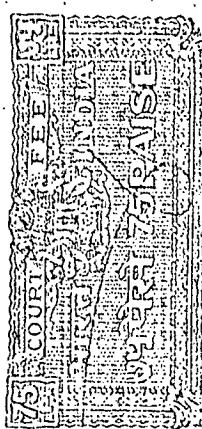
Civil Judge (S.R.O. No.)
Athenor

12/8/04

Sd/- Dr. Ali

Civil Judge (A.O. No.)

Amroor 12/8/04



Received by Jayashree Goswami 12/8/04
Certified to be true copy

Signature of Jayashree Goswami

Subordinate 12/8/04
Court & Revenue Judge, DRM

Dhule

Authorised under Rule 11 Sec
7A of the Act. 1872

Certified to be true copy

Advocate

Applying the requisite number of Stamps and Folios	Date of delivery of the requisite Stamps and folios	Date on which the Copy was ready for delivery	Date of mailing over the Copy to the applicant
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38-

HIGH COURT FORM No: (J) 3

HEADING OF JUDGMENT ON APPEAL

DISTRICT : Dhubri

In the Appellate Court of the Civil Judge (Sr. Division)

Present : Sri Imtiaz Ali, (AJS)

.....Mon.....day, the 9th day of August/04 19

Misc. APPEAL No: 15 /04 of 19

from the decree/order of
Munsif/Subordinate Judge No. 1, Dhubri.
Misc. (J) suit/case No. 407/03 of

and mode in

1 Jahan Ali,

Appel

2 Versus
G.C.Hazarika, and others.

Respondent(s)

*Give date or dates.

This appeal coming on this day (or having been heard on) * 28-7-04
In the presence of

1- Sri S.Husain, advocate for Appellant(s)

Advocate(s)
for Respondent(s)
Pleader(s)

1. Sri K.A.Pradhan, G.P.

2. Sri A.Latif, advocate for the respondents.

and having stood for consideration to this day, the court delivered the following judgment :—

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Advocate

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J U D G M M E N T

1. This misc appeal is directed against the order dated 30-4-04 passed by the learned Civil Judge (J.D.) No.1, Dhubri in Misc. (J) Case No. 407/03 arising out of Title Suit No. 581/03 rejecting the prayer of ~~admix~~ adinterim temporary injunction preferred by the plaintiff/petitioner.

2. Being aggrieved by the said order, the plaintiff/appellant preferred this appeal on ^{the} grounds mentioned in the memorandum of appeal. The facts of the case is that the opposite parties with a view to appoint any eligible candidates for the post of G.D.S. Branch Postmaster at Chirakuti has invited applications through the Employment Exchange, on 20-6-03 for the said post ~~on~~ ^{from} the eligible candidates Accordingly, the plaintiff possessing the requisite qualification applied for the post of along with others. Thereafter, the plaintiff/appellant has also appeared before the ~~merit~~ ^{e-mailee} selection ~~committee~~ candidates but the said Selection Committee did not select him violating the rules of appointment etc. However, the aforesaid selection committee selected the defendant No.5 illegally. Therefore, the plaintiff filed the Title Suit No. 581/03 in the learned court below. Along with the said suit, the plaintiff/appellant also filed a petition under order 39 Rule 1 & 2 t/w Sec. 151 CPC praying for grant of temporary injunction restraining the O.P./respondent No.5 from appointing the defendant no.5 ^{post} in the post aforementioned after selection and for a mandatory injunction against other defendants to terminate the defendant No.5. if he joined the said post. After hearing the learned counsels for the

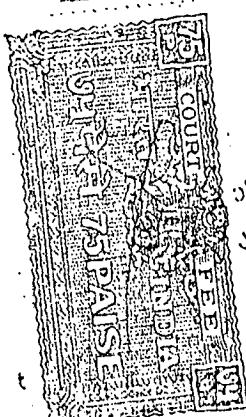
- 3 -

parties, the learned Civil Judge (J.D.) No. 1, Dhubri passed the impugned order. Heard the learned advocates for the parties. Perused the impugned order and the case records.

