

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 689 of 2003

Jabalpur, this the 5th day of October, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Mr. Madan Mohan, I, Judicial Member

Prafull Chouksey
S/o Shri J.P. Chouksey
Aged about 39 years
Extra Departmental Branch Post Master
Tilwara Ghat
R/o 2-B Nehru Nagar,
Near Medical College, Jabalpur

APPLICANT

(By Advocate - Shri V. Tripathi)

VERSUS

1. Union of India
through its Secretary
Ministry of New Delhi.
2. The Chief Post Master General
M.P. Circle,
Bhopal.
3. The Sr. Superintendent of Post Offices,
Jabalpur Division
Jabalpur

(By Advocate - Shri B.da.Silva on behalf of Shri Om Namdeo)

ORDER

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following main reliefs :-

"(ii) Set aside the order dated 13.3.2003(A-1)

(iii) Direct the respondents to appoint/promote the applicant as Postman from the date Shri Dinesh Kumar Vishwakarma has been appointed/promoted as Postman with all consequential benefits including seniority and arrears of salary"

2. The brief facts of the case are that the applicant's mother Smt. Rama Chouksey was working as an Extra Departmental Branch Post Master (for short 'EDBPM') in Tilwaraghata since 1972. She was also working as a Teacher in a School of State Government. An order was issued by the Deputy Director of Education, Jabalpur on 7.8.1992(Annexure-A-2) whereby the mother of the applicant was directed to leave the job of EDBPM. In pursuance of the order of the Dy. Director Education, the applicant's mother submitted resignation and was relieved from her duties on 16.4.1992(Annexure-A-3). The applicant was asked

to work as additional EDBPM at Tilwaraghata w.e.f.1.4.1992. The respondent no.3 i.e. the Sr. Superintendent of Post Offices, Jabalpur Division, Jabalpur issued a notification dated 4.6.1993 (Annexure-A-4) for filling the post of EDBPM, Tilwaraghata, Jabalpur. The applicant submitted his candidature vide his application Annexure-A-5. Thereafter, the respondent no.3 issued a letter dated 15.7.1993 (Annexure-A-6) whereby the applicant was directed to submit his documents indicating his property. The applicant has contended that apart from his being a permanent EDBPM, he was required to submit surety bond every year in prescribed proforma, and he had furnished the required documents. He has further contended that although no formal order of appointment was issued by the respondents in favour of him, he was allowed to work continuously as EDBPM and was paid monthly salary. Apart from this he was also granted the yearly increments and the benefit of leave with pay. He has contended that the substitute EDBPMs are not provided leave with pay.

2.1 the respondents had While he was working as EDBPM issued a notification to fill up the regular post of Postman under 25% quota of Extra Departmental Agents (for short 'EDA'). The applicant submitted his candidature against the said post. His application was accepted and he was allowed to participate in the examination held for the said post on 24.6.2001. The result of the said examination was declared on 7.1.2002 (Annexure-A-11) and the name of the applicant finds place at serial no.1 in the select list. One Shri Dinesh Kumar Vishwakarma, ED Packer was placed at serial no.2. The said Shri Dinesh Kumar Vishwakarma was, however, appointed as Postman in the City Post Office, Baldeobagh, Jabalpur, whereas the applicant, who was placed at serial no.1, was not appointed to the post of Postman. He preferred a representation and thereafter he approached this Tribunal by filing O.A.No.744/2002, which was disposed of at the admission stage itself vide order dated 14.1.2003 with a direction to the respondents to dispose of his representation within 2 months.

Vide impugned order dated 13.3.2003 (Annexure-A-1) the respondents

have rejected the representation of the applicant. The applicant has contended that the grounds raised by him in his representation have not been considered and replied to by the respondents while passing the said order dated 13.3.2003. The main grievance of the applicant is that he has been working as EDBPM without any break since 1.4.1992. He has been continued as EDBPM after following the due process of selection. However, merely because no appointment order was issued in favour of the applicant, he cannot be put to a disadvantage due to the fault of respondent no.3. Once he was permitted to participate in the selection process under departmental quota of 25% for the post of Postman, after his selection on the said post he cannot be debarred from the regular promotion/appointment as Postman, on the ground that he was not a regular EDBPM. Hence this OA.

