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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI - 5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GENERAL DIVISION

ORDER SHEET

1. Original Application No. 102/07

2. Misc Petition No. /

3. Contempt Petition No. /

4. Review Application No. /

Applicant(s) Abdur Rohim vs Union of India & Ors

Advocate for the Applicant(s) Mr. M. de Mandal

Mr. M. H. Chaudhury

Advocate for the Respondent(s) Mr. C. S. G. A. Baruwa

Notes of the Registry Date Order of the Tribunal

This application is in form
is filed/... F. for Rs. 50/-
deposited via IPO/ED
No. 346653193
Dated 30.3.07

Mr. S. B. J.
Dy. Registrar
Am

Petitioner's claim
for some notices
not received

3.5.2007

Present: The Hon'ble Mr.K.V.Sachidanandan
Vice-Chairman.

The Applicant had applied for the
post of Branch Post Master of Chirasuti
Branch Post Office and he appeared in the
selection/interview alongwith 13
candidates. Pursuant to the selection one
person was appointed. The selection was
subsequently cancelled. In its common
order 12.04.2005 this Tribunal dismissed
the O.A. Nos.23/05, 27/05 whereas
O.A.32/2005 was disposed of. High Court
also affirmed the orders of this Tribunal.

Now, the claim of the Applicant is
that since the other candidates have been
declared as not qualified in the said
selection proceedings the Applicant has to
be considered for appointment being the
only qualified candidate in the said
selection and hence he has filed this O.A.

Copy not yet served on
Respondent.

N. S. G.
3.5.07

- 2 -

Contd.

3.5.2007

Heard Mr. M. U. Mandal, learned counsel for the Applicant. Mr. G. Baishya, learned Sr.C.G.S.C. representing the Respondents sought for time to get instruction in the matter. Let it be done. Six weeks' time is allowed.

Post on 18.06.2007.

*Final hearing
on 18.06.07
10.05.07*

Vice-Chairman

/bb/

18.6.07

Counsel for the respondents prays for further four weeks time to file reply. Post the matter on 19.7.07.

Reply not filed. 1m

Vice-Chairman

18.7.07

19.7.2007

As a matter of last chance four weeks further time is granted to the respondents to file written statement.

Post on 20.8.2007.

23.8.07

WTS filed by the Respondents.

copy served. page 1 to 25.

(WTS)

pg

20.8.2007

Reply statement is reported to have been filed. Let it be brought on record if it otherwise in order. Applicant is at liberty to file rejoinder, if any.

Post the case on 10.9.2007.

7.9.07
no rejoinder filed.

h,

/bb/

Vice-Chairman

OA. 102/07

3

10.9.2007

Three weeks time is granted to the Applicant to file rejoinder. Post the case on 4.10.2007.

Vice-Chairman

/bb/

Rejoinder not filed.

04.10.07

2/10.07

Mr. M.H. Choudhury, learned counsel for the applicant seeks more time to file rejoinder. Prayer is allowed.

Call this matter on 12.11.07

Khushiram
(Khushiram)
Member(A)

Monoranjan Mahanty
Monoranjan Mahanty
Vice-Chairman

Rejoinder not filed.

8.11.07

lm

No. 11.07

Rejoinder filed
by the applicant.
Copies served.

Q.P.

12.11.2007

Rejoinder filed in Court today, after serving copy thereof on Mr. G. Baishya, learned Sr. Standing counsel for the Union of India. The matter is ready for hearing.

Call this matter on 19.12.2007 for hearing.

M.R. Mohanty
(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

15.11.07

/bb/

19.11.2007

On the prayer of Mr M.U. Mandal, learned counsel for the Applicant (made in presence of Mr G. Baishya, learned Sr. Central Government Standing Counsel) this case is adjourned to 21.11.2007.

Khushiram
(Khushiram)
Member (A)

M. R. Mohanty
(M. R. Mohanty)
Vice-Chairman

nkm

21.11.07 Heard Mr M.U.Mandal, learned counsel appearing for the Applicant and Mr G.Baishya, learned Sr. Standing counsel for the Union of India and perused the materials placed on record. For the reasons recorded separately this Original Application stands dismissed. There will be no order as to costs.

28.11.07
Certified
Copy of the
document has been
collected by the
L/Adv. for the
Applicant
A. B.

18.12.07
Order passed
vicle of No. 1789
to 1793 on
13.12.07

Received by Chairman of C.I.C.M.A.

and before action taken by the C.I.C.M.A.

Khushiram Adhikary

(Khushiram)
Member(A)

(M. R. Mohanty)
Vice-Chairman

Attest: A. B. (Signature) Dated: 13.12.07 pg 10/12/07

With a lot of thanks in best regards
S. V. Mohanty, I.A. No. 10870, A. 300, C. 100
Member of C.I.C.M.A. (Chairman of C.I.C.M.A.)
P. O. Chhatrapur, Dist. Cuttack, Orissa - 753001
Date: 13.12.07

Attest: A. B. (Signature)
S. V. Mohanty, I.A. No. 10870, A. 300, C. 100
Member of C.I.C.M.A. (Chairman of C.I.C.M.A.)
P. O. Chhatrapur, Dist. Cuttack, Orissa - 753001
Date: 13.12.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 102/2007

DATE OF DECISION : 21-11-2007

Abdur Rohim

.....Applicant/s

Mr M. U. Mandal

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mr G. Baishya, Sr.C.G.S.C.

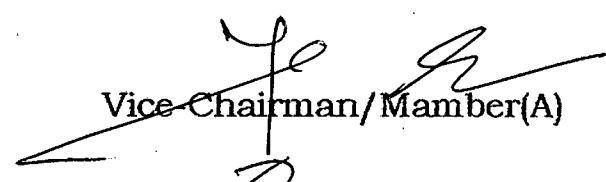
.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/No.


Vice Chairman/Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.102 of 2007.

Date of Order : This the 21st Day of November, 2007.

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

Md Abdur Rohim
Son of Samad Ali,
Village Chiracuti,
P.O. Chiracuti,
P.s. Chapar,
Dist. Dhubri, Assam

.....Applicant

By Advocate Mr M.U. Mandal

-Versus-

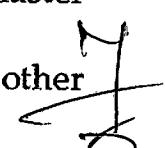
1. Union of India,
represented by the Secretary to the
Govt. of India, Ministry of Communication,
New Delhi.
2. The Director of Postal Services,
New Delhi
3. The Post Master General,
Assam, Meghdoott Bhawan,
Guwahati.
4. The Superintendent of Post Offices,
Goalpara Division,
Dhubri, Dist. Dhubri (Assam)
5. The Inspector of Posts,
Dhubri Sub division, Dhubri.Respondents

By Mr G. Baishya, Sr. C.G.S.C.

ORDER (ORAL)

KHUSHIRAM, MEMBER(A)

The Applicant had applied for the post of Branch Post Master
of Chiracuti Branch Post Office in the District Dhubri alongwith 13 other

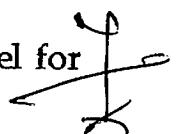


candidates. The selection was subsequently cancelled. Applicant and others challenged the action of the Respondents in this Tribunal. In its common order dated 12.04.2005 this Tribunal had earlier dismissed O.A. No. 23/05, O.A.No.27/05 and O.A.32/05. The said order was challenged before the Hon'ble High Court, where the decision of this Tribunal was upheld in W.P(C) No.4477/2005 and WP(C) No.6063/2005 by an order dated 23.02.2007. Since the decision of the Tribunal was upheld by the Hon'ble High Court, this O.A has been filed by the Applicant to press for implementation of certain observations of this Tribunal. In para 9 of the order dated 12.04.2005 of this Tribunal (while disposing of the Applicant's case) it was observed as under :-

"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."

The applicant has claimed that the Respondents has not yet decided his case as directed by the Tribunal. Therefore, he has filed this O.A.

2. We have heard Mr M.U.Mandal, learned counsel appearing for the Applicant and Mr G.Baishya, learned Senior Standing Counsel for the Union of India. The learned counsel for the Applicant pressed for directions to the Respondents to consider the case of the Applicant for an employment on the strength of the fact that he had worked as temporary Branch Post Master for a period of 5 months prior to the Notification of the vacancy dated 27.01.2003 and, therefore, he must be regularized against the notified vacancy or any other alternate post. The learned counsel for



the Respondents contended that Applicant has been filing litigation before the Tribunal and the High Court to seek employment with the Postal Department. In the written statement the Respondents have stated that the Applicant had challenged the matter twice before the Tribunal and his case was finally disposed of with the dismissal of O.A.287/2003 vide order dated 23.09.2004 and second time with the disposal of O.A.32/2005 by the Tribunal vide common order dated 12.04.2005 and that, hence, this Original Application is barred by res judicata.

3. We have carefully considered the rival contentions of both the parties and have gone through the materials placed on record. The only point on the basis of which the Applicant is pressing for appointment with the Respondents was his experience of 5 months when he worked as a temporary Branch Post Master and, in case, that is not possible then he claims to be provided with an alternative appointment.

4. The learned counsel for the Respondents cited the case of Secretary, State of Karnataka & Others vs. Umadevi (3) and others, (reported in (2006) 4 SCC 1), wherein the Apex Court has held as under :-

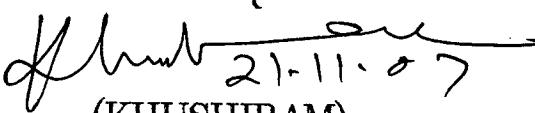
“Absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment - Issuance of directions for, and for stay of regular recruitment process for the posts concerned - Impermissibility of - Need for addressing concerns of equity for all, and not of just the few before the court, by upholding of constitutional scheme of public employment, whose hallmark is equality of opportunity. Supreme Court and High Courts should not issue such directions unless the recruitment itself was made regularly and in terms of the constitutional scheme. - The wide powers under Art. 226 are not intended to be used for issuance of such directions,



certain to defeat the concept of social justice, equal opportunity for all and the constitutional scheme of public employment. It is erroneous for Supreme Court to merely consider equity for the handful of people who have approached the court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for competing for employment - Further, courts must be careful in ensuring that they do not interfere unduly with the economic/financial arrangement of the affairs of the State or its instrumentalities."

It was further held that casual labour/temporary employee "do not have any right to regular or permanent public employment - Further, temporary, contractual, casual, ad hoc or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it."

5. In view of the above decision of the Apex Court, the Applicant has no case whatsoever. His claim for employment as a right, on the basis of his 5 months experience of working with Postal Department, is devoid of any merit and, hence, dismissed. There will be no order as to costs.


 21-11-07
 (KHUSHIRAM)
 ADMINISTRATIVE MEMBER


 21-11-07
 (MANORANJAN MOHANTY)
 VICE CHAIRMAN

/pg/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI.

LIST OF DATES ON BEHALF OF THE RESPONDENTS

OA No. 102 of 2007

Abdur Rahim -vs- The Union of India

28.12.2003-The Applicant was appointed as a substitute to work as GDSMS of regular incumbent of Sti Nabin Hussain for five months.

18.9.2003- Selection was held to select BPM.

23.9.2004- The Order of the Tribunal passed in OA No. 287 of 2003 finally deciding the right of the applicant.

7.12.2004- Order of the Supdt. Of Post offices Dhubri to cancel the entire selection process.

12.4.2005- Common order passed by the Hon'ble Tribunal in OA 23/05 27/05 & 32/05.

19.8.2005 The representation filed by the applicant was rejected by the Supdt. Of Post Offices Dhubri.

23.2.2007- Order of the High Court in W.P.(C) No. 4477 of upholding the verdict of the Tribunal.

Filed by

Granban Ali

Senior CGSC.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI.
LIST OF DATES ON BEHALF OF THE RESPONDENTS

OA No. 102 of 2007

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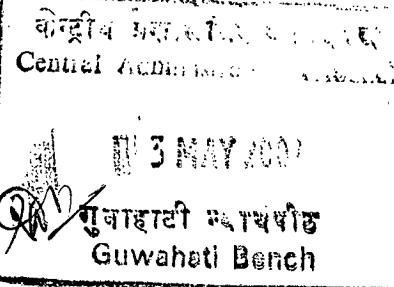
19.8.2005 The representation filed by the applicant was rejected by the Supdt. Of Post Offices Dhubri.

23.2.2007- Order of the High Court in W.P.(C) No. 4477 of upholding the verdict of the Tribunal.

Filed by

Granum Singh

Senior CGSC.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

O.A. NO. 102 /2007.

Abdur Rehim Applicant
-Versus-
The Union of India & Ors. Respondents

List of dates and synopsis of the application:-

1. 29.01.03, Notification issued by the Suptd. of Post Office, Goalpara Division for filing up Branch Post Master of Charikuti, Branch Post Office under Bilasipara Sub-Division, District-Dhubri (Assam).
2. 29.01.03 & 26.6.03, the applicant submitted for the post of BPM at Chirakuti.
3. 29.03.03, the appointed as GDSMD/mcad Jamduan and for 5 months.
4. 19.6.03, Notification dated 27.01.03 was cancelled.
5. 20.06.03, 2nd Notification was issued by the Suptd. Of Post Officer, Goalpara Division, Dhubri for filling up the same post as notified dated 29.01.03.
6. 19.09.03&20.10.2003, the unqualified candidates were called for produce land document.
7. 18.09.03, the applicant has appeared before the selection committee as per the invitation letter 27.8.03 along with 13 candidates. The other candidates were not eligible and qualified at the time of interview/selection dated 18.8.03. The respondents authorities appointed one person in pursuance to selection which was cancelled later on, finding anomalies in the selection process.

