

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos. 362 of 2003 and 398 of 2003

Jabalpur, this the 8th day of August, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

(1) Original Application No. 362 of 2003

Ram Kumar Gupta
Son of Shri Banshidhar Gupta,
Aged about 28 years,
R/o Village Teela, P.O. Teela,
P.S. Alipura, Tehsil Nowgong,
District Chhatarpur(MP)

APPLICANT

(By Advocate - Shri N.S. Ruprah)

VERSUS

1. Union of India,
Through Secretary,
Post & Telegraphic,
Govt. of India,
New Delhi.
2. Chief Post Master General,
Madhya Pradesh Circle,
Bhopal (MP)
3. Superintendent of Post Office
Chhatarpur Division
Chhatarpur (MP)

RESPONDENTS

(By Advocate - Shri K.N. Pethia holding brief of
Shri Om Namdeo)

(2) Original Application No. 398 of 2003

Har Narayan Ahirwar, S/o Shri
Chhakkilal Ahirwar, aged about
31 years, R/o Achelal Colony,
Nowong (Bkd), District Chhatarpur
(MP)

APPLICANT

(By Advocate - Shri R. Shrivastava)

VERSUS

1. Union of India
Through its Secretary,
Department of Postal Dak Bhawan,
New Delhi.
2. Chief Post Master General
M.P. Circle, Bhopal (MP)
3. Superintendent of Post Offices,
Chhatarpur Division,
Chhatarpur (MP)
4. Ram Kumar Gupta, S/o Shri
B.Gupta, aged about 28 years,
R/o Village Teela, PO : Teela,
Police Station Alipura Nowgong,
District Chhatarpur (MP)

RESPONDENTS

(By Advocate - Shri N.S. Ruprah for respondents 1 to 4
Shri S.P. Singh for respondents 1 to 4)

Common ORDER

By J.K.Kaushik, Judicial Member -

Ram Kumar Gupta and Har Narayan Ahirwar have filed Original Applications Nos. 362 of 2003 and 398 of 2003 respectively under Section 19 of the Administrative Tribunals Act, 1985. The controversy involved in the present cases is related to the same set of facts and the question of law involved is also same. Thus, it is considered expedient to dispose of both these applications by a common order.

2. In OA 362/2003 applicant Ram Kumar Gupta has assailed the order dated 13.5.2003 (Annexure-A-1) by which he has been issued a notice to show cause as to why his appointment should not be cancelled. The applicant's case is that in pursuance with a notification dated 24.12.2002 (Annexure-A-7) he applied for the post of Extra Departmental (Gramin Dak Seva) Branch Post Master (in short 'ED(GDS)BPM'). He possessed the requisite qualification and also fulfilled other conditions for possessing moveable and immovable property as well as good moral character. He has, therefore, been given the appointment vide letter dated 25.2.2003 (Annexure-A-9). He immediately joined on the post of ED(GDS)BPM, Teela on 28.2.2003. The Sarpanch of the Gram Panchayat was fully satisfied with his work. The further case of the applicant is that he has been issued with a notice dated 13.5.2003 (Annexure-A-1) to show cause as to why his appointment should not be cancelled, as it has been found that his appointment is said to be irregular. Annexure-A-1 does not specify as to what the alleged irregularity is. He has, however, replied to the same. The Original Application has been filed on number of grounds mentioned in the Original Application. The main ground of assailing the order is that no authority is empowered to take any penal action against an employee without specifying the charges against him. His appointment has been said to be irregular but no reasons have been given.

3. In OA 398/2003, applicant Har Narayan Ahirwar also applied for the post of ED(GDS)BPM against the aforesaid notification dated 24.12.2002 but he has not been selected and it is submitted that he is better qualified than respondent no.4 (i.e. the applicant in OA 362/2003). He made a protest against the selection and appointment of respondent no.4 to the competent authority and thereafter the show cause notice dated 13.5.2003 (which is the impugned order in OA 362/03) came to be issued. The applicant has sought a direction to the respondents to appoint him on the post of ED(GDS)BPM Teela in place of respondent no.4 inter alia other reliefs mentioned in the OA.

4. A reply has been filed on behalf of the respondents in OA 362/03 and the case has been vigorously contested. In brief history of the case it has been submitted that the applicant has secured only 58.61 % of marks in the High School Examination, whereas Har Narayan Ahirwar(applicant in OA 398/2003) has secured 73.53% marks. Therefore, latter is more meritorious candidates than the applicant, but the claim of more meritorious candidate has been left out and when the fact came to the knowledge of the competent authority, the notice was issued. The appointment given to the applicant is illegal and, therefore, the respondents have not committed any illegality in cancelling the appointment of the applicant. Other grounds have been generally denied.

5. In reply to OA 398/2003 the respondents have submitted that a notice has already been issued to respondent no.4 and as no order or decision has been taken against the respondent no.4, the allegation against the irregularity in the selection of ED(GDS)BPM is not correct. However, it is submitted that the applicant does not have landed property in his own name and that is one of the essential condition for the post of ED(GDS)BPM. He also does not have fulfilled all the conditions prescribed in the rules and, therefore, there is no violation of any rules.

6. We have heard the learned counsel of parties and perused the records of both the cases carefully.

7. The learned counsel for the applicant in OA 362/03 has submitted that the applicant was duly appointed after due selection to the post of ED(GDS)BPM and his services cannot be terminated in a slipshod manner as is proposed by the respondents. He has also submitted that the applicant has been selected with full application of mind by the competent authority seeing the comparative position of the applicant vis-a-vis other candidates. Shri Har Narayan Ahirwar, applicant in OA 398/03 does not fulfil the conditions mentioned in the notification. It has also been submitted that mere having the higher marks in the High School examination would not give go-bye to other essential conditions. The said candidate Har Narayan Ahirwar does not have any landed property in his name and he has even submitted only one character certificate whereas two such character certificates were required and rightly he has not been selected. On the other hand there is absolutely no illegality in the appointment of the applicant and the very notice issued to him is a non-speaking order and does not contain any reason whatsoever and the same cannot be sustained in law. Therefore, the Original Application deserves to be allowed.