3. My findings and reasons thereof are given below :-

The learned Civil Judge (J.D.) no.1, Dhubri by way of the impugned order has rejected the prayer of the petitioner/appellant for the granting injunction. In this case, the plaintiff/appellant stated that an advertisement was made on 20-6-03 ^{through} to the local Employment Exchange, Dhubri for the post of G.D.S. Branch Postmaster, at Chirakuti Branch Office. Accordingly, the plaintiff applied for the said post in the office of the defendant No.1 and attended before the ~~selection~~ ^{selection} committee on 18-9-03. Along with the plaintiff/appellant, another 14 Nos. of candidates appeared before the selection committee. The appellant ~~substant~~ claimed that he secured 62% marks in the Matriculation Examination under the Board of Secondary Exam Education, Assam, which the said marks was the highest amongst all the candidates who appeared before the selection Committee for the post of G.D.S. Branch postmaster, Chirakuti Branch Officer. The plaintiff/petitioner also claimed for graduate in Science and ~~History~~ ^{Passed} in the year 1995 from B.N. College, Dhubri.

After perusal of the documents of the candidates by the selection committee the defendant No.1 issued a letter dated 20-10-03 in the name of the plaintiff with the defendant No.1 to produce necessary documents exclusively in their names. On receipt of the said letter the plaintiff has sent the necessary documents to the defendant No.1 by ~~not~~ ^{cooperative} ~~way~~.



- : 4 : -

registered post. However, despite having requisite qualification, the selection committee did not select the plaintiff/appellant. ^{Moreover} ~~however~~, the said committee selected the defendant No.5 on 10-12-03 and issued ~~an~~ appointment letter though there was ~~to be~~ allegation about the character of defendant No.5.

4. The Opposite parties contested the injunction matter before the learned court below and the O.P. No.1 to 4 and 5 filed the written objections separately. They denied the allegations brought out by the plaintiff/appellant and claimed that the process of selection was done on the basis of the departmental rules and guidelines and accordingly, finding the defendant No.5 suitable, was selected and provisionally ~~allowed to~~ ~~joined for~~ in the aforementioned post. From the above, it is seen ^{that} from the selection committee after going into the selection process and on consideration ~~of~~ the examination of the certificates, testimonials/ ~~to~~ the documents etc found the defendant No.5 eligible and holding merit for defendant No.5 selected him for the post of G.D.S. Branch Postmaster at Chirakuti Branch Officer. If there~~s~~ is any illegal selection the same is a matter ^{to be} adjudicated ⁱⁿ the main suit. Prima facie at this stage, nothing was shown as how the selection of the defendant No.5 was illegal. The appellant simply stated that the selection committee in violating the rules of appointment and out of provision of law whimsically, arbitrarily, and improperly selected by the defendant No.5. Now from the above, if the ~~injunction~~ contention of the plaintiff is accepted the process of selection as a ~~as~~ whole stands ^{Who} tainted. In such circumstances, the plaintiff ~~has not been~~

selected have no right to accrued in his favour for coming appointment. Now comes into question whether the plaintiff/appellant and defendant No.5 were duly considered by the selection board. I am of the opinion that the plaintiff has required qualification ad per advertisement. Records show that the plaintiff along with others including the defendant No.5 were duly considered and defendant No.5 was selected by the selection committee. There is nothing on record to so as to ~~not~~ scrutinise the correctness of process adopted by the Selection committee.

5. Having regard to the above, I do not

find any prima facie case that the defendant No.5 has been illegally and arbitrarily selected. The learned Civil Judge (JD.) passed the impugned order on a consideration of the fact that the appointment of the defendant No.5 was in the nature of contract and so there was no possibility of granting permanent injunction as prayed for by the plaintiff. The learned court below also held that the temporary injunction cannot be granted ^{where} ~~whether~~ permanent injunction is ~~not~~ possible to be granted. The granting of temporary injunction ~~is~~ is regulated by the principle of prima facie case, balance of conveniences and irreparable loss. From the above, I find that the appellant was a candidate for the post of G.P.S. Branch Post Master, G.P.S. CHILAKUTI BRANCH Office and ^{he} claimed that he was the best suitable candidate but the defendant No.5 was selected arbitrarily and illegally by the selection committee.