Abdur Rehim

8. 27.12.04, the select list and appointment in favour Elius Rahman cancelled and the applicant is entitled for appointment/regularization his service being a experience candidate as per the Service Rule 1964 and employment Rule 2001.

9. 12.4.2005, Common order in O.A. No.23/2005, O.A. No.27/2005 and O.A. No.32/2005.

10. 11.5.2005, Representation filed by the applicant.

11. 19.8.2005, Rejection order by respondent No.4 in response to the representation dated 11.5.2005.

12. 23.2.2007, Common Judgment & Order whereby W.P.(C) No.4477/2005 and W.P.(C) No.6063/2005 were dismissed.

13. 13.4.2007, representation filed by the applicant praying for regular appointment in the light of the common judgment and order-dated 23.2.2007.

Filed by

Advocate

३ MAY 2007

गुवाहाटी बैचन्स
Guwahati Bench

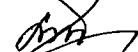
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

O.A. NO. 102 /2007.

Abdur Rehim Applicant
-Versus-
The Union of India & Ors. Respondents

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Filed by



Advocate

IN THE ADMINISTRATIVE TRIBUNAL, GAUHATI
BENCH, GUWAHATI.

Filed by the
claimants & petitioner
Abdur Rahim
Innong
M. H. Choudhury
Advocate
30/4/07

O.A. NO. 102 /2007.

BETWEEN

Abdur Rahim,
Son of Samad Ali,
Vill. Chiracuti,
P.O. Chiracuti,
P.S. Chapar,
Dist. Dhuburi, Assam.

.....APPLICANT.

-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, New Delhi.
3. The Post Master General, Assam, Meghdoott Bhawan, Guwahati.

4. The Superintendent of Post Office, Goalpara Division, Dhubri, Dist.Dhubri(Assam).

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

..... **RESPONDENTS.**

DETAILS OF APPLICATION

1. **PARTICULAR OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE.**

The instant application is directed against the illegal action of the respondent authority in pursuance to the 'Interview/selection' dated 18.9.2003 for the post of GDS/EDDA/EDMC i.e. at Chiracuti Branch Post Office, under Bilasipara Sub-Division in Dhubri District, Assam and also against the illegal action of the respondent authority by violating the Notification dated 20.6.2003. The application is also directed against the arbitrary, malafide, bias discriminatory and high handed exercise of powers of the respondents authority in selection and appoint of BPB of Chiracuti Branch Post Office. The application is also against the impugned Notification dated 5.1.2005 issued by the Superintendent of Post

Absentee Bohemia

18/9/05

Officer, Goalpara Division for filling up B.P.M. post of Chirakuti Branch Post Officer in view of the order dated 7.12.04 and 27.12.04 in not appointing the applicant as B.P.M. of Chirakuti who has been deemed to be selected in pursuance to the interview held on 18.9.03.

2. THE JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION :

The applicant further declares that the application is filed within the limitation period prescribed under the section 21, of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4.1. That the applicant are the citizen of India and permanent resident of the aforesaid address mention in the cause title of this application in the State of Assam and as such they are entitled to get all sorts of rights, privileges, protection and benefits guaranteed by the Constitution of India and other laws of the land.

Absent from home

4.2. That on 28.12.02 the applicant was appointed as GDSMD/MC/EDBO who worked for 5 months at Zamduar B.O. and released on 31.5.03. On 29.1.2003 a Notification was issued by the Superintendent of Post Officer, Goalpara Division for filling up the post of Branch Post Master at Chirakuti, Branch Post Office, accordingly the applicant applied for the said post. But, surprisingly, on 19.6.2003 the earlier notification was cancelled due to some unavoidable reasons.

Photocopies of the Order dated 27.5.03 and 31.5.03 are annexed herewith and marked as Annexure-1 and 1A respectively.

Photocopies of the Notification dated 29.01.03, two Form and letter dated 19.6.03 are annexed herewith and marked as Annexure-1B, 1C & 1D respectively.

Photocopies of the letter dated 19.6.03 is annexed hereto and marked as Annexure-2.

4.3. That on 20.6.03 another Notification was issued by the Superintendent of Post Office,

Abdulkhan

Goalpara Division, Dhubri for filling up of a post of Branch Post Master of Chirasuti Branch Post Office. Accordingly, the applicant appeared for the said post alongwith other 13 candidates. The applicant, being duly qualified for the said post submitted all required documents with the form. After the interview held on 18.9.03, the letters dated 19.9.03 and 20.10.03 were issued to 4 candidates which contrary to the Notification. The local public has demanded and submitted a representation to appoint the applicant who was provided all accommodation and other and documents for running Chira Kuti BO which has bear recommended by the Local G.P. members and President while the selection date was deferred in violation of the Notification.

A photo copy of the Notification dated 20.6.03 is annexed as

Annexure-3.

Photocopies of the call letter, character certificate, 2 letters dated 19.9.03 and 20.10.03 are annexed hereto as Annexure-4, 4A, 4B, 4C, 4D, 4E & 4F respectively.

Abslur Rohim

4.4. That on 27.8.2003, the applicant was invited and asked to appear before the selection committee on 18.9.2003. Accordingly, the petitioner appeared in the selection committee on 18.9.03 alongwith other 13 candidates and the applicant did well in the interview for the Post of Branch Post Master for Chirakuti Branch of Post Officer. As per the terms and condition of the Notification, the selected list should be published/notified in the notice Board then and there. But the respondents did not publish the select list as per the notification. The applicant being HSLC passed candidate, submitted all documents as per the terms of the advertisement along with the prove of working certificate and land documents who was to be selected and appointed.

Copies of the R.C., LHC, I.C. Admit, testimonial and Marks sheets and Sale deed and heading over charge are annexed herewith and marked as **Annexure-5, 5A, 5B, 6, 6A, 6B, & 7** respectively.



4.5. That on 19.9.03, the respondents wrote, letter to the one Elias Rahman and Ashed Ali directing them to submit Land documents. On 20.10.2003, another letter was issued to one Rofiqul Islam and Jahan Ali directing them to

submit land documents. The above noted two letters dated 19.9.03 and 20.9.03 can not be issued as per ~~the~~ terms and conditions of the Notification dated 20.6.03 and the same two letters were issued just to accommodate the private candidates for extraneous consideration which can not be allowed as per the Acts, Rules Guidelines and Notification framed thereunder. The applicant challenged the impugned selection and appointment of Elias Rahman by filling O.A. No.287/03 and this Hon'ble Tribunal was pleased to issue notice of motion fixing on 2.2.2004 by its order dated 19.12.03 and the O.A. No.287/03 was dismissed on 23.9.04. On 7.12.04, the Assistant Director (INW) wrote a letter to Superintendent of Post Office, Dhubri to cancel the select list dated 29.1.03 and the appointment letter dated 15.10.03 since the selection and appointment were cancelled by the authority in view of the huge anomalies in making selection and as such as per the Notification dated 20.6.03 the applicant deemed to have been ^{selected} and appointed in the interest of justice.

Abulkarif Khan

Copies of the order dated 19.12.03 and 23.12.03 and 23.9.04 passed in O.A. 287/03 are annexed herewith and marked as Annexure-8 and 9 respectively.

Copies of the order dated 7.12.04 and 27.12.04 are annexed herewith and marked as Annexure-10 and 11 respectively.

4.5 That the applicant begs to state that he has fulfilled all the terms and conditions as laid down in the notification and the applicant is the only candidate who ought to have been selected and appointed for the post of Branch Post Master of Chirakuti Branch Post Officer. None except the applicant had ~~not~~ fulfilled all the terms and conditions as per the Notification dated 20.6.2003 at the time of submission of their applications and at the time of selection committee held on 18.9.2003. No other candidates was eligible and qualified and could not fulfill conditions as per the Notification dated 20.6.03 except the applicant. After cancellation the selection and appointment in respect of Branch Post Master at Chirakuti Branch Post Office, the applicant has submitted a representation on 31.1.2005 to the respondent seeking appointment in view of the cancellation orders dated 27.12.04 issued by the respondent No.4 but the respondent No.4 has issued a fresh impugned Notification without disposing the representation dated 3.1.2005 which is illegal,

Abulrekhim

arbitrary, malafide, discriminatory, in violation of the principle of Natural justice, administrative fair play and as such the impugned Notification dated 5.1.2005 is liable to be set aside and quashed.

A copy of the representation dated 3.1.05 and a copy of the impugned Notification dated 5.1.05 is annexed herewith and marked as Annexure 12 and 13 respectively.

4.7 That as many as 3 original applications vide O.A. NO.23/2005, (Elias Rahman -vs- Union of India and others), O.A. No.27/2005 (Jahan Ali -vs- Union of India and others) and O.A. NO.32/2005 (Abdur Rahim -vs- Union of India and others) were filed before this Hon'ble Tribunal challenging the interview and selection process as per the 20.6.2003 and the Notification dated 5.1.2005. The O.A. NO.23/2005 and O.A.27/2005 were dismissed by this Hon'ble Tribunal and O.A. NO.32/2005 was disposed of directing the respondents to consider the applicants claim for alternate appointment and arrear of pay within a period of three months from the date of receipt of the order dated 12.4.2005.

Abdur Rahim

A photo copies of the order dated 12.4.2005 in O.A. Nos.23/2005, 27/2005 and 32/2005 is annexed herewith and marked as Annexure-14.

4.8. That on 11.5.2005 the applicant has submitted representations as per the common order dated 12.4.2005 to the respondent No.4 praying for alternate appointment in terms of the order dated 12.4.2005 in O.A. No.32/2005. The respondent No.4 by order dated 19.8.2005 has rejected the claim of the petition that too in violation of the order dated 12.4.2005 passed in O.A. 32/2005 and also in violation of the principle of Natural justice, the Act, Rules and guidelines framed thereunder and as such the order dated 19.8.2005 is illegal, arbitrary, malafide, discriminatory, perverse and without jurisdiction and same is liable to be set aside and quashed.

Photo copies of the representation dated 11.5.2005 and the order dated 19.8.2005 is annexed herewith and marked as Annexure-15 and 16 respectively.

Abulkalam

4.8 That the applicants of the O.A. No.23/2005 and O.A. No.27/2005 preferred the writ petition ~~exes~~ vide W.P. (C) NO.4477/2005 (Elias Rahman -vs- Union of India and others) and W.P. (C) No.6063/2005 (Jahan Ali -vs- the Union of India and others) challenging the common order dated 12.4.2005 in O.A. No.23/2005, O.A. No.27/2005 and O.A. No.32/2005 and the same were dismissed by common judgment and order dated 23.2.2007 holding that the petitioners have not fulfilled the essential criteria in terms of the advertisement dated 20.06.2003 and ^{as} ₁ such the selection can not be ~~valid~~ valid which has substantiated the case of the present applicant who is deserved to be considered for appointment in the light of the common Judgment and order dated 23.02.2007.

Photostat copy of the common judgment and order dated 23.02.2007 is annexed hereto and marked as **ANNEXURE-17**.

4.9. That on 13.04.2007, the applicant has submitted a detailed representation to the Respondent No.4 praying for regular appointment as B.PM, EDDA, GDS, cum EDMC in the light of common Judgment and order dated 23.02.2007 passed in W.P. (C) No. 4477/2005 and W.P. (C) No. 6063/2005 but the Respondent authorities have not taken any positive

Abhisekh Bhim

steps to appoint the applicant as prayed for rather the Respondent authorities are contemplating to appoint some fresh candidates in violation of the provisions of Act, Rules and Guideline framed there under and as such finding no alternative ways, the applicant is preferring this original application in the interest of Justice.

A Photostat copy of the representation dated 13.04.07 is annexed hereto and marked as ANNEXURE-18.

4.10. That the applicant begs to state that as per the order dated 12.4.2005 in O.A. NO.23/2005, O.A.NO.27/2005 and O.A. No.32/2005 and also as per the common judgment and order dated 23.2.2007 the applicant is entitled for regular appointment but the respondent authorities ^{has} _{not} ~~not~~ taken any action in response to the representations dated 13.4.2007 despite the available vacancies under respondent No.4 & 5 and as such your Lordships should be pleased to direct the respondents particularly the respondent No.4 & 5 to appoint the petitioner in pursuance of the selection process held on 18.9.2003 as per the Notification dated 20.6.2003 in which the applicant was the only candidate who fulfilled all criteria laid down in the

Abhurekohim

advertisement amongs the participants and as such the applicant deserved to be selected and appointed in the post of GDS/EDDA/EDMC/BPM/ (Branch Post Master) at Chirakuti Branch Post Office or the applicant may be appointed in the job as per the Acts, Rules & Guidelines.

4.11. That the applicant was appointed and served for a period of 5 months in the said Zamdur Branch Post Office as G.D.S., EDDA cum EDMC. The applicant is an experience person and preference should be given to him. The cancellation of appointment letter of the applicant is in violation of the Act, Rules and guidelines ^{framed} ~~formulated~~ thereunder and as such the applicant should be appointed in view of the experience gathered for 5 months.

