

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

ORIGINAL APPLICATION NO. 378/1998

JABALPUR : THIS THE 31ST DAY OF JULY , 2003

Hon'ble Mr. J.K. Kaushik, Judicial Member

Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

...

Suresh Kumar Darshaniya,
S/o Shri M.S.Darshaniya,
aged about 38 years,
ED Branch Post Master,
at Post Office Katra,
Mandla (MP)

..... Applicant.

(By Advocate : Shri V. Tripathi, brief holder for
Shri S. Paul)

Vs.

1. Union of India
through its Secretary,
Ministry of Communication,
Department of Posts,
Sanchar Bhawan,
NEW DELHI.
2. Chief Post Master General,
MP Circle, Bhopal.
3. Shri R.K. Chaurasia,
Assistant Director (S),
Office of Post Master General,
Raipur Region,
Raipur (MP).
4. Post Master General
Raipur Region, Raipur.
5. Senior Supdt. of Post Offices,
Balaghat Division, Balaghat (MP).
6. Shri Ram Charan Gedam,
Post Master
Head Post Office,
Mandla (MP).

..... Respondents

(By Advocate : Shri P. Shankaran, brief holder for
Shri B. Dasilva.

...

ORDER

By J.K. Kaushik :

This application has been filed by Shri Suresh Kumar Darshaniya, under Section 19 of the Administrative Tribunals Act, 1985, and has sought the following reliefs :-

- "(i) to summon the entire relevant records including the Answer sheets, Question papers of the applicant and the private respondents for the perusal of the Court,
- (ii) to restrain the respondents to destroy the records of selection during the pendency of the petition,
- (iii) to set aside the order dated 30.12.97(Annex.A-1) and 13.4.98 (Annex.A-2) to the extent it relates to the applicant and the private respondents,
- (iv) to direct the respondents to implement the order dated 16.12.1997 by giving appointment/ promotion to the applicant on the post of Post Man from the date the private respondents have been given,
- (v) to direct the respondents to pay all consequential benefits as if the applicant is promoted on the post of Post Man from the date the private respondent is promoted alongwith difference of back wages on promotional post, seniority and all other perks and consequential benefits,
- (vi) cost of the litigation be awarded to the applicant,
- (vii) any other order/orders which this Hon'ble Court deems fit."

2. The material facts leading to filing this O.A. are at a very narrow compass. Applicant is employed on the post of Extra Departmental Branch Post Master (for short 'EDBPM') and is holding this post since 22.9.77 and has been discharging his duties with honesty, entire satisfaction of his superiors and has been commanding the clean records. A departmental test was organised for purposes of appointment/promotion to the post of Post Man. The post of EDBPM is one of feeder category post.

[Signature]

Applicant, being eligible, was allowed therein and fared well. Vide order dated 16.12.1997 placed at Annexure A/3, he was found to be selected on the post. Applicant belongs to SC category. All the other candidates, whose names are indicated in the select list, were given appointment orders as Post Man except applicant.

The further case of applicant is that an another order dated 30.12.1997 (Annex.A-1) was issued in supersession of order dated 16.12.1997 (Annex.A-3) and his name has been deleted and substituted by one Shri Ram Charan Gedam, who has been arrayed as respondent No. 6 in this O.A. Shri Gedam has already been given appointment as a Post Man. Shri R.K. Chaura, who is respondent No. 3 had some oblique motive and for some other considerations, issued Corrigendum dated 30.12.97 deleting the name of applicant giving no reasons as to why his name has been deleted and also no opportunity whatsoever was given to the applicant. The applicant challenged the action of the respondents by filing OA 73/98 which came to be disposed of by this Tribunal on 2.2.98 directing the respondents to decide the representation which was to be preferred by him. A representation, as ordered, was made but he was directed to prefer the same to the Senior Superintendent of Post Offices which he submitted but it came to be rejected on 12.4.1998 containing therein no reason for rejection.

3. This is also a case of the applicant that on 16.12.97 Shri Chaura (Respondent No.3), wrote an Inland letter which is placed at page 20 of the paper book to the father of the applicant suggesting him to meet him. In turn, when his father met the said respondent, he demanded Rs. 50,000/- for selecting and promoting his son. The father of applicant expressed his inability to pay any gratification. On 16.1.1998

[Signature]

vide Annexure A/9, again the said Shri R.K. Chaura, Assistant Director (S), wrote an another letter in the same matter and on meeting, he assured his father that if money is paid, the name of the applicant will be inserted now or his name will be included in the next examination.

4. The Application has been moved on number of grounds and it has been very specifically submitted that either the answer sheets of the applicant have been tampered with or are not evaluated properly vis-a-vis the private respondent. In this way, he pointed out that the impugned orders are non-speaking orders and do not contain any reason and the same cannot stand in the eye of law.

5. The respondents have filed a detailed reply to the O.A. Reply has also been filed by the respondent No.3, who has been impleaded in person.

In reply, it has been said that there was 'total mistake' in the marks attained by the applicant who has in fact got 88 marks but by mistake it was totalled as 98 marks. In one of the paper he has secured only 20 marks whereas, the minimum passing marks are 22.5 out of 50 i.e. 45%. Respondent No. 6 has secured 91 marks in aggregate. However, applicant's name erroneously declared as successful due to inadvertance and it has happened for the bonafide reason in preparation of tabulation-sheet of large number of candidates and such mistake may occur in normal course which are always open to be corrected. The grounds raised in the OA are generally denied. The letters annexed as Annexs. A/8 and A/9 addressed to the father of applicant, were in personal capacity of the respondent No. 3 and same cannot be linked with the case filed by him.