Now in finding out as to whether there is a prima facie case, court has to be look ^{into the} either strength of the plaintiff's case as reveals from ~~then~~ his petition and a affidavit at this stage, the Court

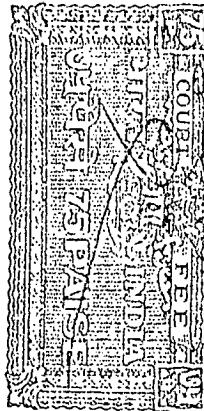
need not examined the merit of the case. The contention ~~xx~~ raised by the plaintiff/petitioner that he was the person to be selected by the selection committee but the said committee ^{selected}, the defendant No.5 arbitrarily raised a substantial question which needs investigation and a decision on merits. ^{thus} applying the above, I find that the petitioner has a *prima facie* case to go for for trial. Again if the O.P./defendant No.5 is not ^{assignment} allowed to join in his ~~existing~~ ^{new} assignment he will definitely suffer irreparable loss and in the event of the plaintiff/petitioner's case being failed, it will be ^{hard} ~~hard~~ be on the part ^{of the} of the defendant No.5 to get back his post. In these circumstances, I am of the opinion that the O.P.No.5 could be put into the ~~matter~~ matter in-convenience if the injunction in favour of the plaintiff is allowed. Hence, I find that the balance of convenience is not in favour of the petitioner. Further, appointment of the G.D.S. ^{Branch} postmaster was made in favour of the O.P.No.5 after conducting selection process and therefore, it appears that it will cause ^{inseparable} ~~inseparable~~ injury ~~to~~ to the defendant No.5, ~~xx~~ if injunction is granted as no post will ~~be~~ remained ~~xx~~ vacant in ~~xx~~ future if the O.P.No.5 is ^{not} allowed to resume his duty in the post of the G.D.S. postmaster in the event the plaintiff ^{failed} failed to get the decree in the instant suit. On the other hand, if the plaintiff get a decree in the instant suit, there is remedy for giving relief to the plaintiff. Hence, no prejudice has ~~to~~ been caused upon the plaintiff if any injunction ^{as} ~~had~~ prayed for is not granted, for the reasons, observation and discussion made above, I am of the opinion, that the defendant/appellant/plaintiff could not make out any case to justify interference with the signed order dated 30-8-04 passed by the ~~xxxxxx~~.

learned court below.

6. In the result, this appeal is without any merit and accordingly, dismissed, thus affirming the impugned order passed by the learned court below.
Both the parties bear their own cost.

Send back the original case record with a copy of this judgement to the learned court below.

Given under my ~~hand~~ hand and seal of this court on this the 9th August 2004 at Dhubri.



Dictated & Corrected by me

Sd/- D. Ali
 Civil Judge (S. & D. J. D.)
 Dhubri. 9/8/04

Sd/- D. Ali
 Civil Judge (S. & D. J. D.)
 Dhubri. 9/8/04

dictated &
 12/8/04

dictated &
 12/8/04

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Gayashree Goswami 12-8-04

Shrikrishna J. D. Civil Judge

Dhubri

Authorised under Rule 1, Sec
 70 of the Act 1872

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 true copy

Advocate

Md. Abdul Latif,
B.A. (Hons.) LL. B.
Advocate, Dhubri
Residence - Ward No. 9, Dhubri
(Near Police Point No. 2)

- 45 - Ph: 230168X

Date: 1. 08-2004

ANX NO. 12

Ref. T. S. 581/2003, Misc. (J) 407/2003, Misc. Appeal 15/2004 and Misc (J) 14/2004

Subject: Legal Opinion

To,

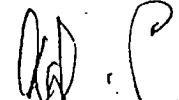
The Superintendent of Post Offices,
Goalpara Division at Dhubri

Sir,

In reference to the subject cited above I am sending this legal opinion as asked for,

I have gone through the records of the above referred cases. One Jahan Ali instituted the above noted case against you and others praying injunction against the appointment and joining of Elias Rahman, Deft/Opp. No. 5 in the post of B.P.M. Chirakuti within Bilashipara Sub-Division. Failing to get any relief in the Court of Civil Judge (Jr. Divn.) No. I, Dhubri in Misc.(J) 407/03 Jahan Ali instituted Misc Appeal 15/2004 and Misc. (J) 14/2004 in the Court of Civil Judge (Sr. Divn.), Dhubri. After full length hearing of both the sides the Honourable Civil Judge (Sr. Divn.) has dismissed both Misc. (J) 14/2004 and Misc. Appeal 15/2004 vide judgment dated 09-08-2004.

Now, there is no impediment against the appointment, joining and functioning of Elias Rahman in the post of B.P.M., Chirakuti Branch Post Office in connection with the above referred cases.


(Md. Abdul Latif)
Advocate, Dhubri
16/812504

Enclosed:

Certified copies of the judgments dated 09-08-2004

ABDUL LATIF
Advocate, Dhubri

Certified to be true

True Copy

Advocate

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES
GOALPARA DIVISION : DHUBRI - 783 301.