4.12. That considering the facts and circumstances of the case, the select list and the appointment letter dated 29.1.2003 and 15.10.03 which has been already cancelled and as such the applicant should be appointed in the interest of justice.

4.13. That this application has been made bonafide and to secure the ends of the justice.

Abdurehman

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS.

5.1. For that the impugned selection and appointment letter is illegal, arbitrary, malafide, discriminatory, without jurisdiction as per the Act, Rules, Guidelines, and notification dated 20.6.03 and the select list and the appointment letter are already cancelled for anomolice and as such the 3rd Notification dated 5.1.05 is liable to be set aside and quashed and the applicant should be selected and appointed considering only experience candidate in the interview held on 18.9.03 for the post of BPM at Chirakuti Branch Post Office as ^{per} the service Rule 1964 and Employment Rule 2001 and in the light of the common judgment and order dated 12.4.05 and 23.2.07 in the interest of justice.

5.2. For that that ^{no} ~~no~~ other candidate except the applicant was not eligible and qualified at the time of interview time and again and as such the illegal, 3rd Notification dated 5.1.05 is liable to be set aside and quashed.

5.3. For that the respondent authorities letter dated 19.9.2003 and 20.10.2003 was illegal, arbitrary, bias, malafide arbitrary and without jurisdiction and for that reason the select list

Absure Rokim

was illegal, malafide arbitrary, and without jurisdiction and the same has already been set aside and quashed and as such the applicant is deserved to be selected and appointed in the interest of justice by setting aside and quashing the impugned Notification dated 5.1.2005.

5.4. For that the respondent authorities have violated the Act, Rules, Guidelines and Notification framed thereunder and as such the impugned select list and the appointment letter already made is illegal, arbitrary, bias, based on extraneous consideration and the same is already set aside and quashed and as such the 3rd impugned Notification is liable to be set aside and quashed.

5.5. For that in any view of the matter the entire action of the respondents are liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

6. DETAILS OF THE REMEDIES EXHAUSTED :

The applicants declares that they he has no alternative and efficacious remedy except by way of filing this application.

Ahsan Rahim

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

The applicant further declares that no other application, writ petition or suit in respect of the subject matter of any other Court Authority or any other Bench of the Hon'ble Tribunal for any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:-

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

8.1 To direct the Respondent No.3 and 4 to set aside and quash the impugned 3rd Notification made by the Superintendent of Postal Department, Goalpara Division, Dhubri order dated 19.8.05 and appoint the applicant as Branch Post Master at Chirakuti Branch Post Office in view of the interview held on 18.9.03 considering 5 months experience in services in the interest of justice.

Absent from him

8.2 To direct the Respondent No.3 and 4 to select the applicant and also to appoint the applicant in the post of GDS/EDDA/EDMC/EPM Branch Post Master at Chirakuti Branch Post, Bilasipara, in the district of Dhubri, in pursuance to the Notification/selection held on 18.9.03 as per the Notification dated 20.6.03, order dated 12.4.05 common judgment and order dated 23.2.07 or regularized his post by providing alternative job as per the Act, Rules and guide lines framed thereunder.

8.3 Any other relief/reliefs to which the application is entitle to.

9. INTERIM ORDER PRAYER FOR;

Pending disposal of this application the Applicant prays that Your Worships would be pleased to stay the 3rd Notification dated 5.1.05 and appoint the applicant in pursuance to the selection committee held on 18.9.2003 in pursuance to the Notification dated 20.6.2003, 12.4.05 and 23.2.07 in O.A. 32/05 and W.P.(C) No.4477/05 and W.P.(C) No.6063/05 and also direct the respondents authority not to make any appointment as BPM at Chirakuti Branch Post Office ~~regularizes the~~ or be pleased to regularize the service of the applicant or provide alternative job to the applicant in view of last 5 months experience as EDDA/GDS/EDMC/EPM/ in the interest of justice.

Absent him

Further be pleased to direct the respondent authority that there shall be no bar to appoint the applicant regularize/alternative job during pendency of this application.

10. The application is filed through advocate.

11. PARTICULARS OF THE I.O.P.

- I. I.P.O. NO.
- II. Date
- III. Payable at Guwahati.

12. LIST OF ENCLOSURE

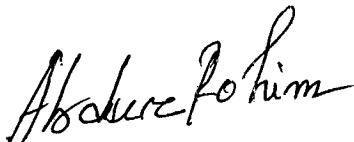
As stated in the index.

Ahmed Rohim

VERIFICATION

I, Sri Abdur Rohim, aged about 25 years, S/o. Samad Ali, resident of village- Chirakuti, P.O.- Chirakuti, P.S. Chapar, in the district of Dhubri, do hereby solemnly affirm and declare and verify that the statement made in paragraphs 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 & 4.9..... are true to my knowledge those made in paragraph 4.10, 4.11, and 4.12 are matter of records..... rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 3rd day of May, ²⁰⁰⁷ at Guwahati.



D E P O N E N T

6/1 - 20/6/2003 - Hn/Exn-1
SPOB

DEPARTMENT OF POSTS - INDIA
OFFICE OF THE INSPECTOR OF POSTS : DHUBRI SUB-DIVISION
DHUBRI - 783301

Memo No A-2/Chirakuti/1

Dhubri Dated 27/5/2003

The following orders are issued in the interest of service

- 1 The arrangement for the post of GDSBP M, Chirakuti Pt I, EDBO made by this office memo of even no. dtd. 28/12/2002 is hereby terminated w.e.f. 31/05/2003 (afternoon). Sri Nabi Hussain who has been working as BPM at Chirakuti Pt I EDBO will join to his original post i.e. GDSMD / MC, Zamduar EDBO terminating substitute arrangement made by this office memo of even no. dtd. 29/03/2003.
- 2 Sri Abul Kalam Sheikh, GDSMD, Kadomtala EDBO will take over the charge of BPM, Chirakuti Pt I EDBO from Sri Nabi Hussain on 31/05/2003 (afternoon) and will continue as BPM until further order.
- 3 The GDSMC, Kadomtala EDBO will perform the delivery works of their office in addition to own duty

Inspector of Posts,
Dhubri Sub-Division
DHUBRI-783301

Copy to:

- 1 SPOS, Dhubri for information and kind approval
- 2 Post Master, Dhubri HO for information and necessary action
- 3 SPM, Bilasipara, SO for information
- 4-6 BPM, Kadomtala / Zamduar / Chirakuti Pt I EDBO for information and suitable action.
- 7 Sri Abul Kalam Sheikh, GDSMD, Kadomtala EDBO for information
- 8 Sri Minger Hussain, GDSMC, Kadomtala EDBO for information
- 9 Sri Abdur Rahim, GDSMD / MC (substitute), Zamduar EDBO with information that his service is terminated w.e.f. 31/05/2003 (afternoon)
- 10-12 P/F of the officials
- 13 Office Copy

Inspector of Posts,
Dhubri Sub-Division
DHUBRI-783301

- 15 -

Amendment to General Financial Rules, 1963

Form VFR 33

(See Rule 77B)

Certificate of transfer of Charge

Certified that I / We have in the forenoon /asternoon of this day respectively made over and received charge of the Office G.D.S. EDDA / EDMC in pursuance of Order No A-2 / Chirakuti T dated 27.5.03

Relieved Officer ABDUR ROHIM

Relieving Officer MABI HUSSAIN

Signature Abdur Rohim

Signature Mabi Hussain

(Name in Block Letters)

(Name in Block Letters)

Designation EDDA / EDMC

Designation EDDA / EDMC

Station Jornduar

Station Jornduar

Date 31.5.03

Date 31-5-03

(For use in Audit Office / RAO only)

Noted in A/R at page

SO / AAO / AO / PAO

Noted in A/R at page

SO / AAO / AO / PAO

Forwarded

Abdur Rohim

Note : Separate Certificate (as per Form appended) also to be used where transfer/assumption of charge involves responsibilities for cash, stores etc.

FORM GFR 33 APPENDIX

(See Rule 78)

80 -16 22
 Certificate of transfer of charge in respect of transfer/ assumption
 responsibilities for Cash, Stores etc.

1. Name of the Officer relieved of charge of Cash, Stores etc.

2. Name of the Officer relieving the above Officer of charge of Cash, Stores etc.

3. Name of the Officer relieved of charge of Cash, Stores etc.

4. Name of the Officer relieving the above Officer of charge of Cash, Stores etc.

Cash Rs.

Permanent advance Rs.

Others

Relieved Officer

Relieving Officer

DEPARTMENT OF POSTS

1. अधिकारी
पुस्तकालय
कार्यालय
Goalpara Division
गोपालगढ़-783301

(A-2)(i)

No. 130/3578/CR/Recd. No. 1 Dated at Jorhat on the 29-6-1980

NOTIFICATION

Sub:- Appointment to the post of BPM/EDSO / Clerk Grade I (Bn.)

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 28/7/80. The application should be submitted in closed covers only, duly superscribed in bold letters as 'APPLICATION FOR THE POST OF BPM/EDSO CLERK GRADE I B.O/EDSO'. 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.
(Strike 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 candidates to claim any regular full-time post in the department. The post carries time related continuity allowance of Rs/280+35--1980 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.

6. ELIGIBILITY CONDITIONS:

(i) AGE:

About 18 years and below 62 years of age as on the 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/other 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 deed 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/prefeential condition/selection process once again. The selection would be finalised in

1/20 26/11/03 (A-4)

APPLICATION FOR THE POST OF B.P.M./Chirakuti-1 B.O.
REFERENCE TO LETTER/NOTIFICATION NO. B.O/358/Chirakuti-1

Dated 27-01-2003 of Office of the Superintendent of Post Office, Tilonpara Division, Dhubri.

1. Name in full : <u>MD. ABDUR RAHIM</u>	2. Present address : <u>Vill- Chirakuti A-1, Chirakuti-1, Tilonpara, P.S. Chirakuti, Sub-Division - Tilonpara Dist - Dhubri, Pin- 783348.</u>
3. Permanent address : <u>do</u>	4. Whether SC/ST/OBC (enclose the certificate issued by competent authority) : <u>NO</u>
5. Date of birth : <u>1st January 1982</u> (enclose the school leaving certificate or birth certificate) <u>(Copy enclosed)</u>	6. a) Educational qualification : <u>H.S.L.C. Passed.</u> (enclose copies of certificates) <u>(Copy enclosed)</u> b) Marks obtained in HSLC : <u>(Copy enclosed)</u>
7. Particulars of landed/immovable property etc. held in the name of candidate only. (enclosing copy of record of right) <u>2 (Two) Bigha 1 (one) Katha 0 (zero) lessa under Ichahan No 70 covered by Dug No 48/87 at village Chirakuti, P.T. under Chirakuti revenue circle P.S. Tilonpara (Copy enclosed)</u>	8. INCOME : i) Annual income : <u>Rs 10,000/- monthly</u> ii) Source of income : <u>From Cultivation (Certificate enclosed)</u> (enclosing certificate issued by Revenue/ competent authority verifying the source of income in the name of candidate)
9. Enclosed two character certificate issued by prominent persons of the locality : <u>1) one certificate from Head Master Tilonpara High School 2) one certificate from the G.P. President of Chirakuti-Tilonpara Gram Panchayat enclosed</u>	

Do you know cycling

Yes,

11. If you are not a resident of the post village, are you prepared to shift your residence to the PO village, in the event of your selection

Does not arise

12. Can you provide free accommodation to house the PO in PO village.

Yes,

13. Whether you hold any elected post ? If so furnish details.

No

14. Are you an agent of LIC or any other insurance/finance company ? If so give details.

No

I hereby declare that the information furnished above is true and correct to the best of my knowledge. I understand that if the information is found to be false at a later date, my candidature/selection/appointment is liable to be cancelled/terminated apart from criminal prosecution.

Place : Chirakuli pt I.

Abdul Bohem

Signature of the candidate
(Name & address)

Date : 29/2/03

Enclosures :

- School leaving certificate or birth certificate.
- HSLC mark sheet.
- Caste certificate (if belonging to SC/ST/OBC) issued by competent authority.
- Record of rights (landed/other immovable property).
- Income certificate issued by competent authority in the name of the candidate only.
- Two character certificates from 2ri A. A. Sheikh, Dist. A. H. & V. O. C. Officer, Kokrajhar
→ Mr. Ruppan Nessa, President, Chirakuli
→ Mr. T. M. Parma, C. P.

Note : Tick in the box for the certificate enclosed.

ION FOR THE POST OF
REFERENCE TO LETTER/NOTIFICATION NO. 130/13/315/TE/2007

dated 22-6-2003 of office of the

1. Name in full

ABDULKARIM

2. Present Address 211- Charkuti 1741 P.O. Charkuti - 123130
P.S. Charkuti Dist. Dibrugarh Assam
Post Box No. 185378 36481

3. Permanent Address - do

4. Whether SC/ST/OBC (enclose the certificate issued by competent authority)

5. Date of Birth
(enclose the school leaving certificate
of birth certificate)

6. a) Educational Qualification
(enclose copies of certificates)
b) Marks obtained in HSLC

7. Particulars of landed/immovable
property etc. held in the name of
candidate only.
(enclose copy of record of right)

8. INCOME:

I) Annual Income ✓ Rs. 16,000/-
II) Source of Income
III) Enclose income certificate issued
by Revenue/competent authority spe-
cifying the source of income in the name
of candidate

9. Enclose two character certificate

10. Issued by prominent person of your loca-
lity

BPP/Charkuti-B.C.

