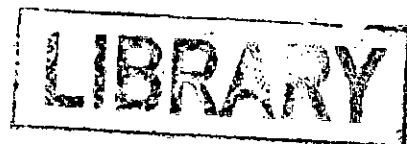


**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA**



No.O.A.350/119/2012

Date of order : 12.06.2019

Coram :Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Dr.(Ms.) N. Chatterjee, Administrative Member

BidyutMandal,
Son of Late Nabin Chandra Mandal,
Aged about 36 years,
Worked as GraminDakSevak
Branch Post Master (GDSBPM)
At SataliMandalpara Post Office
Under the Superintendent of Post Offices,
Cooch Behar Division
And residing at Village and Post Office – SataliMandalpara,
Police Station Kalchini,
District – Jalpaiguri;

..... Applicant.

Versus

1. Union of India
Service through the Secretary,
Department of Posts,
DakBhawan,
New Delhi – 110001.
2. The Chief Post Master General,
Eastern Zone,
West Bengal Circle,
YogayogBhavan,
Kolkata – 700012.
3. The Superintendent of Post Offices,
Cooch Behar Division,
Cooch Behar,
Police Station – Cooch Behar,
District – Cooch Behar- 736101;

4. Barsha Lama,
 Son of Palden Lama,
 Aged about 22 years,
 Residing at Village and Post Office – Satali Mandalpara,
 Police Station – Kalchini,
 District – Jalpaiguri;

..... Respondents.

For the applicant : Mr. P.C. Das, counsel
 Ms. T. Maity, counsel

For the respondents : Ms. M. Bhattacharya, counsel

ORDER(ORAL)

Mr. Justice L. Narasimha Reddy, Chairman

The Department of Posts, North Bengal and Sikkim region issued an advertisement on 23.09.2008 inviting applications for appointment to the post of Gramin Dak Sevak Branch Post Master (GDSBPM) reserved for S.T. community. Such intimation was also given through employment exchange. The applicant herein and several others applied and ultimately the applicant was appointed through an order dated 26.06.2009. Challenging the selection of the applicant herein one Ms. Barsha Lama filed O.A.No.1011 of 2009 before this Tribunal. It was alleged that though she secured more marks in the Matriculation Examination than the applicant, she was not selected. The applicant was impleaded in the said O.A. as Respondent No.4. The O.A.1011/2009 was disposed of on 22.07.2011 directing the Appointing Authority to examine various facts and the next higher authority was



directed to reconsider the matter and pass a speaking order within a month of the receipt of that order.

2. In compliance with the direction issued by the Tribunal in O.A.1011/2009, the respondents passed a detailed order dated 30.11.2011. It was stated that the appointment of the applicant was liable to be set aside since he secured less marks than Barsha Lama. This was followed by an order dated 14.12.2012 through which the appointment of the applicant was terminated.

3. The applicant contends that he was selected by the competent authority after verification as to compliance with the conditions and his appointment was cancelled without following the principles of natural justice. He contends that the respondents did not give him any notice, nor furnished any valid reasons for setting aside his appointment. The grounds of hardship are also pleaded.

4. On behalf of the respondents a detailed counter affidavit is filed. It is stated that the post was earmarked for S.T. candidate and on verification of the applications with reference to the relevant rules and provisions it emerged that the applicant was eligible to be appointed and accordingly orders of appointment were issued. It is stated that the order dated 30.11.2011 was issued by duly serving a copy to the applicant and thereafter the order of termination was issued and in his place one, Sri Tapas Champramary who secured 45% marks was appointed.

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5. We heard Mr. P.C. Das leading Ms. T. Maity, Id. counsel for the applicant and Ms. M. Bhattacharya, learned counsel for the respondents.