Memo No.B3/358/Chirakuti

Dated at Dhubri the 27-12-2004

As directed by the Chief Postmaster General/Guwahati vide C.O's letter No. V16/5/TS/03/03 dated Guwahati 07-12-2004 the whole process of appointment for GDS BPM, Chirakuti B.O. in a/c with Bhasipara S.O. made by this office letter of even no B3/358/Chirakuti-1 dated 29-01-2003 have been cancelled. In this connection, the selection of Shri Elias Rahman S/O Md. Ibrahim Khalil Sh, Chirakuti issued vide this office Memo No. B3/358/Chirakuti issued vide this office memo of even No. B3/358/Chirakuti dated 15-10-2003 has also been cancelled.

sd-

(G. C. Hazarika)

Supdt. of Post Offices
Goalpara Divn. Dhubri
783 301.

Copy to :-

1. The Chief Postmaster General, Assam Circle, Guwahati-1 for information.
2. The SDI(P), Dhubri-Sub-Divn, Dhubri for information.
3. Shri Elias Rahman, S/O Ibrahim Khalil Sh, VHP & PO- Chirakuti Vn- Bhasipara for information.
4. The Deputy Registrar, Central Administrative Tribunal, Guwahati bench, Guwahati-5 through Shri Arunesh Deb Roy, CSC, Guwahati Bench, Guwahati-5.
5. The Civil Judge (Sr. Divn.) Dhubri through Shri K. A. Prodhan Govt. Pleader, Dhubri.

Ex-Ex-1409
(G. C. Hazarika)

Supdt. of Post Offices
Goalpara Divn. Dhubri
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ANX NO. 14

DEPARTMENT OF POSTS

(A-2)(1)

Office of the
Superintendent of Post Office
Gorakhpur - Division
Dhuri - 78230

No. 33/358/Chirakup-1

Dated at Dhuri on 05-01-2005

NOTIFICATION

Sub:- Appointment to the post of BPM/Chirakup-1 PO.

Applications in the enclosed proforma are invited for the above post from the intending candidates fulfilling the following conditions. The applications complete in all respects should reach the office of the undersigned on or before 05-02-2005. The application should be submitted in closed covers only, duly superscribed in bold letters as 'APPLICATION FOR THE POST OF BPM/EDSP/ Chirakup-1 PO/EDSP'. Incomplete applications, applications without prescribed enclosures and applications received after the due date will not be entertained.

2. The vacancy is reserved for / not reserved for any community.
(Score out whichever is not applicable).
3. In case the minimum number of three eligible candidates do not offer their candidature, the vacancy will be re-notified.
4. The appointment is purely temporary and is the nature of a contract to be terminated by the competent authority at any time with one month's prior notice. The work is part time for a period of 3 to 5 hours a day and the appointment will not confer any right on the candidates to claim any regular full-time post in the department. The post carries time related community allowance of Rs. 1280-35-7980 - plus admissible DA.
5. Any kind of influence brought by the candidates regarding appointment, will be considered as a disqualification. No correspondence attempting to influence the selection process will be tolerated.

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6. ELIGIBILITY CONDITIONS:

(i) AGE:

About 18 years and below 62 years of age as on the last date for receipt of applications.

(ii) MINIMUM EDUCATIONAL QUALIFICATION:

HSLC/ X standard pass.

No weightage is given for higher qualification. However this does not bar the candidates with higher qualification from applying for the post.

(iii) RESIDENCE:

Candidate belonging to places other than Post Office village, can also apply for the post and such candidate should shift the residence to PO village in the event of his/her selection. The selected candidate should produce a proof to that effect within the date prescribed by the undersigned, after selection.

(iv) ACCOMMODATION:

The candidate selected should provide free accommodation to house the Post Office.

(v) INCOME AND PROPERTY:

(a) The candidate should have an independent source of income for his/her livelihood. Income certificate in candidate's own name (indicating clearly the source of income) issued by Revenue/competent authority should be furnished in the enclosed proforma. Income in the name of guardian/others will not make the candidate eligible for the post. Only such candidates who fulfills this condition and all other eligibility conditions, will be eligible to apply for the post.