130/13/315/TE/2007

Superior post office and Gramin
Post Office

Post Box No. 185378 36481

Assam

-17- -29- 18/1/2014

Do you know cycling

Yes,

11. If you are not a resident of the post village, are you prepared to shift your residence to the PO village, in the event of your selection? *Does not arise*

12. Can you provide free accommodation to house the PO in PO village. *Yes*

13. Whether you hold any elected post? If so give details. *No*

14. Are you an agent of LIC or any other insurance/finance company? If so give details. *No*

I hereby declare that the information furnished above is true and correct to the best of my knowledge. I understand that if the information is found to be false at a later date, my candidature/selection/appointment is liable to be canceled/terminated apart from criminal prosecution.

Place: *Charkuti/17-1*

Abdul Kader
Signature of the candidate
(Name & Address)

Date: *22/6/2014*

Enclose:

- School leaving certificate/birth certificate.
- HSLC marksheet.
- Caste certificate (if belonging to SC/ST/OBC) issued by competent authority.
- Record of rights (land other immovable property).
- Income certificate issued by competent authority in the name of the candidate only.
- Two character certificate from 1. *Mr. AA. Sankli, A.T.S. Office, Kokrajhar*
2. *Mr. Rupahan Nessa, P.C. Office, Kokrajhar*

Note: Tick in the box for the certificate enclosed.

48-24-30-FF Annex No. 2

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

No. B3/358/Chirakuti-I

Dated at Dhubri the 19-06-2003

Sub :- Appointment to the post of RPM/Chirakuti-I P.O.

The advertisement made vide this office memo of even no. dtd 29-01-2003 on the above noted subject is hereby cancelled due to some unavoidable reasons and fresh advertisement will be issued later on.

This is for information to all concerned.

(G. C. Hazarika)
Supdt. of Post Offices
Goalpara Division
Dhubri - 783301.

Copy to :-

1. The Asstt. Director, Employment Exchange, Dhubri w.r.to his No. DOX/VC-5/84/03/226-27 dtd 25-2-03.
2. The President, Chirakuti Tilapara GP, P.O.-Tilapara. Via- Bilasipara.
3. The RPM, Chirakuti P.O. Via- Bilasipara S.O. for displaying on office notice board.
4. The SPM/Bilasipara S.O. for displaying on office Notice Board.
5. The SDI(P), Dhubri for displaying on office notice board.
6. All applicants concerned.

Signature W3
Supdt. of Post Offices
Goalpara Division
Dhubri - 783301.

DEPARTMENT OF POSTS

Post Office

Headt. of Post Office

Office of the गोपारपाटा अधिकारी

Goalpara Division

गोपारा-Dhubri-783301

(A-2)

No. B2/358/Chirakuli

Dated at Dhubri on 20/6/82

NOTIFICATION

Sub:- Appointment to the post of Gs/As/BPM

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 21/7/82. The application should be submitted in closed covers only, duly superscribed in bold letters as "APPLICATION FOR THE POST OF BPM/EDSPM Chirakuli 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 ~~SC/ST~~ /not reserved 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 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.

-19-

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

-RB-337-

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 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 IISLC (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 the date 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/preferential condition/selection process once again. The selection would be finalised in

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 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.

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

Signature:
Designation:
गांवपाल गांव
Gaonpara Division
सिली-Dibrui-783301

Copy to (Regd AD)

1. The President, Gaon Panchayat
2. The Head Master, Govt. Primary/High School
3. BPM/ बैंकरी बैंक (Bank)
4. SPM/ अधिकारी (Account Office)
5. The ASPO/IC/SDI(P)

Sub Division.

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

Signature:
Designation:
गांवपाल गांव
Gaonpara Division
सिली-Dibrui-783301

-23- -35 - 20 - Rajib AP.

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

To,
Shri Abselur Ramkrishna
C/O S. S. M. S. A. G.
Vill Gulistan Kuchi
P.O. - Chirakuti
Via - BILASIPARA.
Dist. - Dhunbri.

No: B3 / 358 / Chirakuti.

Dated at Dhunbri 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
(G. C. Hazarika)
Supdt. of Post Offices
Goalpara Divn, Dhunbri
783301.

30-36

ANNEXURE - 4 A

From

Dr. Ali Azam Sheikh,
B.V.Sc & A.H. (AMU) M.V.P.H(C.U)
Regd. No 0400

District A.H & Veterinary Officer Kokrajhar.

TO HCA II MAY CUNGRN

This is to certify that Md. Abdur Rahim
s/o Md Samad Ali an inhabitant of village Chirakuti
Pt- I, p.O Chirakuti, P.S. Chapar in the Bilesipara
Sub Division of Dhubri district is personally
known to me since last few years.

To the best of my knowledge and belief he bears
a good moral character. He is a young energetic boy of active
habits and of amiable disposition.

I wish him every success.

Sd/- Illigible,

21.02.2003

(Dr. A.A. Sheikh).

ANNEXURE - 4 B

OFFICE OF THE
CHITAKUTIA Tilapara Gaon Panchayat
P.O TILAPARA, DIST. DHUBRI (ASSAM)

EFOM

Rupbhan Mesa
President.

Ref. No. 9/2002-2003/9

Date 5.2.03

This is to certify that Abdur Rahim S/o Samad
Alian inhabitant of village Chirakuta Pt-I, P.O Chirakuti,
P.S. Chapar, Dist. Dhubri (Assam) is known to me
well . He

His character and conduct has been found good.

I wish him every success in life.

Sd/- Illegible.

ANNEXURE - 4 C

OFFICE OF THE HEADMASTER/SECRETARY
TILAPARA HIGH SCHOOL
P.O TILAPARA, DISTT DHUBRI(ASSAM)

Ref. No.

Dated 6.2.03

Certified that Abdur Rohim S/o Samad Ali
village Chira Kuta Part - I, P.O Chira Kuti, P.S. Chapars
District Dhubri, Assam. He is personally known to me. He
was a regular student of this Tilapara High School and passed
the H.S.L. (Rept) examination /2001 from this school under
Roll No. R 7 - 428 No. 0057. His conduct and character were
found good while he was a student of this High School.

I wish him every success in life.

Attested.

....

Sd/-

Illegible,

....

ANNEXURE - 4 D

Superintendent of Police
Goalpara - Division,
Dhubri. - 783301.

To

1. Shri Elias Rahman,
vill I.P.O Chirakuti,
village - Bilasipara.
2. Shri Ashad Ali Ahmed,
C/o Abdus Sattar,
Village I.P.O Chirakuti,
Village - Bilasipara.

No. B₃/358/Chirakuti Dated at Dhubri I.M.

19.9.03.

Sub: Regarding selection of GDS BPM for Chirakuti

B.O in a/c with Bilasipara S.O

Reff: Your application for the post of BPM/Chirakuti.

Sir,

Please refer to your application u/s
you are hereby requested to submit land
documents exclusively in your own name within a period
of 20(twenty) days on or before 10.10.2003 for getting
selection to the post of GDS BPM/Chirakuti B.O.

Yours faithfully,

Sd/-

Superintendent of Post Offices
Goalpara Division,
Dhubri - 783301

-20-

Annexure - 4 E

DEPARTMENT OF POSTS INDIA

1. Sri Rafiqul Islam,
Village & P.O : Cherakuti,
Via - Bilasipara,
District - Dhubri.
2. Sri Jahan Ali,
Sar No. 4, Geuripur,
P.O : Geuripur.

No. B3 /358/ Cheirauti Wated at Dhubri the 20.10.03

Sub: Regarding selection of GRCS BPM of Chairakat DO

Sir,

Please refer to your application in c/w the subject. In this connection we are requested to submit land documents exclusively in your own name within 15 (fitem) days from the date of receipt of this letter to this office.

Yours faithfully,

(G.C. Hazaika).

Supdt. of Post Office,
Goalpara Division.

OFFICE OF THE INSPECTOR OF POSTS
DHUBRI SUB DIVISION : DHUBRI-783301

Shri Nabi Hussain GDS ED/MC, Jamduar H.O.
handing over GDS Charge to a nominee (Nur Islam)
has been working as BPM at Chirakuti Pt I EDPO w.e.f.
1-1-03 as per this office memo of even no dt. 28-12-02.

The Service of nominee i.e. Sri Nur Islam
is hereby terminated w.e.f. 31-3-03 (after no n) and the
following arrangement is made on purely temporary
basis liable to be terminated at any time without assigning
any reasons.

- i) Sri Abdur Rahim S/o. Sri Samad Ali vill & P.O.
Chirakuti/I Dist. Dhubri will work as GDS ED/MC of
Jamduar EDPO in a/c with Silasipara SO under Dhubri
H.O. being the substitute of Sri Nabi Hussain.
- ii) Sri Abdur Rahim has been given clear understanding
that he will have no future claim for any appointment
on the strength of this memo.

No. A-7/Chirakuti dt. 29-3-03.

2d
Inspector of Posts
Dhubri Sub Division
Dhubri-783301.

Copy to : 1. Post Master Dhubri H.O. for information
and necessary action.

2. SPM, Silasipara C.O. for information.

3. BPM, Jamduar P.O. for suitable action.

4. BPM, Chirakuti for information

5. Shri Abdur Rahim S/o. Sri Samad Ali
vill & P.O. Chirakuti part - I. Shri Rahim
will report to Sri. Jamduar P.O. for his join
ning.

6. File.

7. Sparc.

2d
Inspector of Posts
Dhubri Sub Division
Dhubri-783301

— 42 —
— 35 —
ANNEXURE 5
RECEIPT
OF THE SUB-DIVISIONAL OFFICER (CIVIL) ::::: BILASIPARA.
(MAGISTRACY BRANCH)

RESIDENTIAL CERTIFICATE

This is to Certify that Shri/Smti Abdul Rehman,
S/o, D/o, Late/Sri Abdul Samad is resident of
Chirakula P.O Jarmapur P.S Chirakula
in the District of Dhubri (Assam). This
Certificate is issued only for Army purpose.

Io. BRC 2/97/07 II/7-26

Date: 24/8/2000

Sub-Divisional Officer (Civil)
 Sub-Divisional Magistrate (Civil),
Bilasipara.

Abdul Rehman

11/8/2000
Abdul Rehman
Sub-Divisional Officer
Bilasipara

Director of Employment
 Director of Employment Exchange
DIMERI

28.8.2000

- 36 - 43 -

←  - 5A Sori

AGE OF THE GIRL E READER CHAPAR GIRL E LILLI LILLI CHAPAR,
NO. CC. 10/2000/2002/105 Dated chapter the 25th Nov/2002.

LAND HOLDING CERTIFICATE.

Etrols officer
Chaper stage.

37.44

53

CE OF THE CIRCLE OFFICER, CHAPAR CIRCLE, CHAPAR.

CC. 2/2002/1727

Dated Chapar the 10th October/2002.

INCOME CERTIFICATE.

This is to certified that the total annual income of Sri/Smti

Samad Ali _____ Father/Mother/Husband/Wife/Son of Sri/
late - Abdur Robim _____ of Village Chitakula
under Chapar Circle is Rs. - 8,00/- (Rupees Eight
- Thousand _____) only.

Y
Circle Officer,

CHAPAR

(M)

10/10/02

6/2/03

132831



Board of Secondary Education, Assam,

ADMIT



Son/daughter of SAMAD ALI

Roll R7-428 No. 0057

To the High School Leaving Certificate (Repeaters) Examination, 2001
to commence on Monday, the 4th December, 2000

His/Her Date of Birth is JANUARY 01, 1982.

MIL Subject	Subjects in Lieu of MIL	Elective
ABBAMEBE		HINDI 4

Commencement: Morning 9.00 a.m. Afternoon 1.00 p.m.

N.B.: Any alteration made in entries on this Admit Card without the authority of the Board renders
the candidate liable to disqualification for sitting at this or any subsequent examinations.

Coun. Signed

Office in Charge
A.O. in Charge
H.S.L.C. Exam. Centre, SalkochaSd/- N.C. Barakar
Secretary
Board of Secondary Education, Assam
Guwahati 781021

Accepted
R. R. Roy
9/12/2000

Anandam - 6

39-46

6A

Book No. 2/2000

Office of the Headmaster

TILAPARA HIGH SCHOOL

P. O - TILAPARA, VIA - BILASIPARA

POST & TELEGRAPH ST. - DHUBRI (ASSAM)

Date ... - ..

No. 01

Certify that Shri/Miss Abdur Rofum
Son/Daughter of Shri/Late Samad Ali
of the Village Chirakata P.O Jamduar
P. S Chapar in the District of Dhubri
(Assam) appeared in the H.S.L.C (Boy/Rept)
Examination under the Board of Secondary Education, Assam, in the Session, 2001 - as a regular/institutional/non-institutional/private compartmental candidate from this school. He/She came out/~~not come~~ with successful in that Examination and was placed in the III (Third) Division. His/Her identity in the said examination was.

