

Sunil Kumar and ors. Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Patna

Decided On : Feb-04-2000

Judge : L Jha, H A L.

Appellant : Sunil Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. Both the aforesaid O.As. relate to the appointment on the post of EDBPM, Ajaypur EDBO in account with Asta, S.O. in Nalanda Postal Division, Biharsharif. The applicant of O. A. No. 194/94, Sunil Kumar, is Respondent No. 6 in O. A. No. 505/94 and the applicant of O.A. No.505/94, Mrs. Sanju Sinha, is Respondent No, 6 in O.A. No. 194/94. They are rival claimants for the aforesaid post, and common material, questions of law and facts are involved in both the OAs. Hence, they are taken up together and decided by this common order.

2. The Superintendent of Post Offices, Nalanda Division at Biharsharif (Respondent No. 4) made a requisition with the employment exchange, Biharsharif, District Nalanda for sponsoring the names of eligible candidates as per the instructions laid down in P&T recruitment order vide letter dated 31.5.93 as at Annexure-A/1. The last date for submissions of the applications was 29.6.93. The Director General, Department of Posts, New Delhi, issued a letter on 12.3.93, as at Annexure-A/2, according to which, the minimum educational qualification for appointment in the post of EDBPM was revised from VIII Standard.

(Matriculation or equivalent may be preferred) to Matriculation or equivalent. The Selection/ appointment to the aforesaid post from amongst contesting candidates was required to be made on Matriculation marks basis in view of the instructions as contained in letter No. in the ED BIG dated 25.11.81/PMG, Bihar as at Annexure-A/3.

3. The Employment Exchange, Nalanda, sponsored the names of six candidates, out of which one candidate was non-matriculate. It is stated by the applicant, Sunil Kumar, (applicant of OA-194/94) that he fulfilled the conditions of appointment and he was the best amongst all the candidates. Accordingly, he was offered appointment by Respondent No. 4, vide Memo. No. 15 dated 13.1.94, as at Annexure -A/9, after verification of his papers as at Annexure-A/4 to Annexure-A/8 by the Respondent No. 5. Rejoined the said post of EDBPM on 20.9.93, his joining report is as at Annexure A-10.

4. It is the further case of Shri Sunil Kumar, the applicant of OA No.194/94, that amongst six participating candidates, the applicant of OA No. 505/94 Mrs. Sanju Sinha, had highest marks in the Matriculation Examination. But, she married 8 to 10 years back at village Jhammu, P.S. Garuara, District Nalanda, which is far of from the Post Village.

She was residing in that village with her husband. She did not fulfil property criteria, and accordingly, she was not considered eligible for appointment to the aforesaid post of EDBPM. It is stated that Mrs.

Sanju Sinha approached the Respondent Nos. 2 & 3 for cancellation of appointment of Shri Sunil Kumar and for her appointment in his place, and, therefore, the Respondent No.2, issued a letter to Respondent No.4 for issue of a show cause to him (Sunil Kumar).

Respondent No. 2 stated in his letter that the appointment of Sunil Kumar was void ab-initio and, therefore, he had cancelled his appointment. However, Respondent No. 4 issued a show cause notice to Sunil Kumar which was an empty formality. The show cause issued by the Respondent No. 2 is at Annexure-A/11 to the application No. L94 of 94.

The applicant, Shri Sunil Kumar, submitted representation, vide Annexure-A-12 to the Superintendent of Post Offices, Nalanda, Bihar Sharif. The Respondent No.4 also sent a copy of the representation to the Respondent No. 3 as at Annexure-A/13. However, the Respondent No.4 without waiting for the reply on his aforesaid representation issued direction, vide his letter No. AI-15 dated 3.5.94. to the Respondent No. 5 to relieve him from the post of EDBPM, Ajaipur, even without termination of his appointment which is arbitrary, illegal and malicious.

5. The Respondents 1st set have countered the prayer of the applicants Sunil Kumar who is applicant, in OA-194/94, by stating that the Superintendent of Post Offices, Nalanda Division, Bihar Sharif, has wrongly required VIII Standard passed as minimum qualification in stead of Matriculate. Therefore, the Chief Postmaster General directed to draw the requisition and to initiate action for selection afresh. The Director of Postal Services, Patna, reviewed the appointment file and observed that the candidature of Smt. Sanju Sinha (applicant in OA-505/94) was more suitable amongst all the candidates sponsored by the Employment Exchange. But her candidature had been rejected on the basis of a biased verification report of the STI to the effect that she was not a permanent resident of the post village. She had given documents showing landed property in her name in the post village, and also, residential certificate issued by Mukhiya and Pramukh.