3. In the reply, the respondents have stated that the post of Gramin Dak Sevan (for short 'GDS'), Branch Postmaster, Tilwaraghat, formerly known as EDBPM, fell vacant on resignation by Smt. Rama Chouksey w.e.f. 1.4.1992. The applicant was engaged to work vice outgoing incumbent till selection/appointment to the post. The applicant applied for appearing in the examination for promotion to the cadre of Postman held on 24.6.2001. Since he was not an 'appointed official' he was not entitled to appear in the said examination. Inadvertantly the applicant was permitted to appear and subsequently when the fact came to light, his result was cancelled due to his non-entitlement.

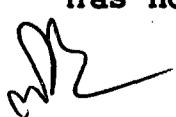
4. Heard the learned counsel of both the parties, and carefully perused the pleadings.

5. The learned counsel for the applicant has stated that the applicant has been selected on the basis of 1993 notification for the post of EDBPM, although no formal order was issued in his favour, but he has been continued in service and granted all the benefits such as increments regular leave with pay etc. which are entitled only to a regular person. In fact the applicant has also been allowed to appear in the examination for the post of Postman under 25% departmental quota. He has been declared in merit at serial no.1. Shri Dinesh Kumar



Vishwakarma, who was placed at serial no.2 in the merit list has been given appointment order whereas the respondents after declaration of the result and the applicant having been selected, have cancelled his candidature, merely on the ground that he was not entitled to appear in the said examination.

6. On a careful consideration of the arguments advanced on behalf of both the parties, we find that the applicant was appointed as a substitute EDBPM on 1.4.1992. The respondents have notified the vacancy of EDBPM, Tilwaraghata vide notification dated 4.6.1993. The applicant had applied for the same. The respondents vide their letter dated 15.7.1993 have asked the applicant to produce certain documents relating to his property. Thereafter, the applicant has submitted all the required documents. It is an admitted position that the applicant has been allowed to work as EDBPM since 1.4.1992 till date without any break. He has also been granted all the benefits of regular incumbent such as increments, leave with pay, etc. On the basis of these facts, the applicant has also been permitted to appear in the examination held for the post of Postman against 25% departmental quota and he had qualified and was placed at serial no.1 in the select list. The respondents in their reply have not denied all these facts. Since the applicant has been working for 12 years on the post of EDBPM and has been allowed to continue to work as EDBPM after notifying the post of EDBPM in 1993 it is presumed that the applicant has been selected on regular basis but no formal order has been issued to that effect, merely because the applicant has not produced the documents relating to property etc. In case the applicant was not appointed on regular basis as EDBPM, the respondents would have readvertised the post or alternatively terminated the appointment of the applicant as EDBPM, which has not been done. In the absence of denial by the respondents



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that the applicant has been paid all benefits of regular employee during all these years, we find substance in the submissions made by the learned counsel for the applicant. We may also observe in this regard that a Full Bench of the Tribunal in the case of H.Lakshmana and others vs. Supdt. of Post Offices & others, CAT(FB)2003(1)ATJ277 has clearly held that possessing of adequate means of livelihood is neither an absolute condition nor a preferential condition required to be considered for the post of EDBPM. Thus, when the applicant has qualified as a regular Postman on the basis of a departmental examination, the respondents at this stage cannot come up with the plea that all these things have happened during last 12 years by mistake, and deny the benefit to the applicant of his regular appointment on the post of Postman.

7. In the result, for the reasons stated above, the O.A. is allowed. The impugned order dated 13.3.2001 (Annexure-A-1) is quashed and set aside. The respondents are directed to appoint the applicant on the post of Postman on the basis of the result of the examination declared on 7.1.2002 (Annexure-A-11), within a period of three months from the date of communication of this order, with all consequential benefits except the arrears of back wages. No costs.

(Madan Mohan)
Judicial Member

M.P.Singh
(M.P.Singh)
Vice Chairman

rkv.

पृष्ठांकन सं. ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अन्वेषित:-

- (1) सचिव, उच्च व्यायालय बार एग्सीटिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.के काउंसल
- (3) पत्त्यार्थी श्री/श्रीमती/कु.के काउंसल
- (4) व्यायाल, केंपअ., जबलपुर व्यायातीठ

सूचना एवं आवश्यक कार्यवाही हेतु

S. Paul
B. Devi
उप रजिस्ट्रार

Issued
On 8-10-04
B.B