Roll R7-428 No. 2057 His/Her date of Birth 21-07-82

His/Her character and conduct, I know is good. I wish him/her every success in life.

Date 30-5-2001

Abdur Rofum
Tilapara High School.

61

The candidate

secured marks as detailed below in the High School Leaving Certificate (Repeaters) Examination, 2001.

Subjects	First Language			Lang. in lieu of 1st Lang.		General Science			Division	Grade
	Assamese	Hindi	English	Assamese	Hindi	English	Assamese	Hindi	English	
Full Marks	75	25	25	100	50	50	100	100	100	100
Pass Marks	—	—	—	30	15	15	30	30	30	30
Marks Obtained	30	06	—	36	—	—	21	21	30	45

Subjects	Elective			General			Elective			Division	Grade
	Without Practical	With Practical	Total	Grade	Division	Grade	Without Practical	With Practical	Total	Division	Grade
Full Marks	100	—	100	—	—	—	—	—	—	—	—
Pass Marks	40	—	40	—	—	—	—	—	—	—	—
Marks Obtained	30	06	36	—	—	—	193	07 (+ -)	200	III	B

Full Marks: 75 Pass Marks: 30
 DRAFTS: 10 DRAFTS: 10
 DRAFFTS: 10 DRAFFTS: 10
 AGRICULTURE: 50 AGRICULTURE: 50
 HOME SCIENCE: 60 HOME SCIENCE: 60
 COMPUTER SCIENCE: 40 COMPUTER SCIENCE: 40

Full Marks: 70 Pass Marks: 35
 DRAFTS: 10 DRAFTS: 10
 DRAFFTS: 10 DRAFFTS: 10
 AGRICULTURE: 50 AGRICULTURE: 50
 HOME SCIENCE: 60 HOME SCIENCE: 60
 COMPUTER SCIENCE: 40 COMPUTER SCIENCE: 40

2000
 2000

Secretary



Deed no - 2087 of 2002. Stamp value of Rs. 50/- (Rupees Fifty only) 20/- (Rupees one Thousand Five hundred and twenty) only

SALE DEED

THIS DEED OF SALE is made on this 13th day of Nov, 2002

BETWEEN :-

Smti. ^{Harmo} Rani Paul w/o. D/O Mohan Bashi Paul of
village Upartari (Beltoli) P.O. Hakama P.S. Bilasipara
Dist. Dhubri (Assam) (hereinafter called the SELLER/ VENDOR)
of the one part.

A N D

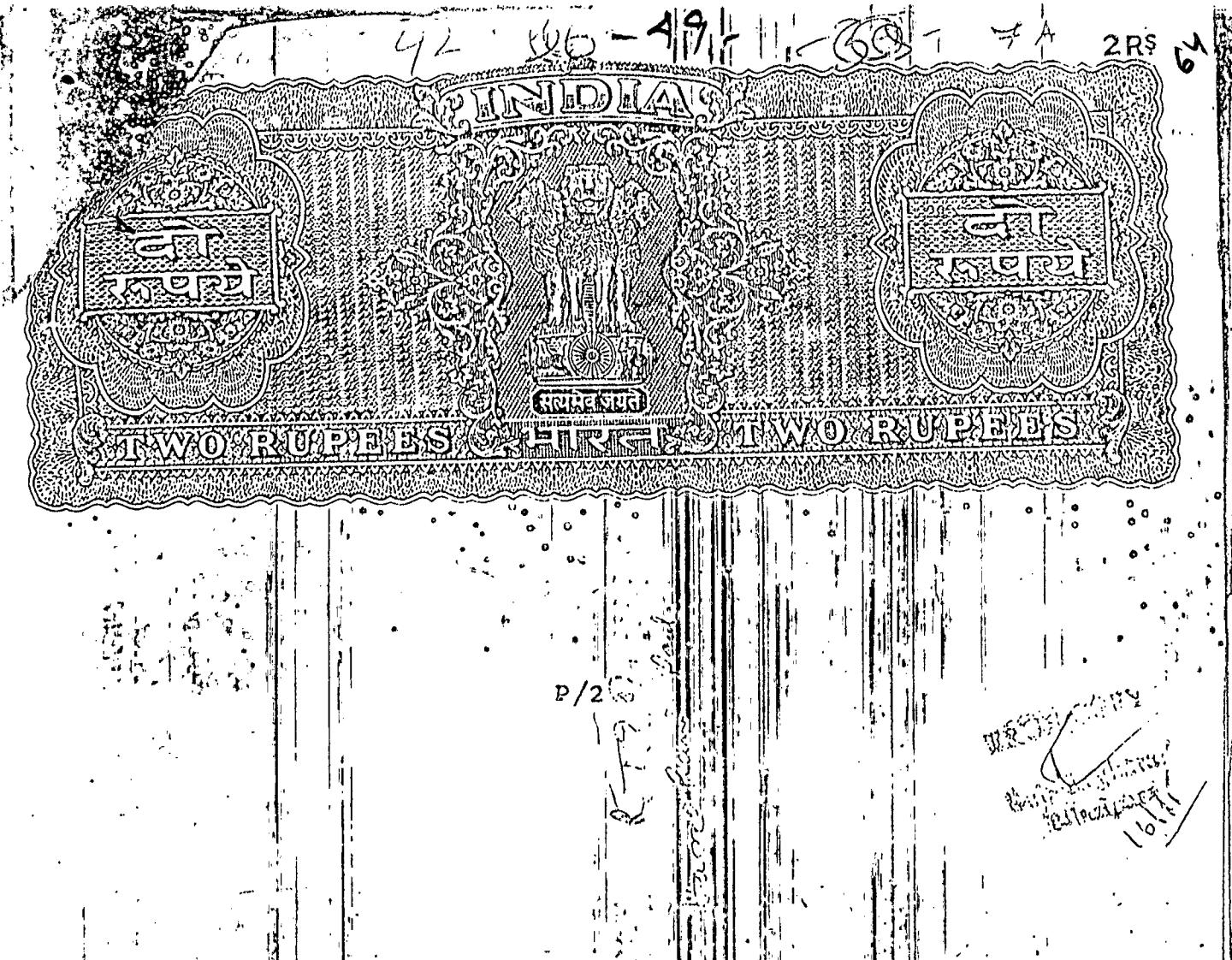
Abdur Rahim S/O Md. Binnad Ali of village Chirakuta
P.O. Jamduar, P.S. Chapar Dist. Dhubri (Assam) (hereinafter
called the PURCHASER/ VENDEE) of the other part.

Drafted by

Sch. S.K. Saha - 15/11/02

S.K. Saha Adv.
Bilasipara

Contd. P/2



WHEREAS the above named vendor/seller are the absolute owner and peaceful possession over the plot of land measuring 2 B. 31 K. 0 L. covered by Patta No. 55, Dag No. 48, 187 situated at R/Village Chirakuta Pt,I under circle Chapar Dist. Dhubri (Assam) which is more specifically mentioned in the schedule below-

AND WHEREAS THE Vendor agreed with the purchaser for an absolute sale of land measuring 21 B. 1 K. 0 L. for a fair and reasonable aggregate in consideration of Rs. 29,35,000/- (Rupees thirty five thousand) Only where had been paid by the purchaser named above the receipt of which the vendor hereby acknowledge.

NOW THIS DEED OF SALE DIT IN THE LAST MENTIONED

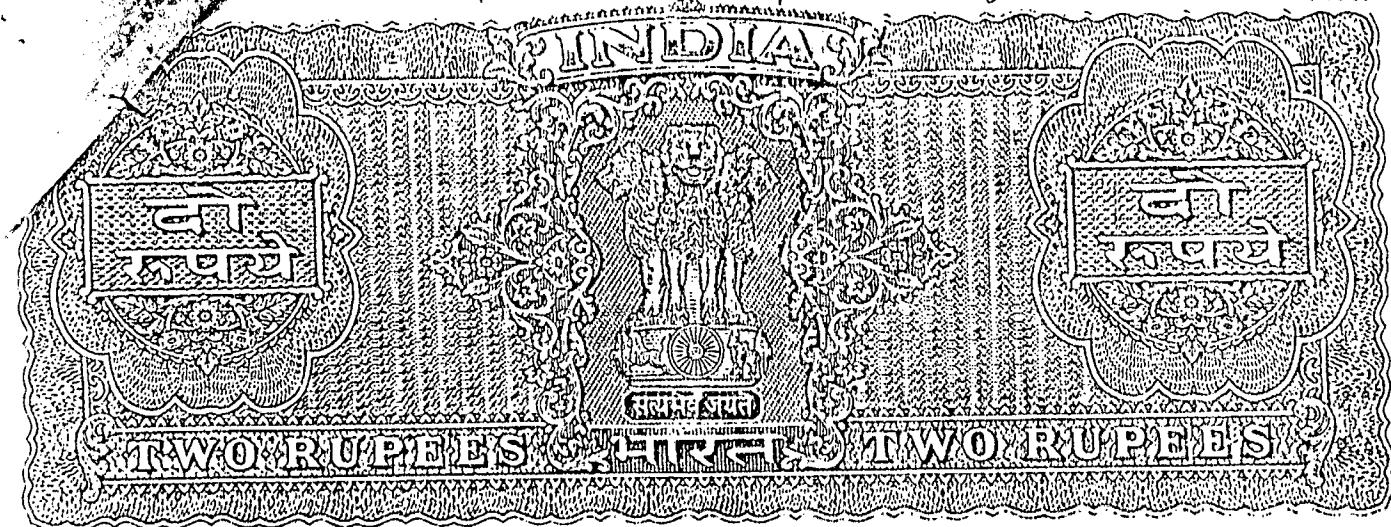
(i) The vendor having absolute right, title, interest, possession and ownership has transferred, covenanted and assigned all the part and parcel of the said land unto the purchaser to have and to hold ofx for ever.

Drafted by:

S. K. Seiden

S.K.Saha Adv.

Cont P/3



P/3

Kewal

COPY

(II) Be it further stated and emphatically made and declared that the land property herein transferred is free from all sorts of encumbrances, that so ever nature and vendor/seller deliver the khas and peaceful possession of the said land unto the purchaser free from encumbrances, description and interferences in any way from any question including the vendor/seller himself by his successors administrators assigns and representation.

(III) Henceforth all the ownership hereditaments and land holdershhip shall vest unto the purchaser and the purchaser shall be at liberty to possess occupy and drive the rent profits easements benefits of the land under covenant.

(IV) Further the vendor covenants that if transpires that the property hereby conveyed by the vendor is not free from any encumbrances as herein before stated by him and the purchaser dispossessed of by anybody claiming superior title to the vendor his heirs, executors, administrators and successors shall be bound to make good any loss sustained by the purchaser his heirs successors administrators and assigns.

Drafted by

S.K.Saha Adv

Contd.. P/4

P/4

R. T. D.

H. C. and Recd. by

16

In witness whereof the vendor has set and subscribed his hand in the date/month/year above mentioned at Bilasipara Sub-Registrar Office.

Schedule of Land

A plot of land measuring 2 B. 1 K. 0 L. (two Bigha one katha) covered by Patta No. 55, Dag No. 48/ 187 situated at R/Village Chirakuta Pt. I under circle Chapar Dist. Dhubri (Assam) as bounded by :-

North :- N.H. 31

South :- Hill (Govt land)

East :- Govt. land

West :- Bhashan Paul

Drafted by

S.K. Saha
S.K. Saha Adv.

Contd. P/5

115 - 89 - ~~88~~ - FD 67

P / 5

Signature of the witnessess

1. ~~Sal~~ Ricken Paul
 320 - Parikh (-Paul
 Velti - Upadekai
 B5 Belcastor

2. ~~Sal~~ Parker (M.D. of Monell
 322 - Joni (M.D. of Monell)
 V.E.LI - Joni (M.D. of Monell)

Signature of the SELLER | VENDOR

Drafted and read over to the parties
in presence of two witnesses and duly
identified by Sri S.K.Saha Adv.on
this 13rd day of Nov,2002

SD SK Sarker
15/11/02
Advocate Bilasipara

typed by

(S. R. Haldar)

Mc Gregor, Iowa

83100102

46-53-

. FROM NO. 4
(SEE RULE 42)CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:ORDER SHEETOriginal Application No:- 287 / 2003

Misc. Petition No:

X

Contempt Petition No:

X

Review Application No:

XName of the Appellant(s): Abdul RahmanName of the Respondent(s): 11098...anAdvocate for the Appellant:- Mr. H.R.A. Choudhury, M.U. Mandal
Mr. Z. HussainAdvocate for the Respondent:- C.G.S.C

Notes of the Registry | date | Order of the Tribunal

19.12.2003

Heard Mr. M.U. Mandal, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents.

Issue notice to show cause as to why the application shall not be admitted.

List on 2.2.2004 for admission.

Sd/ MEMBER (Adm)

Section Officer (YJ)

C.A.T. GUWAHATI BENCH

Guwahati 781005

19/12/03

K
19/12/03

Original Application No. 287 of 2003.

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

THE HON'BLE SHRI JUSTICE R. K. BATTA, 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
Meghdoot 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
P.S: Chapor
Dist: Dhubri
Assam.

Respondents.