Accordingly, he ordered to cancel the appointment after issuing a show cause notice to the appointed candidate, Shri Sunil Kumar (the applicant of OA-194/94). Smt. Sanju Sinha, who is the applicant in OA-505/94 had secured 702 Marks in Matriculation Examination, Whereas, the applicant, Shri Sunil Kumar of OA-505/94 secured 476 marks. She has 1.87 acres of land and Rs. 35.000/- annual income. Therefore, there was nothing to doubt the candidature of Smt. Sanju Sinha and the appointment of Shri Sunil Kumar was ex-facie illegal, irregular and in violation of the Rules relating to the recruitment to the said post.

6. Smt. Sanju Sinha, applicant in OA-505/94, and Respondent No. 6 in OA-194/94, filed Written Statement in the aforesaid OA-194/94. It appears from the contents of her application in OA-505/94, read with the Written Statement filed on her behalf in OA-194/94 that she has claimed her appointment to the aforesaid post of EDBPM

on the ground that apart from fulfilling all the conditions as per the Rule, she has the highest marks in the matriculation examination among all the contesting candidates. She is married to Shri Dhananjay Singh, a resident of village Thaman, P.O. Dharnaka, District Nalanda. But she is residing at the post village Ajaipur with her father, Shri Ram Jee Prasad, P.S. Noorsarai, District Nalanda to look after him as she has no brother. She possesses house property and 1.87(1/2) acres of land in her name and her annual income is Rs. 25,000/-. She filed certified matriculation marksheet, the residential certificate issued by the District Magistrate, Nalanda, Revenue rent receipt, and the income certificates, as per Annexure A-1 to Annexure-A-II, for verification to the Sub-Divisional Officer, District Nalanda on 31.7.93. But, the Superintendent of Post Offices, Nalanda, respondent No. 4 did not consider her case judiciously and according to the administrative order issued by the Department of Posts, particularly the instructions contained in DG's letter No. 171/497/90-EDIRY dated 10.5.91 as at Annexure-A-15 and had appointed Sunil Kumar, who had obtained less marks than her. She represented her case before the Vigilance Officer, Office of the Chief Postmaster General, Bihar Circle, Patna on 28.9.93 against the appointment of Shri Sunil Kumar and the Postmaster General, Bihar Circle, Patna, directed to cancel the appointment of Shri Sunil Kumar, but the Respondent No. 4 in order to favour him (Sunil Kumar) directed the Sub-Divisional Inspector, Post Offices, Central Sub-Division, Bihar Sharif vide his letter No. AI-15 dated 30.5.94 to relieve him (Sunil Kumar) from the post of EDBPM, Ajaipur. It is stated that this order of Respondent No. 4 is not covered by any Rule. Thus it is the case of Smt. Sanju Sinha that she is a resident of Post Village and possesses landed property there. She has more marks in Matriculation Examination than Shri Sunil Kumar. Accordingly, the appointment of Shri Sunil Kumar was rightly cancelled and she is entitled to be appointed on that post.

7. Admittedly Shri Sunil Kumar was appointed by order of appointment dated 13.9.93 issued under the signature of appointing authority i.e.

Superintendent of Post Offices, Nalanda Division, Bihar Sharif, vide Annexure-A/O. Mrs. Sanju Sinha made certain complaints before the Chief Post Master General, Bihar Circle, Patna and the Director of Postal Services, Central Region

(Respondents Nos. 2 & 3 respectively) against the appointment of Sunil Kumar and non-consideration of her better claim for appointment. It appears that the Chief Postmaster General, Bihar Circle, Patna, examined the appointment file and observed that the requisition made to the employment exchange for appointment to the post of EDBPM, Ajaipur Branch, was ab-initio void and, therefore, the order for cancellation of his appointment was issued. The Superintendent of Post Offices, Nalanda Division, Bihar Sharif, accordingly communicated to Shri Sunil Kumar about the cancellation order of his appointment by the Chief Postmaster General, Bihar Circle, Patna with a request to submit his representation, if any, within 10 days from the date of receipt of the letter dated 3.1.94 as at Annexure-A/11. Shri Sunil Kumar represented vide representation on 7.1.94 to the Superintendent of Post Offices, Nalanda Division, as at Annexure-A/12, and also, to the Chief Postmaster General, Bihar Circle, Patna, on 8.1.94 as at Annexure-A/13, with request to regularise his appointment as EDBPM, Ajaipur. However, the Superintendent of Post Offices, Nalanda Division, Bihar Sharif, issued a letter on 3.5.94 to Shri Mohammad Murtaza, SDI (P), Bihar Sharif, directing him to relieve Shri Sunil Kumar at once under intimation to him of the date of relieving at the earliest.