6. The facts that gave rise to filing of this O.A. are stated in the preceding paragraphs. The order dated 30.11.2011 is a sequel to the order passed by this Tribunal in O.A.1011/2009. A copy of the same was marked to the applicant, since he is the only person, to feel the impact thereof. In case he felt aggrieved by that, he could have pursued remedy available under the law, but he did not do so. Having awaited sufficiently, the respondents passed an order dated 14.12.2012 terminating the services of the applicant.

7. We examined the matter on merits also. It is a matter of record that only candidature of three persons was considered after examining various applications that were received in response to the notification. The marks secured in the Matriculation was the deciding factor. Ms. Barshajama secured 52.87 marks. One Mr. Tapas Champramary secured 45% marks and the applicant secured 44.8% marks. The respondents chose the applicant herein in preference to the other two candidates who secured more marks, on the ground that other two persons did not file the income certificates. Ms. Barshajama filed the O.A.1011 of 2009 challenging the appointment of the applicant herein. The prayer therein reads as under:-

"a) The selection conducted in respect of appointment to the post of GDSBPM is in violation of service rules for Postal

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GraminDakSebok and therefore the appointment given to the Private respondent should be quashed;

b) An order do issue directing the respondents to conduct selection afresh for appointment to the post of GDSBPM, SataliMondal Para B.O. on the basis of marks secured in the matriculation."

8. The applicant herein was impleaded as Respondent No.4 in O.A.NO.1011/2009. The record of that O.A. discloses that the applicant was served a notice but he did not choose to contest. In the order dated 22.07.2011 passed in O.A.No.1011/2009 this Tribunal held as under :-

"5. Coming to the facts of the case, we find that it is the case of the respondents that there were only two effective applications. The law relating to as to what qualifications have to be considered at the time of selection and which are the subsequent conditions to be fulfilled in a reasonable time had been laid down in the above Full Bench decision. The DG Posts has also issued an order. The selection notification is contrary to the above judgment and the Recruitment Rules notified by DG Posts. It is well settled that the selection notification has to be in accordance with the Recruitment Rules.

6. The GDS(Conduct and Employment) Rules empowers an authority higher than the Appointing Authority to examine the facts of the case. We direct the next higher authority to reconsider the matter in the light of what has been stated above and to pass a speaking order within a month of receipt of the order."

9. In compliance of the direction issued by the Tribunal the respondents have verified the entire issue and came with a detailed speaking order dated 30.11.2011. Para 5.6 of the order dated 30.11.2011 reads as under:-

"5.6. In view of above discussion the selection made by SPOs, Coochbehar Division was in contravention of rules/instructions



and notification dated 23.09.2008 and as such it deserves to be quashed.

I, therefore, order accordingly and it is also directed that appointing authority should take action to terminate employment of Sri Bidyut Mandal the private respondent who has joined on 7.7.2009 and has rendered less than 3 years continuous service under the provision of Rule -8 of GDS(Conduct & Employment) Rules 2001 and make selection afresh amongst ST candidate who had already applied for the post strictly in accordance the relevant rules and instructions. This exercise should be over within two months."

A copy of this order was communicated to the applicant through registered post. He did not challenge the same and ultimately an order dated 14.12.2012 has been passed terminating his appointment.

10. The main cause for the entire exercise leading to the cancellation of appointment of the applicant is the adjudication in O.A.No.1011/2009. The applicant neither took part in the said O.A. even being a party to the same nor he challenged the order passed therein. It needs be mentioned that specific reference was made in the order of the Tribunal. It is not the exercise undertaken by the respondents on their own. If at all anyone, it is the applicant, who is to blame himself, for this.

11. What emerges on verification of merit is that he secured least marks amongst the three candidates. The candidate who secured highest marks expressed her disinclination at a later point of time. Therefore, the next candidate was offered appointment. We do not find any illegality in the entire exercise. Further, the applicant has not chosen to implead the candidate who was appointed in his place.



12. From any angle we do not find any merit in the O.A. and it is accordingly dismissed. There shall be no order as to costs.

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(Dr. N. Chatterjee)
Administrative Member
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(Justice L. Narasimha Reddy)
Chairman