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

ORDER (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.

Contd./2

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.

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 i.e. 18.9.2003, and though ^{even if} 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-

contd./3

land document in view of the said notification. In support of his contention, learned counsel for the applicant has relied upon judgment of the Apex Court in Maharashtra State Transport Corporation and Ors. -vs- Rajendra Bhimrao Mandve and Ors. 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.G.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, infact, 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 the procedural requirement was relaxed in respect of production of land documents.

Contd./4

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 1. 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

Contd./5

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.



29/9/60
Section Officer
C.A.T. GUW
Guwahati
NCH

Sd/ VICE-CHAIRMAN
Sd/ MEMBER (A)

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Annex - 10
24

DEPARTMENT OF POSTS: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE: GUWAHATI

ANNEX - 11

Dated at Guwahati the December 7, 2004.

Shri G. C. Hazarika
SPO, Dhubri

Sub: Re: Selection of GDS BPM of Chirakuti EDBO in account with Bilasipura SO.

Re: Re: our Note No. 33/358/Chirakuti-I dated 7.9.2004.



The appointment case has been scrutinised and it is found that the candidate Shri(Md.) Jolian Ali, who secured the highest marks in HSLC Examination (59.76%) amongst all the candidates (apart from fulfilling the criteria/conditions including property/income condition was ignored and another candidate with lesser marks (56.50%) was selected for the post of GDS BPM, Chirakuti EDBO. Shri Jolian Ali as it appears, submitted a land holding certificate issued by the appropriate authority. Therefore insistence of land document from the candidate and rejection of his candidature was not in order. The selection has vitiated the guidelines contained in Directorate's No. 17-300/91-ED&Trg. dated 12.3.93.

In view of the vitiation of selection, the competent authority has directed to cancel the entire selection process and start it afresh duly observing the required formalities. It is also directed that the panel committee for selection should consist of at least one SPOs of a neighbouring division and the selection should be made without leaving any doubt on its fairness and uniformity.

I am therefore directed to inform you that immediate steps may be taken to cancell the selection made for the post of GDS BPM, Chirakuti EDBO.

The Civil Court, Dhubri and CAT, Guwahati in which the matter is under litigation in S. No. 581/03 and OA No. 287/03 respectively may be apprised of this administrative action through the GP/CGSC concerned at the next hearing of the cases.

A compliance report may also be sent to Circle Office for information of DPS/CPMG. The appointment case file is returned herewith for disposal.

Enclo: As above.

(S. Ghose)
Asstt. Director (INV)
O/o the Chief Postmaster General
Assam Circle, Guwahati - 781 001

.....2

DEPARTMENT OF POSTS INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICE
GOALPARA DIVISION :: D. HUBRI - 783 301

Dated at Dhulri on 27-12-2004

As indicated by the Chief Postmaster General/Guwahati vide C.O.'s letter No. VIG/5/13/3/3 dated Gauhati 07.12.2004, the whole process of appointment for GDS DRM/AC/dated 13.01.1998 with D.Basapara S.O. made by this office U.L.C. of even no. B3/35/Chirakuli dated 29.07.2003 have been cancelled. In this connection, the selection of Gurjot Singh Rajput S.O. M.J. Ibrahim Khalil Sk. Chirakuli issued vide tel. office Memo No. B3/35/Chirakuli issued vide this office memo of even no. B3/35/C.O./dated 13.01.2003 is hereby cancelled.

Oct 23/92
(C. C. Hazarika)
Supdt. of Post Offices
Golparu Dsra. Dhubri
783 301

1. The Deputy Registrar, Central Administrative Tribunal, Calcutta bench, Calcutta, S. through Shri Aruneshwar Doh. Roy, CGSC, Calcutta Bench, Calcutta, Case no. 311/2003 dated 16.12.2003.
2. The Hon'ble Mr. Justice (S. Dny. Dhami) through Shri K. A. Prodhan, C. P. P. Leader, Dhami, Case no. 311/2003 dated 16.12.2003.

(G. C. MacLean)
Sup't of Ind. Schools
Guelph, Ontario

OF AWARENESS, ESTIMATES, AND PREDICTIONS IN THE FIELD OF
MANUFACTURING PLANT DESIGN

To

1. The Superintendent of Post Office,
 Coalpara Division, Dhubri.
2. The Inspector of Posts, Dhubri sub-division
 Dhubri.

Dated 3. 1. 2005.

sub : An appeal for alternative employment or for regular appointment as per the Agents (Conduct and Service) Rules, 1964 and the Department of Posts Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

Sir,

I have the honour to state that I was initially appointed as Branch Post Master of Zunder Branch Post Office by order dt. 28. 12. 2002 and I have worked there for 5 months but I got salary for 2 month. Thereafter my service was terminated by order dt. 27. 5. 03 w.e.f. 31. 5. 2003. On 29. 1. 2003 an advertisement was issued and I applied for the post of Branch Post Master where I had accommodated all facilities for opening new Branch Post Office at Charakata. On 19. 6. 03, the advertisement dt. 29. 1. 03 was cancell and a fresh advertisement was issued on 20. 6. 03 accordingly I applied alongwith relevant documents as per terms and condition of the advertisement and I appeared before the selection/interview board along with all relevant(original documents) and did well in the interview held on 13. 9. 03. By order dt. 27. 12. 04, the selection was cancelled due to huge anomalies in making selection in view of the O.A. No. 287/03 and T.S. No. 581/03. On 5. 1. 2005, 3rd advertisement is issued without considering my case as per service rules, 1964 and employment Rules, 2001.

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- 62 -

Therefore, you are cordially requested to
appoint me as Branch post master/GDS/EDSO and pay salary
for 2 months provide alternative employment or
regularise my service as stated above, and till
consideration of the appeal, the advertisement etc.
S.1.2005 may be stayed in the interest of justice.

Yours faithfully,

S/o - Abdir Rehman

Ex. NM/GDS/ED SO

S/o. Samei Ali

Vill. Chirakute

P.O. Chirakute

G. S. 311111111, Dist. Dhule, A.P.S.C.

Administrator of Post Offices
Government - Division
Dhankuta - 782301

B3/358/Chirakut-1

Dated at Dhankuta on the 05-01-2005

NOTIFICATION

1. Appointment to the post of BPM/Chirakut-1 BO. 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 one covers only, duly superscribed in bold letters as 'APPLICATION FOR THE POST OF BPM/EDSPM Chirakut-1 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 / 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 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 candidates to claim any regular full-time post in the department. The post carries time related gratuity allowance of Rs. 1280-35-1980 plus admissible DA.

5. Any kind of influence brought by the candidates regarding appointment, will be considered as a disqualification. No correspondence claiming to influence the selection process will be entertained.

- 57 - 19 - 6A - 20

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/inmoveable 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/inmoveable 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 DC 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

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the entire 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 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.

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.

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

SGF
Superintendent of Post Office
Signature: Gobinda - Divisional
Designation: DPO - 783301

Copy to (Regd. A42)

1. The President, Gram Panchayat Chirakuti-1 via Tilpara GP Tilpara via Chirakuti-1 via Tilpara BSNL Tilpara BSNL Chirakuti-1 via Bilampara BSNL Bilampara

2. The Head Master, Govt. Primary/High School Chirakuti-1 via Bilampara BSNL Bilampara BSNL Chirakuti-1 via Bilampara BSNL Bilampara

3. BPM Chirakuti-1 via Bilampara BSNL Bilampara BSNL Chirakuti-1 via Bilampara BSNL Bilampara

4. SPM Bilampara (Account Office) BSNL Bilampara BSNL Bilampara BSNL Bilampara

5. The ASPO/HC/SDI(P) Dhur Sub Division

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

Gobinda SGF
S. C. BAZAR (Signature)
Superintendent of Post Office
Signature: Gobinda - Divisional
Designation: DPO - 783301

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SL. NO. 73

Annex No. 14

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 Bhawan, 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 Rahman
 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.

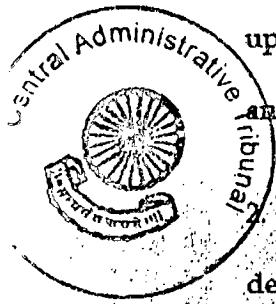
My Ms. U. Das, Adl. C.G.S.C.

ORDER (ORAL)

SIVARAJAN, J. (V.C.)

Applicants in all the three O.A.s 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.

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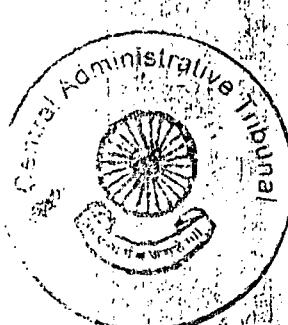
Accordingly the 4th Respondent issued proceedings dated 27.12.2004 (Annexure 12 in the said O.A.) canceling the selection.

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.

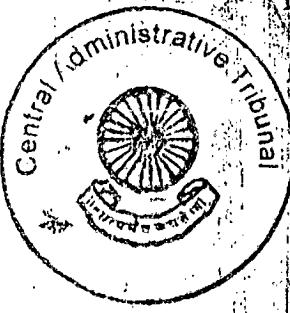
7. The case of the applicant in O.A. No. 32/2005 is that though his application O.A. No. 287/2003 challenging the selection and appointment of the applicant in O.A. No. 23/2005 was dismissed in view of the fact that the respondent themselves have cancelled the entire selection process including the appointment 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 heard Mr. M.U. Mendal, learned counsel for the applicant in O.A. No. 32/2005, Mr. I. Hussain, learned counsel for the applicant in O.A. No.

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 and 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.



1. 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).
2. 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

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 7th 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.

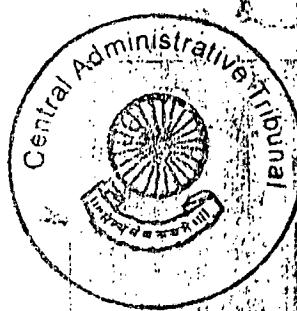
15. Having regard to the facts that the respondents have advertised the vacancy again by notification dated 05.01.2005, all the applicants are getting one more opportunity to apply for the post fulfilling all the conditions in the said notification. It is seen that the selection meeting was scheduled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



Sd/ / VICE CHAIRMAN

Sd/ / MEMBER (A)

Certified to be true Copy

सत्याग्रह

5-5-05
Section Officer (1)

C.A.T. GUWAHATI BANCH
Guwahati 781005

15/5/05

To,
 * (1) The Superintendent of Post Office,
 Goalpara Division District Dhubri,

Date -11-05-05.

Sub:- Application for alternative appointment as per order dated 12-4-05, passed O.A. No. 32/05.

Sir,

I have the honour to state that I worked 5 months as EDDA, GDS, cum EDMC. According to the order dtd. 12-4-05, of the honourable Central Administrative Tribunal, the honourable directed the authority to provide alternative appointment within a period of 3 months from the date of received of the order. Therefore you are requested to do the needful. A copy of the order dtd. 12-4-05, passed in O.A. No. 32/05 is enclosed herewith.

Therefore you are requested to make an arrangement to make the appointment and appoint me as per order of the Hon'ble Tribunal and for this act of kindness your applicant as in duty bound shall ever pray.

Thanking You,

Yours Faithfully,

Abdur Rohim

Abdur Rohim

S/O Samad Ali

Vill. Chirakuti, P.O. I.

P.O. Chirakuti

P.S. Chirakuti, Dist. Dhubri, (Assam)

Copy to:-

(1) The Secretary Ministry of Communication Department S/O Samad Ali
 of Post Dak Bhawan, Vill. Chirakuti, P.O. I.,
 New Delhi, I. P.O. Chirakuti

(2) The Director of Postal Service, Assam Circle, P.S. Chirakuti, Dist. Dhubri, (Assam)
 Meghiddo Bhawan-Guwahati

DEPARTMENT OF POSTS

NAME OF THE SUPERINTENDENT OF POST OFFICES: GOALPARA DN: DHUBRI

B3/358/Chirakuti

DATED at Dhubri the 19.08.2005

Subject: CAT, Guwahati Bench Order dated 12.4.2005 in OA No. 32/2005 – consideration of the representation dated 3.1.2005 of Shri Abdur Rahim, addressed to the Supdt of POs, Dhubri in the matter of alternative appointment as Branch Postmaster, payment of salary etc.

Shri Abdur Rahim, a resident of Chirakuti in the district of Dhubri, Assam applied for the post of GDS BPM of Chirakuti in response to the advertisement issued by the SP0s, Dhubri vide No. B3/358/Chirakuti, dated 20.6.2003. His case was considered by the Selection Committee along with other candidates applying for the post. The applicant was not selected for the post as the Selection Committee did not recommend his case on account of his position being lower in rank of the merit list of the candidates taken into zone of consideration. Being aggrieved by the non-selection for the post, the applicant filed an application before the Hon'ble Tribunal, Guwahati Bench vide OA No. 287/2003. The Hon'ble Tribunal, after hearing both the parities, disposed off the OA on 23.9.2004 with order of dismissing the application as having no merit.