8. The learned counsel for the applicant contended that the applicant, Sunil Kumar, was relieved by the order of the Superintendent of Post Offices i.e. the appointing authority, but without any termination order by him. The Superintendent of Post Offices issued the aforesaid direction of relieving him (Sunil Kumar) as his appointment as EDBPM, Ajaipur Bench was cancelled by the Chief Postmaster General, Bihar Circle, earlier, vide his order dated 3.8.1994, as at Annexure-A/11.

The learned counsel for the applicant submitted that the Chief Postmaster General is not an appointing authority of EDBPM and he could not have cancelled his appointment in exercise of his reviewing power.

The order of the Superintendent of Post Offices, as at Annexure-A/11, requiring Shri Sunil Kumar to submit his representation and consequently relieving him by order dated 3.5.94 as at Annexure-A/14 are nothing but empty formality. The learned counsel for the applicant is fortified in his stand in view of the several decisions of

the different Benches of the Central Administrative Tribunal. He referred to the decision dated 21.11.97 by this Bench of the Tribunal in OA-466 of 1994, in which exactly the same question, as to whether the selection made by the appointing authority which had already been acted upon could be reviewed and set aside by the higher authority as answered in the negative. This Bench in the aforesaid O. A. relied upon the decision of co-ordinate Benches of Cuttack and Ernakulam as well as an earlier decision of this Bench in K.K. Ramkrishnan v. The Post Master General and Ors., (1996) 34 ATC 566.

9. The Cuttack Bench of Central Administrative Tribunal in its judgment dated 28.1.87, in OA-140/86, while dealing with the case of appointment of EDBPM, which appointment was cancelled after some months on the report of Postmaster General on the ground that another candidate was not considered even though he had better qualification held as follows:- "Once a particular benefit has been conferred on a particular person he can be divested of the same only when certain legal formalities have not been complied or after appointment something appeared against a particular officer whose continuance in service would be detrimental to the interest of the administration. These consideration can weigh well in order to terminate the services of a particular employee, but once an appointment has been passed and the particular incumbent had joined the post and served for something it is no longer upon to any authority to say that some other candidate had higher qualification and was entitled for appointment." 10. This Bench of the Tribunal in aforesaid K.K. Ramkrishnan case (supra) held that the higher authority cannot usurp the powers of statutory authority which might be lower in the administrative hierarchy, and the power of administrative supervision to high level of administration do not by implication confer on such higher level, the statutory power which is exercisable by lower level.

11. The Ernakulam Bench of the Tribunal in K. Kutalingam v. Special Record Officer, Railway Mail Office and Ors., (1996) 34 ATC 570 rejected the contention that "Being the controlling authority, the Divisional Head has got the authority to review the record relating to the recruitment made by a sub-ordinate authority.

12. We have noticed above that Chief Postmaster General, the reviewing authority, cancelled the appointment of Sunil Kumar and directed the Superintendent of Post Offices (the appointing authority) to issue show cause notice to him. The Superintendent of Post Offices long thereafter, ordered to relieve him without passing even a termination order. This clearly goes to show that the appointing authority did not apply his independent mind to the cancellation of the appointment/selection process and acted upon the direction of PMG, Bihar Circle as an empty formality. It is pertinent to point out that Mrs. Sanju Sinha in her application in para 4.12 has stated that "the Chief Postmaster General, Bihar Circle, Patna, had directed to cancel the appointment of Shri Sunil Kumar, but the Superintendent of Post Offices was in favour of Respondent No. 6 (Sunil Kumar) so he has directed the Sub-Divisional Inspector (Post) Central Sub-division Biharsharif, vide office letter No. A1-15 dated 3.5.94 to relieve Shri Sunil Kumar from the post of EDBPM, Ajaipur. This order is not covered by any Rule." Thus, the applicant, Mrs. Sanju Sinha, admitted this fact that the relieving order of the applicant, Sunil Kumar, is not in accordance with Rule. It is settled law that the Administrative Tribunal is bound by its earlier precedence and in case of difference of opinion a reference has to be made to a larger Bench as laid down by the Hon'ble Supreme Court in Copal Bandhu Biswal v. Krishna Chand Mohanti, 1 998 SCC (L&S) 1147. The case before us is within the favour (sic) with the aforesaid facts and circumstances of the cases referred to above and we are in agreement with the decision as given therein and hold that the superior administrative authority i.e. the Chief Postmaster General, Bihar Circle, Patna, could not have reviewed the appointment made by the appointing authority (Superintendent of Post Offices) which had already been acted upon, in exercise of reviewing power.