(b) Preference will be given to those candidates who derive income from the landed property/immovable assets in their own name. A copy of the record of rights of property issued in respect of property in the name of candidate only, should be enclosed. Joint property or hereditary property not transferred in the name of the candidate, will not be considered as property since the name of the candidate. The landed property/immovable assets purchased/transferred in the name of the candidate subsequent to the submission of application, but

before the last date for receipt of applications, will be considered only if the copy of record of rights as mentioned above and income certificate issued by Revenue/competent authority indicating the income from such property are submitted to reaches the undersigned on or before the last date fixed for receipt of applications.

- (vi) The candidate should not be an elected member of Gram panchayat/other statutory bodies.
- (vii) The candidate should not be an agent of LIC or other insurance/finance companies.

7. DOCUMENTS TO BE ENCLOSED

Copies of the following certificates/documents should be enclosed to the application, invariably. If any of these enclosures listed below do not accompany the application, the application is liable to be rejected outright. The originals need not be sent. They may be produced for verification when called for.

- (i) School leaving certificate/or certificate regarding date of birth.
- (ii) Marks sheet of HSLC (any higher qualification if any).
- (iii) Caste Certificate issued by DC/competent authority in the enclosed proforma. (in case of candidates belonging to SC/ST/OBC).
- (iv) Record of rights of property (if property is in the name of candidate only. If no such property exists, this enclosure is not insisted upon).
- (v) Income certificate in the name of candidate issued by Revenue/competent authority in the enclosed proforma.
- (vi) Two character certificates issued by prominent persons of the locality.

8. SELECTION PROCESS:

Selection will be made on merit among the candidates who fulfill all the prescribed eligibility conditions. The closed covers containing applications will be opened in this office by the undersigned on [] in the presence of all such candidates who may be present. All the candidates may participate in this process personally and their representatives will not be allowed. Before opening the covers/applications, the candidates present will be explained about the eligibility conditions/presidential condition/selection process once again. The selection would be finalised in

the presence of candidates and the name of selected candidate would be notified then and there and the letter of selection would be issued to the selected candidate. Thereafter the other pre-appointment formalities like verification of documents, medical examination, collection of appointment papers etc. would be completed. The selection/appointment would be provisional till completion of police verification and also subject to the conditions as mentioned in the relevant appointment letter.

If any information furnished in this application by the candidate is found to be false at a later date, the selection/appointment would be terminated apart from criminal prosecution.

Enclosure 1. Preforms of application.

- 1. Preforms of caste certificate. (wherever applicable)
- 2. Preforms of income certificate.

S. C. B.
Superintendent of Post Office
Signature - Goa Dena - Division
Designation - 783301

Copy to (Recd/Refd)

- 1. The President, Gram Panchayat / *Chirakut - Tilipara, GP*
- 2. The Head Master, Govt. Primary/High School *pp. Tilipara, Arambol*
- 3. DPM *Chirakut-1 via - Bolampara*
- ✓ 4. DPM *Bolampara (Account Office)*
- 5. The ASO/HC/SDI(P) *Dhurgo* Sub-Division

(for dis. lay on the notice card and/or wide publicity).

Georgios S. C. B.
Superintendent of Post Office
Signature - Goa Dena - Division
Designation - 783301

केन्द्रीय प्रशासनिक न्यायालय Central Administrative Tribunal
31 MAR 2005
गुवाहाटी न्यायालय Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO. 23/05

ELIAS RAHMAN

.....APPLICANT

-Versus-

UNION OF INDIA & ORS

.....RESPONDENTS

WRITTEN STATEMENT FILED BY THE RESPONDENTS

- That the respondents have received a copy of the OA and have gone through the same and have understood the content thereof. Save and except the statements, which are admitted herein below, rest may be treated as total denial. The statements, which are not borne on record, are also denied and the applicant is put to the strictest proof thereof.

Before going through the various paragraph of the OA the respondents beg to give the brief history of the case.

The brief history of the case is narrated as below:-

An advertisement for filling the newly created post of GDSBPM/Chirakuti EDBO under Bilasipara was made on 20-06-03. All together 15 applications were received and all the candidates called for before the selection committee fixing date on 18-9-03. The applicant Shri Elias Rahman and other 11 candidates were attended before the Supt. Of Post Office, Dhubri on 18-9-03. The applications were opened in presence of

81
31-3-2005
Filed by
the Respondents thru
Usha Das
(Usha Das)
Addl. C. G. S. C.
CAT/Ghy.
31/3/05
C.R. Rahman
Sub-Commissioner of Post Office
Gorakhpur : Division
Gorakhpur - 7825301

them on 18-9-03 and it was found that none of the candidates' submitted land document inclusively in their own name. A comparative chart of the applicants was prepared on 18-9-03. Four candidates among them getting higher marks in the HSLC examination were asked to submit land documents exclusively in their name. Accordingly Shri Elias Rahman and Jahan Ali submitted land documents and Elias Rahman being post village candidate was selected for the said post vide letter dated 10-12-03 though his percentage of marks in HSLC examination is less than Jahan Ali.