Meanwhile, the selection of the candidates for the post of GDS BPM Chirakuti was reviewed by the competent authority and ordered to be cancelled due to certain procedural lapses vide No. Vig/5/TS/03/03, dated 7.12.04, which was implemented by the SP0s Dhubri, vide his no. B3/358/Chirakuti dated 27.12.2004. Simultaneously, the SP0s Dhubri issued a fresh advertisement vide No. B3/358/Chirakuti-1 dated 5.1.2005 calling for applications for filling up of the said post. Having learnt about the said fresh advertisement the applicant filed another application vide OA No. 32/2005 before the Hon'ble Tribunal, Guwahati Bench to challenge the cancellation of the earlier advertisement dated 20.6.2003 and process of selection there under the

seeking direction from the Hon'ble Tribunal to appoint him in the post of GDS BPM, Chirakuti B0.

The Hon'ble Tribunal after hearing the parties disposed off the application on 12.4.05 with order of rejecting the claim of the applicant for appointment in the notified vacancy i.e. the post of GDS BPM Chirakuti B0 with however a direction to consider the applicant's claim for alternate appointment and arrears of pay mentioned in his representation dated 3.1.2005 (Annexure-12 of the OA) within a period of three months from the date of receipt of the order of the Hon'ble Tribunal. The order dated 12.4.05 of the Hon'ble Tribunal was received on 24.5.05 through the CGSC concerned.

In pursuance of the observation and direction of the Hon'ble Tribunal in the OA No. 32/2005, the representation dated 3.1.2005 of the applicant is examined carefully and record the observations as under.

- (a) As per records, the applicant was engaged as nominee (substitute) in the post of GDS MC , Jamduar EDB0 for the period from 1.4.03 to 31.5.03 against leave of the original incumbent of the post i.e. Shri Nabi Hussain at the risk and responsibility of the later. The allowances for the said period was duly paid to the applicant. Engagement of nominee by the regular GDS on proceeding leave is an exclusive prerogative of the GDS who is held responsible for the work and conduct of the nominee (substitute) so engaged by him. Such nominee is not covered by the GDS (Conduct and Employment) Rules 2001 and liable to be terminated on resumption of duty by the regular incumbent in terms of Rule-7 of GDS (Conduct and Employment) Rules 2001. The applicant being a nominee on leave arrangement has no right to count the service so rendered or claim for regular absorption or it will confer any weightage in future selection and appointment in any vacant post.
- (b) Since the applicant worked as nominee in leave vacancy for the said period and the allowance due accordingly paid to him for the period, the claim of the applicant to the fact that he worked as GDS BPM at Jamduar B0 for 5 months and arrear allowance is due to him, is not true and based on records.

(c) The issue of selection of the candidate for the post of GDS BPM, Chirakuti has been settled by the Hon'ble Tribunal in its orders in OA No. 287/2003 and OA No. 32/2005 filed by the applicant. The Hon'ble tribunal has rejected the claim of the applicant for selection and appointment in the post with observations inter-alia that the applications have no merit.

(d) The applicant having performed as nominee against a regular incumbent temporarily on leave period has not right to claim appointment regularly either in the post of regular incumbent or alternately in any other vacant post. This position as laid in the rules for employment of GDS has been upheld by the Hon'ble Tribunal, Kolkata Bench in its order in OA No. 14/2003 and the same was also confirmed by the Hon'ble High Court, Kolkata (Circuit Bench of Port Blair) in its order in WP (C) No. 58/2003.

In view of the facts discussed above, the undersigned finds no merit and grounds to accept the claim of the applicant for alternate regular appointment in any GDS post and to pay arrear pay as made in his representation dated 3.1.2005 and hence reject the same.

13-08-2005
(R RABHA)

SUPERINTENDENT OF POST OFFICES
GOALPARA DIVN : DHUBRI

To

✓ Shri Abdur Rahim
Vill & P0 Chirakuti

(Through : SDI POs, Dhubri)

Copy to :

1. The Chief PMG (Vig), Assam Circle, Guwahati wrto C0's No. Vig/5/v/05, dated 23.6.05.
2. The Registrar, CAT Guwahati Bench, Bhangagarh Guwahati-5 wrto OA No. 32/05.
3. Smti Usha Das, Addl. CGSC, for information and necessary action.
4. OC
5. Spare

SD
(R RABHA)
SUPERINTENDENT OF POST OFFICES
GOALPARA DIVN : DHUBRI

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Amx. 17

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

WP(C) NO 4477 OF 2005

The 23rd 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,

Amx.

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, Meghdoot 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,

✓

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 relate to 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

- 84 -

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

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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

20/

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

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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.

st-2

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 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. Sazma

Judge

Sd/- P. G. Agarwal

Judge

CERTIFIED TO BE TRUE COPY

Kereng Ram Lekh
 Date 13/4/07
 Superintendent (Copying Section)
 Gauhati High Court
 Authorised U/S 76, Act I, 1971

P/No: 73624

dt. & 13/4/07

13/4/07

To,
The Superintendent of Post Officer,
Goalpara Divisions, District- Dhubri.

Date- 13.4.07

Sub: Application for alternative appointment/Branch Post Master in the light order dated 23.2.2007 of the Hon'ble High Court passed in W.P.(C) No.4477/07 and W.P.(C) No.6063/2007 and order dated 12.4.05 passed in O.A. No.32/05.

Sir,

With due respect I beg to state that I filed an Original Application before the Hon'ble Administrative Tribunal for an order to the respondent authority to appointment me as Branch Post Master in Chirakuti Branch Post Office/ alternative appointment under Goalpara Division, District- Dhubri, accordingly the Hon'ble Tribunal by an order dated 12.4.05 directed you to consider my case and to appoint me within a period of three months. Thereafter I filed a representation along with order dated 12.4.05 passed by Hon'ble CAT which was rejected by your Honour by an order dated 19.8.05.

That by challenging the said common order dated 12.4.2005 passed the Hon'ble CAT in O.A. No. 23/2005, O.A.No. 27/2005 and O.A. No.32/2005 the applicants, in O.A. No.23/05 and O.A. No.27/05 preferred a writ petition being W.P.(C) No.4477/2005 and 6063/2005, which were dismissed.

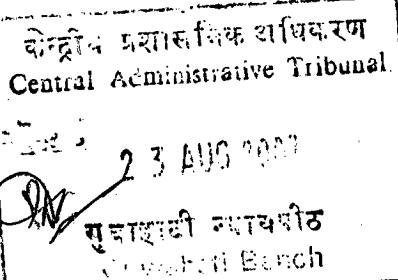
Therefore, it is prayed that your honour would be pleased to admit the petition and consider my case sympathetically and appointment me in post of Branch Post Master of Chirakuti Branch Post Office or provide me any alternate appoint as per orders dated 12.4.2005 and 23.2.07 passed in O.A. No.32/2005 and W.P.(C) No.4477/05 and W.P.(C) No.6063/05 and for this act of kindness your petitioner as in duty bound shall every pray.

Yours faithfully

Abdur Rahim

(ABDUR RAHIM)

Vill. Chirakuti Part-I, P.O. Chirakuti,
District- Dhubri (Assam)



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

O.A. No. 102 of 20067

Abdur Rahim

File No.

.... Applicant.

-VS-

Union of India & Ors.

.... Respondents.

The written objection on behalf of the Respondents abovenamed.

WRITTEN STATEMENT OF THE RESPONDENTS MOST RESPECTFULLY
SHEWETH:

1. That with regard to the statement made in paragraph 1 of the instant application the Respondents beg to state that the applicant had approached before this Hon'ble CAT challenging the same selection dated 18/09/2003 by way of filing OA 287/03 and the Hon'ble Tribunal after being heard the case was pleased to dismiss the said OA 287/03 with cost. The applicant had again approached before the Hon'ble Tribunal challenging the same selection dated 18/09/2003 by filing OA No. 32/05 and the Hon'ble Tribunal rejected the OA-32/05 in a Common Judgment dated 12/5/2005 in OA 23/2005, OA-27/2005 & OA 32/2005.

Contd.... p/

Subd. of Post Offices,
Gosipoor Divn. Dhubri
783301
20.08.07
Prakash

20.08.07
Prakash

The copies of the judgments are annexed herewith and marked as ANNEXURE-A & B.

2. That with regards to the statement made in the paragraph 2 of the instant application the respondents beg to state that the applicant had challenged the matter twice and the Hon'ble Tribunal disposed of the case finally as stated in above para. Hence the Hon'ble Tribunal may accept review petition from the applicant if there is a glaring omission, mistake error in the judgment. Hence the present application being OA 102/07 on the same subject matter and by the same applicant is barred by resjudicata and the Hon'ble Tribunal may not admit the same.

3. That with regards to the statement made in the paragraph 3 of the instant application the respondent beg to state that the application if not filed within a the limitation period of 1 (One) year prescribed under section 21 of the Administrative Tribunal Act, 1985. Hence the OA 102/07 is not admirable by the Hon'ble Tribunal and the applicant also failed to show sufficient cause to explain the delay and on that account the instant application is liable to be dismissed.

4. That with regards to the statement made in paragraph 4.1 of the instant application the respondents have no comment.

5. That with regards to the statement made in paragraph 4.2 of the instant application the respondents beg to state that he was no appointed at Jamduar B.O., he was ordered to work as GDSMC at Jamaduar as a substitute of regular incumbent Sri Nabin Hussain with clear understanding that he will have no future claim for appointment on the strength of the said order. Hence his experience, if any has no relevancy for his appointment in another separate and establishment at Chirakuti EDBO.

6. That with regards to the statement made in paragraph 4.3 of the instant application the respondent beg to state that the letter was issued to give weightage to the meritorious candidates.

7. That with regards to the statement made in paragraph 4.4 of the instant application the respondents beg to state that as per notification the selection had to be made on the basis of merit of the candidates and not on the basis of document as alleged by the applicant.

8. That with regards to the statement made in the paragraph 4.5 of the instant application the respondents beg to state that the letters were issued to afford the opportunity of meritorious candidates only. But the higher authority of the department reviewed the selection procedures and ordered to cancel it. Accordingly the selection was cancelled.

9. That with regard to the statement made on the paragraph 4.6 of the instant application the respondent beg to state that the representation dated 03/01/05 of

the applicant was not entertained as the claim of the applicant was discussed in OA No. 287/03.

10. That with regards to the statement made in paragraph 4.7 of the instant application the respondents have no comment.

11. That with regard to the statement made in paragraph 4.8 of the instant application the respondents beg to state that his representation was rejected as per judgment of the Hon'ble Tribunal in OA No. 287/03 this office order dated 19/08/05.

A copy of the order dated 19/8/05 is annexed herewith and marked as ANNEXURE-C.

12. That with regards to the statement made in paragraph 4.9 of the instant application the respondents beg to state that the Hon'ble Tribunal dismissed the case of applicant on OA No. 287/03. Hence the orders passed in OA No. 32/05 was not implemented and rejected his case vide the order dated 10/08/05 passed by the Respondent, endorsing copy there of the Hon'ble registrar of CAT, Guwahati.

13. That with regards to the statement made in paragraph 4.10 of the instant application the respondents beg to state that the representation dated 13/04/07 of the applicant has not been received by this office.

14. That with regards to the statement made in paragraph 4.11 of the instant application the respondents beg to state that the applicant tactfully failed to mention suppressed the material fact that the judgment passed in OA No.287/03 of the Hon'ble Tribunal and he stressed on the judgment in OA No.32/05. The order passed in OA 32/05 to file the applicant a representation and the respondent authorities will disposed of the same and the answering respondent after following the rules and standing Government order and following the verdict passed by this Hon'ble Tribunal in O.A. 287 of 03 rejected the representation.

15. That with regards to the statement made in paragraph 4.12 of instant application the respondents beg to state that the circumstances under which the applicant could not be appointed was informed vide our order dated 19/08/05.

16. That with regards to the statement made in paragraph 5.1, 5.2 and 5.3 of the instant application the respondent beg to state that as the issue which are discussing in these paragraph are already rejected by the Hon'ble Tribunal by its judgment in O.A. Nos.287 of 2003. The same are devoid of any merits and are liable to be rejected.

17. That with regards to the statement made in paragraph 5.4 & 5.5 of the instant application the respondent beg to state that the 3rd Notification was made as per departmental norms and selection was made on the basis of merit and the setting aside and quashing the

same does not arise. The O.A. 102/07 filed by the same candidate on a same ground for 3rd time may be rejected and dismissed. Further respondent beg to state that the grounds setforth by the applicant in this instant application are not good ground and not tenable in law as well as on facts and for that the instant application is liable to be dismissed.

18. That with regards to the statement made in paragraph 6,7 & 8 of the instant application the respondents have no comment.

19. That with regards to the statement made in paragraph 9 of the instant application the respondent beg to state that the claim of the application is illegal and ill founded and previously the Hon'ble Tribunal was already been rejected and as such the instant application is also liable to be dismissed.

20. That the respondents beg to state that the instant application has no merit and as such the application is liable to be dismissed.

VERIFICATION

I, Shri K. Barman at present working as Supdt. of Post offices at Goalpara Divn. 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 paragraphs are true to best of my knowledge and belief, those made in paragraphs 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 1st day of August / 2007 at Dhubri.

DEPONENT


(K. Barman)
Supdt. of Post Offices
Goalpara Divn. Dhubri
783301

~~ADMITTED~~ RD 8-11/2003 *Amrapur A* 113
CENTRAL ADMINISTRATIVE TRIBUNAL, GUJARATI BENCH.