13. The learned counsel appearing on behalf of the applicant, Sunil Kumar, placing reliance on a full Bench decision of the Central Administrative Tribunal, Allahabad Bench, as reported in (1997) 36 ATC 539, contended that the Rule 6 of the Post and Telegraph Extra Departmental Agent (Conduct and Service) Rules, 1964 cannot confer a power on the appointing authority or any authority superior to the appointing authority to cancel the appointment of an Extra Departmental Agent, who has been appointed on a regular basis in accordance with the Rules for reasons other than unsatisfactory service or for administrative reasons

unconnected with conduct of the appointee without giving him an opportunity to show cause. The full Bench of the CAT in the aforesaid judgment relief upon a decision of the Hon'ble Supreme Court in Union of India v. Jai Kumar Panda, 1996 SCC (L&S) 320, wherein it is held. "It is settled law that if any material adverse to the respondents' formed a foundation for termination, principle of natural justice may necessarily require that prior opportunity of notice be given and after considering his reply appropriate order may be passed giving reasons in support thereof." The question before the Hon'ble Supreme Court was whether the termination of Ed Branch Postmaster in that case was in accordance with Rule 6 of the Rules.

There was also a complaint made against the ED Branch Postmaster that he had produced false income certificate before seeking appointment.

Here the complaint was that the appointment of the applicant as ED Packer was tainted with irregularities committed by employee of the Postal Department at the time of making the appointment of the applicant as ED Packer. Though the applicant was not alleged to be a party to the said irregularities, he had a right to show that no such irregularities as alleged were committed at the time of his appointment as Ed Packer or that the irregularities were not such as to vitiate the entire process of selection or appointment as Ed Packer. Rule 6 of the Rules does not contemplate termination of such appointment on the basis of such order as was passed in the instant case by the Postmaster General, Patna, since the action was initiated on the basis of the order of the Postmaster General pursuant to the complaint made by one Shri Raj Kumar Senkar, who was also considered for appointment to the said post along with the applicant, the order of the Postmaster General and the complaint of Raj Kumar Senakar formed the foundation and not a motive for taking the impugned action and, therefore, the impugned order of termination is not sustainable in law.

14. In the instant case the PMG pursuant to the complaint made by Mrs.

Sanju Sinha who was a candidate for appointment issued the impugned order of cancellation of appointment through the appointing authority i.e. the Superintendent of Post Offices. In fact, the appointing authority without issue of

termination order in black and white passed the order for relieving him from the post. Therefore, we have no hesitation in holding that the case of the applicant Sunil Kumar is fully covered by the aforesaid decisions of the Hon'ble Supreme Court.

It is rather on better footing as there is no termination order in this case and, accordingly, the impugned order is not sustainable in law.

15. The learned counsel for the Respondents Department contended that the Chief Postmaster General, Bihar Circle in course of reviewing the appointment file found that the selection process was ab initio void as the appointing authority i.e the Superintendent of Post Offices, Nalanda Division, had wrongly required VIII Standard Pass as minimum qualification in stead of a matriculate. He also found that the candidature of Smt. Sanju Sinha was more suitable as she had highest marks among all the candidates sponsored by the Employment Exchange, and she also fulfilled the criteria of permanent resident and independent source of livelihood and immovable property in her name in the post village. Therefore, the appointment of Sunil Kumar was rightly cancelled. It appears from Annexure-A/1 that the advertisement dated 31.5.93, for filling up of the aforesaid EDBPM post, the minimum qualification of VIII standard passed (Matriculation or equivalent to be preferred) was required. But, the Director General (Department of Post), New Delhi had earlier issued a letter on 12.3.93 (Annexure-2 of OA 194/94) according to which the minimum educational qualification for the aforesaid post was revised to matriculation or equivalent.