After his selection Shri Jahan Ali filed an injunction petition before Civil Judge(Jr) Division Dhubri in Misc (J) 407/03 and preferred title Suit no. 581/03. But the learned Judge, Civil Court, Dhubri rejected the temporary injunction on 30-4-04. Aggrieved by the impugn order in Misc (J) no. 407/03 said Shri Jahan Ali preferred appeal No. Misc(A) 15/04 and also preferred Misc (J) 14/04 before the learned Civil Judge, Dhubri praying for a direction towards the respondents to maintain Status quo as on that day. Both the cases were dismissed on 9-8-04 and transferred the records to the lower courting T.S. No.581/03. Then Shri jahan Ali withdrew his case No. 581/03 on 14-10-04 and filed OA No. 311/04 before this Hon'ble Tribunal.

In the same matter Shri Abdur Rahim, another candidate being dissatisfied with selection of Elias Rahman filed OA No. 287/03 which has been dismissed by this Hon'ble Tribunal.

Due to above court cases by the parties the selected candidate Sri Elias Rahman restrained from joining to the said post. The selection procedures were review by the CPMG, Guwahati due to non-selection purely on the basis of merit the said selection was cancelled by the order dated 7-12-2004. The order of the higher authority was honored and the selection made to Elias Raman was cancelled on information all concerned.

The Hon'ble Tribunal dismissed the OA no. 311/04 filed by another aggrieved candidate Shri Johan Ali on 19-1-05 due to cancellation of the selection process. However Shri Jahan Ali has filed another OA NO. 27/05 challenging cancellation and reprocess the selection afresh which has been pending disposal before this Hon'ble Trtbunal.

2) That with regard to the statement made in paragraph 1 of the OA the respondents while denying the contentions made therein beg to state that the selection was made to Shri Elias Rahman on 10-12-2003 for the post of GDS BPM/ Chirakuti EDBO in conformity with the standing instruction issued by the Director time to time. Shri Elias Rahman secured 56.6% of marks in HSLC examination and the merit of another candidate Shri Jahan Ali was disregarded for the interest of the local people. Being aggrieved with the selection Shri Jahan Ali who got higher marks in the HSLC examination moved before the court of law and prayed for injunction restraining the applicant the applicant for joining in the said post. Due to court case The Chief Post Master General (CPMG)/ Guwahati reviewed the selection process and cancelled the same vide order dated 7-12-04 and ordered to reprocess the same afresh. Accordingly the selection to Elias Rahman was cancelled vide order dated 27-12-04. Due to cancellation of the selection made on 10-2003 a fresh notification was issued on 5-1-05 for filling up the vacancy and applicant Shri Elias Rahman applied for the said post.

3) That with regard to the statement made in paragraph 2 of the OA the respondents begs to offer no comment on it.

4) That with regard to the statement made in paragraph 3 of the OA the respondents beg to state that the applicant has made false statement because the selection was made on 10.12.03 and the applicant has filed present OA only on 7.2.05. The limitation period in approaching this Hon'ble Tribunal is one year; hence this OA is barred by limitation. No separate application has been filed by the applicant before this Hon'ble Tribunal to condone the delay.

5) That with regard to the statement made paragraph 4.1 and 4.2 of the OA the respondents beg to offer no comment on it

6) That with regard to the statement made in paragraph 4.3 of the OA the respondents beg to state that the advertisement made on 27-1-03 was cancelled due to administrative reason and re-advertisement was made on 20-6-03 for filling up the newly created post.

⑤) That with regard to the statement made in paragraph 4.4 of the OA the respondents beg to state that the applicant did not submit land deed exclusively in his own name in response to the notification dated 20-6-03.