8. On the contrary, the learned counsel of the respondents have submitted that appointments are required to be made on the basis of marks obtained in the High School Examination for the post of ED(GDS)BPM but the same was inadvertently not followed, in the present case, and that is the reason that the applicant Ram Kumar Gupta came to be selected and appointed. He has been also given due notice in the matter and otherwise also there is no dispute regarding the marks obtained by the applicant and the other candidate. The position that the applicant Ram Kumar Gupta has not got the highest marks in the High School Examination remains unrefuted. The respondents have also placed on

record the comparative chart which makes it evident that the applicant has secured less marks than one of the candidates namely Shri H.N.Ahirwar.

9. As regards OA 398/03, his fate is dependent on the result of the case of applicant Ram Kumar Gupta in OA 362/03 and in case Ram Kumar Gupta wins than Har Narayan Ahirwar would lose and in case Shri Ram Kumar Gupta loses, Shri Ahirwar will win the matter, so only final order in this case would suffice.

10. We have considered the rival submissions and the law position on the subject. As far as the facts of the case are concerned, there is hardly any quarrel on the facts of this case. It is admitted position of the case that applicant Ram Kumar Gupta has got 58.61% of marks in the High School Examination and applicant Har Narayan Ahirwar has got 73.53% marks. The position of the law as regards to the making of the selection is also settled and the selection is primarily to be based on the marks obtained in the matriculation examination for the post of EDBPM and this position of law is already settled by various Benches of the Tribunal and does not remain res integra. We only refer to one of the recent judgments in Suman Singh Vs. The Chief Post Master General, Lucknow & ors 2000(3)ATJ 124. Relevant extract from the same is reproduced as under :-

"4. The method of recruitment as laid down in section IV of the Service Rules for Postal E.D. Staff prescribes matriculation as the educational qualification and further provides that no weightage need be given to any qualification higher than the matriculation. Further it is provided that the selection of EDBPMs is to be based on the marks obtained in the matriculation or equivalent examination. Thereafter certain other conditions are to be satisfied before an EDBPM takes over the charge, such as income and ownership of property and the residence in the village where the post office is situated. The method of recruitment as prescribed in the service rules for the postal ED Staff provides as under :-

"The person who takes over the agency(EDSPM/EDBPM) must be one who has an adequate means of livelihood. The person selected for the post of EDSPM/EDBPM must be able to offer space to serve as the agency premises for the postal

operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO(Business premises such as shops etc. may be preferred)."

5. Thus according to the provisions contained in section IV-Method of recruitment, the person who takes over the charge as EDBPM or as EDSPM must be one who has an adequate means of livelihood and the person selected for the post of EDBPM/EDSPM must be able to offer space to serve as agency premises for postal operations. Thus the requirement is that the candidate who is first in merit and has the highest percentage of marks in the matriculation examination has to be selected for the post of EDBPM or EDSPM and on such selection he has to be offered the appointment. Thereafter he has to satisfy the other conditions relating to accommodation and residence...."

Keeping in view the aforesaid proposition of law, the action of the respondents in revising the order of appointment of the applicant Ram Kumar Gupta is in order since he has not secured the highest marks and as per the rules in force stated above, and applicant Har Narayan Ahirwar in OA 398/03, who has secured the highest marks was required to be selected.

11. A point has also been made on behalf of the applicant by the learned counsel of the applicant in OA 362/03 as well as by the official respondents that Har Narayan Ahirwar did not possess the property in his name. The issue regarding the possessing of the property in one's name in case of appointment of EDA has already been settled by the Full Bench of the Tribunal in H.Lakshmana and others Vs. The Superintendent of Post Offices, Bellary and others, 2003(1)ATJ 277 wherein it has been held that possessing of adequate means of livelihood in the circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the aforesaid post.

12. Thus, there should not be any hurdle in giving appointment to Har Narayan Ahirwar, applicant in OA 398/03 on the ground that he does not possess the landed property in his name. As regards the other conditions, the same could be fulfilled subsequently.

13. Before finalising the matter, the question regarding the cancellation of the appointment of applicant Ram Kumar Gupta without any reasons is also required to be considered. As we have held above that the very selection and appointment of applicant Ram Kumar Gupta was dehors the rules, the same is in nullity in the eyes of law and no right accrues to the individual least to say any indefeasible right and in such cases no notice of termination is required to be issued and this proposition of the law is settled by the Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan & others Vs. Ajay Kumar Das & Ors JT 2002(4)SC 467. Thus, the impugned order dated 13.5.2003 in OA 362/2003 does not require any interference by this Tribunal.

14. In the result, we pass the order as under:

- (i) OA 362/2003, Ram Kumar Gupta Vs. Union of India and others, is meritless and the same stands dismissed. The interim order stands vacated. No costs.
- (ii) OA 398/03, Har Narayan Ahirwar Vs. Union of India and others, has ample merit and the same stands allowed. The impugned order dated 25.2.2003 (Annexure-A-4 to OA 398/03) by which respondent no.4 Ram Kumar Gupta had been appointed, is hereby quashed. The respondents are directed to proceed with the process of appointment in respect of applicant Har Narayan Ahirwar treating him as selected for the post of ED(GDS)BPM Teela, within a period of three months from the date of receipt of a copy of this order and he shall be entitled to all consequential benefits including seniority from 25.2.2003 except back wages. No costs.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

J.K.Kaushik
(J.K.Kaushik)
Judicial Member