Original Application No. 287 of 2003.

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

THE HON'BLE SHRI JUSTICE R. K. BATTA, 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.

ORDER (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.

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*True copy
Z. Hussain.*

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 names 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.

Learned counsel for the applicant has argued that the selection process mentioned in the notification dated 20.6.2003 contemplates that the selection was 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 production.

tion of land document in view of the said notification. In support of his contention, learned counsel for the applicant has relied upon judgment of the Apex Court in Maharashtra State Transport Corporation and Ors. -vs- Rajendra Bhimrao Mandve and Ors. 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.G.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 res-

pondent 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~~ ^{appointment} that a meritorious candidate gets ~~and~~ land requirement was relaxed in respect of production of documents.

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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 1. 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.

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)

Certified to be true COPY
RECORDED

29/9/04
Section Officer (J)
C.A.T. GUWAHATI BENCH
Guwahati-781005

~~ANNEX - B~~ - 13 - ~~App. 828~~ - Annexure No. 10
CENTRAL ADMINISTRATIVE TRIBUNAL *Annexure B*
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. Prahладan, Administrative Member.

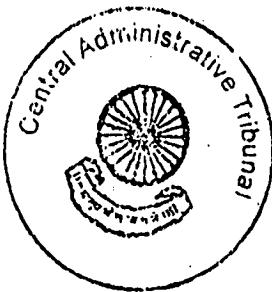
1. O.A. No. 23/2005

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 Bhawan
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.

*I am left
Boojh Ali*

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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, Meghdoott 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 Rahman
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 Service, The Post Master General, Assam, Meghdoott Bhawan, Guwahati.
3. The Superintendent of Post Office, Goalpara Division, Dhubri, District - Dhubri, Assam

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✓ 52 ✓
4. The Inspector of Posts,
Dhubri Sub-Division, Dhubri.

... Respondents.

My Ms. U. Das, Adl. C.C.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 Rahaman, 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.

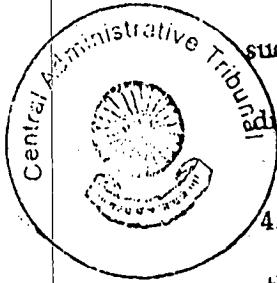
2. While the matter stood thus the 4th Respondent in O.A. No. 27/2005 has decided to cancel the entire selection process and directed the 4th Respondent therein to implement the same vide Order dated 07.12.2004 (Annexure - 11).

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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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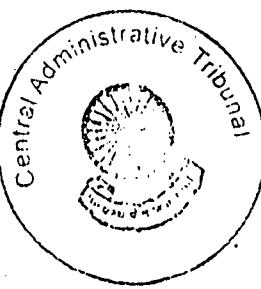
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cancellation of the selection and appointment order by the Respondents ignoring the order passed by this Tribunal is illegal and unjustified. The case of the applicant in O.A. No. 27/2005 is that he was not party in O.A. No. 287/2003 and therefore 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 heard 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.

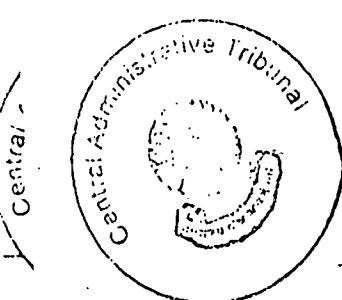
9. We will first deal with the case of the applicant in O.A. No. 32/2005. He challenged the selection and appointment of the applicant in O.A. No. 23/2005 by filing O.A. No. 287/2003, which was dismissed. The said order as already stated has become final. However, the Respondents/Officers have cancelled 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 p.v 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 C.A. No. 23/2005 heavily relies on the order in O.A. No. 287/2003 which is in

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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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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 selection 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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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.

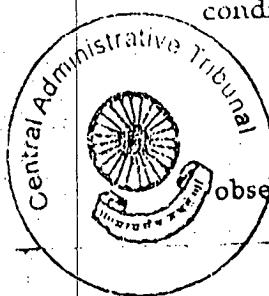
14. Admittedly none of the candidates have produced register land deed, which was a requirement. In view of clause V(b) and 7 the respondents were not justified in affording opportunity to any of the applicants for producing the document subsequently. Though the selection and appointment of the applicant 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.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

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N. S. G. S. S.
Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati 18/2/05

6/5/05

ANNEXURE D

DEPARTMENT OF TRIBUNAL

GOALPARA D.N.C. DUBRI

Date: 19.08.2005

DATED at Dhubri the 19 08.2005

Dear Sirs, I enclose copy dated 12.4.2005 in OA No. 32/2005 of the present application dated 3.1.2005 of Shri Abdur Rahim, GDS BPM Chirakuti, Sub B.M.C. Dhubri in the matter of alternative application for the post of GDS BPM etc.

Applicant served as a candidate for Chirakuti in the district of Dhubri, Assam for the post of GDS BPM of Chirakuti in response to the advertisement issued vide OA No. 23/2003 dated 20.6.2003. His case was rejected by the Selection Committee along with other candidates applying for the said post and were not selected for the post as the Selection Committee did not consider him fit for the post due to his position being lower in rank of the merit list of the selection committee of consideration. Being aggrieved by the non-selection, the applicant filed an application before the Hon'ble Tribunal, Dhubri vide OA No. 23/2003. The Hon'ble Tribunal, after hearing both the parties, dismissed the OA on 23.4.2004 with order of dismissing the application as per the following:

As the application of the candidates for the post of GDS BPM Chirakuti was not implemented sufficient and ordered to be cancelled due to certain administrative lapses vide OA No. 35/2004/Chirakuti, dated 7.12.04, which was implemented vide OA No. B3/358/Chirakuti-1 dated 27.12.2004. Simultaneously, the application of the candidate filed before the Hon'ble Tribunal vide OA No. B3/358/Chirakuti-1 dated 27.12.2004 was rejected for non-eligibility for the said post. Having learnt about the cancellation of the application vide OA No. 35/2004/Chirakuti, the applicant filed another application vide OA No. 32/2005 before the Hon'ble Tribunal to challenge the cancellation of the application dated 27.12.2004 and process of selection there under the said application dated 27.12.2004.

True copy
Sarita Adhikari

... before the Hon'ble Tribunal to appoint him in the post of GDS BPM.

After a careful hearing the parties disposed off the application on 12.4.05 and directed that the claim of the applicant for appointment in the notified post of GDS BPM at Jagduar BO with however a direction to consider the claim for alternate appointment and arrears of pay mentioned in his representation dated 3.1.2005 (Annexure 12 of the OA) within a period of three months from the date of receipt of the order of the Hon'ble Tribunal. The order dated 12.4.05 was received on 24.5.05 through the CGSC.

On receipt of the observation on the direction of the Hon'ble Tribunal in the OA No. 12/2005, the representation dated 3.1.2005 of the applicant is examined carefully and the observations are under:

It is observed that the applicant was engaged as nominee (substitute) in the post of GDS at Jagduar BO for the period from 1.4.03 to 31.5.03 against name of the original incumbent of the post i.e. Shri Nabi Hussain at the risk and responsibility of the latter, the allowances for the said period was duly paid to the applicant. Engagement of nominee by the regular GDS on proceeding to a new post is an exclusive prerogative of the GDS who is held responsible for the conduct and conduct of the nominee (substitute) so engaged by him. Such engagement is not covered by the GDS (Conduct and Employment) Rules 2001 except for the formation or resumption of duty by the regular incumbent in terms of Rule 7 of GDS (Conduct and Employment) Rules, 2001. The applicant being a nominee on leave arrangement has no right to count the days as required or claim for regular absorption or it will confer any benefit in future selection and appointment in any vacant post.

It is observed that the applicant worked as nominee in leave vacancy for the said period and the allowance due is accordingly paid to him for the period, the claim of the applicant to the fact that he worked as GDS BPM at Jagduar BO for 5 months and other allowances due to him is not true and based on records.

After the post of the incumbent for the post of GDS BPM, Chirakuli has filed of the 5th Cir. Tribunal in its orders in OA No. 287/2003 and OA No. 14/2003 of 11.1.2005 the claim. The Hon'ble Tribunal has rejected the claim of the applicant for alternate and appointment in the post with observations that the observations have no merit.

It is a general practice toiform as nominee against a regular incumbent. The regular employee has not right to claim appointment regularly or alternately in any vacant post or in the post of any incumbent or alternately in any other vacant post. This position is laid in the rules for employment of GDS has been upheld by the Hon'ble Tribunal, Kolkata Bench in its order in OA No. 14/2003 and the same was also confirmed by the Hon'ble High Court, Kolkata (Circuit Bench of Calcutta) in its order in W.P. (C) No. 58/2003.

Having in the facts discussed above, the undersigned finds no merit and grounds to the claim of the applicant for alternate regular appointment in any GDS post and the representation made in his representation dated 3.1.2005 and hence reject the

(R RABHA)

SUPERINTENDENT OF POST OFFICES
GOALPARA DIVN : DHUBRI

Mr. Rabha
Superintendent

Re: OA No: S.D.P.O. 51 (Dhubri)

The Chirakuli P.M.C. (Vig) Assam Circle, Guwahati wrto OA's No. Vig/5/v/05
dated 12.3.2005.

the Registrar, C.A. Guwahati Bench, Bhangagarh Guwahati-5 wrto OA No. 32/05
dated 10.3.2005 for information and necessary action.

(R RABHA)
SUPERINTENDENT OF POST OFFICES
GOALPARA DIVN : DHUBRI

File in Court on.....

विद्रोह विधायिका अधिकारण
Central Administrative Tribunal

Court Officer.

13 NOV 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

Filed by The
Abdur Rohim
Applicant
Abdur Rohim
Through
Advocate

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M. H. Choudhury
Advocate
12.11.07

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH AT GUWAHATI.

O.A. NO. 102 OF 2007

Abdur Rohim

Applicant.

-versus-

Union of India & Ors.

Respondents

The counter objection on behalf of
the applicant above named; -

1. That with regards to the statement made in paragraph 1 in the written statement the applicant begs to state that the present application is basically against the order dated 19.8.2005 issued by the Superintendent of Post Offices, Goalpara Division, Dhubri in view of the common Judgment and Order dated 23.2.2007 passed in W.P. (C) No. 4477/2005 and W.P. (C) No. 6063/2005 wherein the Hon'ble High Court was pleased to set aside the impugned selection by which the applicant was illegally deprived by the respondent.

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2. That with regards to the statement made in paragraphs 2 and 3 of the written statement the applicant begs to state that the Judgment and Order dated 23.2.2007 passed in W.P.(C) No.4477/2005 and W.P.(C) No.6063/2005 is a fresh cause of action and as such the present application is neither a time barred by resjudicata nor barred by limitation u/s.21 of the Administrative Tribunal Act'1985.

3. That with regards to the statement made in paragraph 4 of the written statement the applicant has no comment.

4. That with regards to the statement made in paragraph 5 of the written statement the applicant denies the same and begs to state that he was appointed for a period of two months although he was allowed to work for a period of 5 months and finally he appeared in interview who has been illegally deprived in violation of the criteria made in the ~~advertisement~~.

5. That with regards to the statement made in paragraph 6, 7 and 8 of the written statement the deponent begs to state that the impugned action of the respondent i.e. the impugned selection has been set aside by the Hon'ble High Court and as such the statement made in paragraph 6, 7 and 8 are contradictory records.

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6. That with regards to statement made in paragraph 9, 10, 11, 12 and 13 of the written statement the deponent begs to state that the last representation dated 13.4.07 is still pending and the respondent is bound to pass a speaking order in view of the judgment and order dated 23.2.2007 passed in W.P.(C) No.4477/2005 and 6063/2005 and as such the applicant has made out a prima facie case for proper adjudication.

7. That with regards to statement made in paragraphs 14, 15, 16, 17 and 19 of the written statement the deponent denies the same and begs to state that the applicant has never suppressed any material facts on records and he was never heard while making the order dated 19.6.2005 and also begs to state that the present application is not barred by Resjudicata.

8. That with regards to the statement made in paragraph 18 of the written statement the deponent had no comment.

9. That with regards to the statement made in paragraph 20 of the written statement the deponent denies the same and begs to state that the written statement filed by the Respondent is contradictory to the records and the same is liable to be rejected and the present application may kindly be allowed in the interest of justice.

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Guwahati Neth

AFFIDAVIT

I, Abdur Rahim, aged about 24 years, S/O- Samad Ali, resident of village Chiracuti, P.O. Chiracuti, P.S. Chapar, Dist. Dhubri, Assam, do hereby solemnly affirm and declare ~~on oath~~ as follows:-

1. That I am the petitioner of the accompanying petition and as such I am well acquainted with the facts and circumstances of the case.
2. That the contents of this affidavit and the statements made in paras 1 to 9 of the above petition are true to my knowledge and those made under paras are being matter of records derived therefrom I believe to be true and those made in rests are my humble submission before this hon'ble court.

And I sign this affidavit on this the 10th November, 2007, at Guwahati.

Abdur Rahim

Identified by :

Deponent /Applicant

Moyam Hoam Choudhury
12/11/07
Advocate/Advocate's Clerk