[Signature]

In another reply, a preliminary objection has been taken that applicant continues to work on the post of EDBPM and the number of successful candidates are to be restricted to the declared vacancies for the individual Division.

6. A short rejoinder has also been filed to the reply of respondents and certain additional documents were also brought on record.

7. We have heard the learned counsel for the parties at a considerable length and have bestowed our anxious consideration to the submissions, pleadings and the records of this case. Respondents have also produced the selections proceedings in addition to written test copy of the paper in which applicant is said to have obtained only 20 marks i.e. less than the requisite qualifying marks.

8. The learned counsel for applicant has reiterated the facts and grounds raised in the O.A. and has submitted that the complete position of facts would be evident from a perusal of records relating to so called selections and there is hardly any argument required from the side of applicant.

On the contrary, learned counsel for respondents was at pains to justify the stand of the respondents and reiterated the defence of the respondents as set-out in their reply. He has submitted that all the persons who have been placed in the select list have already been appointed to the post of Post Man.

9. We have considered the rival contentions and have gone through the records of the proceedings. From the records we find that originally applicant has secured 30 marks in the second paper but, the same has been rounded and made as

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20. The figure of '30' in blue ink is tried to be made as '20', but the same is still legible and can be read as '30'. Thus, the same is rounded and 20 is written. In the complete Sheet, there is no such over-writing except this. Thus, fabrication of record is very clear. We also found that totaling of marks is not indicated in respect of all the candidates and that has been done only in respect of such candidates who have actually secured the minimum passing marks. The applicant is one of the candidate in whose case, the marks have been totalled. The earlier total being 98 and subsequently it is also rounded to 88. This 88 has come only for changing the marks in written paper from 30 to 20 marks. Hence, with no manner of doubt, it can be said that there is patent fabrication in the record and applicant has deliberately been declared as failed. When this position was pointed out, the learned counsel for the respondents drawn our attention to the answersheet and has submitted that applicant has done only two questions correctly which carried 10marks each and in the answer-copy it is clearly indicated that he secured only 20 marks. The matter being very suspicious, we tried to carry out an incisive analysis and at the first instant, we felt dismayed but, finally we could go to the heart of the actual fabrication even though we are not expected to evaluate mathematical questions but when we have seen the answer to question number 7 which is a simple arthamatic question. We found that even though the solution/answer to question, is correct but still no marks have been given on it and a cross-mark has been made as if, the answer is wrong.

The question was that 'where the sale-price is 660 and the profit ratio is 10%, what is the cost price ?

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The answer has been correctly given as 600/-. It causes an anxiety and doubt that marking on answer book have been entered subsequently and respondent No. 3 was awaiting for materialising his demand from the father of applicant and once the demand could not be materialised, then, he used this as a trump~~y~~ and even has gone to an extent of marking cross even on a correct answer. Thus, we reach to an in-escabable conclusion that respondent No. 3 has manipulated the records and deprived the applicant from selection by mis-using the public power. We record this finding with full conscious as a ^{high} degree of proof, is required for reaching to such conclusion. Thus, the grounds raised in the O.A. on behalf of applicant, are well founded and OA deserves acceptance.

10. We cannot refrain from expressing our serious concern to the manner in which respondent No.3 has misused the public office and mis-used the public power for a wrongful gain at the cost of an innocent employee. If a proper check is not imposed on such mis-use of power, the same may turn wild and an unruly horse which may un-settled even its rider. In view of the essence of keeping the public confidence intact, we think it appropriate to encumber the respondent No. 3 Shri R.K. Chaure (Assistant Director(S), who is the author of complete episode.

11. The upshot of the aforesaid discussions is that the O.A. has much force and substance, the same is hereby Allowed. The impugned order at Annexures A-1 and A-2 dated 30.12.1997 and 13.4.1998 are hereby quashed, so far as they affect the applicant and the respondent No. 6 (Shri Ram



Charan Gedam). The applicant Shri Suresh Kumar Darshaniya, shall be entitled to all consequential benefits within a period of one month from the date of receipt of a copy of this order, by treating him as a Postman from 16th December, 1977 except the back wages. The Respondent No. 3 Shri R.K. Chaure, is saddled with a Cost/Compensation of Rs. 10,000/- (Ten thousand rupees), which shall be directly paid from his monthly salary bill to the applicant in five equal instalments starting from the month a copy of this order is received.

The Registry of this Tribunal is directed to send a copy of this Order under the signature and seal of this Bench of the Tribunal to the Respondent No. 2 (Chief Post Master General, Madhya Pradesh Circle, Bhopal), directly by registered post to enable him to take appropriate remedial action so as to avoid recurrence of such events.

The Original Application No. 378 of 1998 stands disposed of accordingly.

Anand Kumar Bhatt

(Anand Kumar Bhatt)
Administrative Member

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

Issued
on 01-8-03
by *BB*

JRM

प्रृष्ठांकन सं. ओ/न्या....., जवलपुर, दि.....
प्रतिनिधि दोस्ते लिखते:-

- (1) राजिनामा विभाग, विधायक सभा विभाग, जवलपुर
- (2) अधिकारी विभाग, जवलपुर.....के काउंसल *S. Paul Adne*
- (3) प्रवासी विभाग, जवलपुर.....के काउंसल
- (4) वायरल, विधायक सभा विभाग, जवलपुर

सूचना द्वारा आवश्यक कार्रवाई हेतु *T.S. dasilva, Adne*
Res. No. 2

प्रधान सचिव लिखते
31/7/03