⑥) That with regard to the statement made in paragraphs 4.5, 4.6, 4.7& 4.8 of the OA the respondents beg to state that the applicant was called for to attend before the Supdt. Of Post Offices on 18-9-03 and after the selection process he was asked to submit land document in his own name. Accordingly he submitted the land document which was in his own name. Then the applicant was selected for the said post and he was asked to submit cash security vide letter dated 10-12-03 amounting to Rs. 10,000/- to pledge the department and other documents as per the details given in the letter.

⑦) That with regard to the statement made in paragraph 4.9 of the OA the respondents beg to state that though the applicant deposited the security amount he never approached to the department to hand over the security Pass book.

⑧) That with regard to the statement made in paragraph 4.10 of the OA the respondents beg to state that the OA No. 287/03 filed before the Hon'ble Tribunal was dismissed on 23-09-04.

⑨) That with regard to the statement made in paragraphs 4.11, 4.12 & 4.13 of the OA the respondents beg to state that since various cases were pending before the court of law as mentioned in the brief history of the case the applicant was not allowed to continue to the post till finalization of the cases.

⑩) That with regard to the statement made in paragraph 4.14 of the OA the respondents beg to state that the CPMG /Guwahati reviewed the case and concluded that the selection was not made on merit of the candidates and directed to reprocess the same afresh. Accordingly the post was cancelled and re-advertised.

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12) That with regard to the statement made in paragraph ^{4.15} the respondents beg to state that an advertisement has been issued dated 5.1.05.

13) That with regard to the statement made in paragraph 5 (grounds) of the OA the respondents while denying the contentions made therein beg to reiterate and reaffirm the statement made above. The respondents further beg to submit that the grounds stated are not valid grounds because everything was done in accordance with law.

14) That with regard to the statement made in paragraph 6 of the OA the respondents beg to state that the applicant has not exhausted departmental remedies before filing this OA. The applicant neither approached the respondents nor has filed any representation before the respondents.

15) That with regard to the statement made in paragraph 7 of the OA the respondents beg to offer no comment on it.

16) That with regard to the statement made in paragraph 8 of the OA the respondents while defying the contention made therein beg to state that since the application filed after expiry of 1 (one) year it should not be admitted as per section 21 (1) (a) of the Administrative Tribunal Act, 1985.

17) That with regard to the statement made in paragraph 8.1 of the OA the respondents beg to state that since that selection was made without following the rules, the authority has cancelled the whole selection.

18) That with regard to the statement made in paragraph 8.2 of the OA the respondents beg to state that the interview as fixed, as per notification dated 05.01.05 has been kept in abeyance.

19) That with regard to the statement made in paragraph 8.3 of the OA the respondents while denying the contention made therein beg to state that since the applicant has not

approached and joined in the post the payment of salary with retrospective effect does not arise.

- 20) That with regard to the statement made in paragraph 8.3 of the OA the respondents beg to state that since the selection was made disregarding conditions of notification dated 26.06.03 and since the selection was cancelled the reprocessing for selection may be allowed.
- 21) That with regard to the statement made in paragraph 8.4 of the OA the respondents beg to offer no comment on it.
- 22) That with regard to the statement made in paragraph 9.1, 9.2 9.3 and 9.4 of the OA the respondents while reiterating and reaffirming the statement made above beg to submit that in view of the facts and circumstances of the case the applicant is not entitled for any relief as prayed for , hence the OA deserves to be dismissed with costs.
- 23) That the respondents beg to submit before this Hon'ble Tribunal no legal right of the applicant has been infringed by the cancellation of the selection because the same was not made as per conditions of the notification dated 26.6.03. The respondents pray before this Hon'le Tribunal that the applicant has not approached this Tribunal within the limitation period prescribed under section 21 of the Administrative Tribunal Act, 1985 and on this score alone this OA deserves to be dismissed with costs.

VERIFICATION

I Sheri ✓ R. Rabha at present working as
✓ Superintendent of Post offices, at ✓ Goalpara Division, Dhubri,
----- who is taking steps in this case, being duly authorized and
competent to sign this verification, do hereby solemnly affirm and state that the statement
made in paragraph 3, 4, 16, 18, 22, 23, 24
are true to my knowledge and belief, those made in paragraph
1, 2, 5 to 15, 17, 19, 21 being matter of records, are true to my
information derived there from and the rest are my humble submission before this
Humble Tribunal. I have not suppressed any material fact.

And I sign this verification this 23 day of March 2005 at Gujarat.

DEPONENT

(R. Rabha)
Superintendent of Post offices
Goalpara - Division
Dated - 23/03/2005