Therefore, it is said that the advertisement for the aforesaid post of EDBPM as at Annexure-a/1, is void ab initio and no appointment could have been made on the basis of such advertisement. We find that there was no complaint from any corner that any prejudice was caused to any one due to prescribing the aforesaid minimum qualification in the advertisement. In fact, both the rival claimants are Matriculates. Had a candidate not fulfilling the condition of minimum qualification of being matriculate, been appointment, the matter would have deserved serious consideration. But, as said above, all the 6 candidates except one, sponsored by the Employment Exchange were matriculate and the appointee was also a

matriculate. Moreover, from the cancellation order of the Chief Postmaster General, as at Annexure-A/11, it does not appear that the appointment of Sunil Kumar was cancelled due to the aforesaid Lacuna in the advertisement. The pleadings of the parties clearly show that the postmaster General on the complaint of Smt. Sanju Sinha that she having the highest marks could not be selected, cancelled the appointment of Sunil Kumar. In the aforesaid facts and circumstances it is difficult to say that the Selection process was rendered void due to prescribing the minimum educational qualification as VIII the standard pass in the advertisement.

16. Now the next important question crops up for consideration as to whether the applicant Mrs. Sanju Sinha was rightly not considered for appointment in preference to Sunil Kumar. It is admitted position that Mrs. Sanju Sinha has more marks in Matriculation Examination than Sri Sunil Kumar and that the marks obtained in the matriculation examination is the basis for selection/appointment for the post of EDBPM. But we find from the aforesaid conditions, that the candidate desirous of appointment to the post of EDBPM are required to fulfil the conditions of adequate means of livelihood and also, that the property must stand in his/her own name. The Mutation paper and the rent receipt in token of having possessed the landed property as well. The aforesaid conditions as laid down in the employment notice (Annexure-A/1) are as follows:- "(i) He must have adequate means of livelihood. Where means of livelihood is only derived from the landed property it should be in the own name of the candidate for which attested copy or the copy of the requisite document, namely; Khatiyan, mutation or rent receipt should be together with the mutations. In case of candidate who having means of livelihood from other source, such as, vocation/profession other than landed property, a copy of livelihood proved thereof must be furnished along with application form: (ii) The candidate must possess landed property exclusively in his own name with incumbrance and also submit an attested copy or photo-copy of registered deed, Khatiyan, mutation paper and rent receipt in token of having possessed the landed property in his own name." 17. It is thus evidently clear that the candidate to be selected must have sufficient means as to establish to the satisfaction of the appointing authority that he had independent means of livelihood as also some landed property in his/her exclusive name.

18. Now coming to the factual matrix of the instant case we find that Mrs. Sanju Sinha claims ownership of land by virtue of mutation and rent receipt in her name in respect of the land standing in the name of her father. It is the contention of the learned counsel appearing on behalf of Mrs. Sanju Sinha that she is the only daughter of her father and she resides with him at Post village. He contended that her father had transferred 1.87(1/2) acres of land to her by way of family arrangement and its mutation was allowed by the Anchaladhikari, Noorsarai, vide order dated 9.3.93 in mutation case No. 97/2/92-93 and accordingly the rent receipt (Annexure-A/10) was issued. Mrs. Sanju Sinha is entered in register II in respect of the aforesaid land and she is also in possession of the same.

19. The learned counsel for the Respondents, on the other hand, submitted that Mrs. Sanju, being a daughter is not a co-parcener. She can claim ownership in the property of her father during his life time only by virtue of registered transfer deed. A mutation is not a proof of ownership of land. In other words, the admitted position is that Mrs. Sanju Sinha has no ownership over the land claimed by her in the legal sense as required under the conditions referred to above. In a similar circumstance, in OA-490/95 decided on 27.8.99, it was held by this Bench of the Tribunal that the conditions as said above spelt that the proper deed should be in the exclusive name of the incumbent supported together with the mutation order and rent receipt. In the aforesaid case before the Bench, the certified copy of unregistered Panchanama (partition deed) in the joint names of the applicant and his cousin was not held as fulfilling the condition of ownership.

20. In view of the foregoing discussions the OA-505/94 filed by Mrs.

Sanju Sinha is held devoid of merit and, it is, accordingly, dismissed.

The OA No. 194/94 filed by Shri Sunil Kumar is allowed and the impugned order as contained in Memo. No. A/1-15 dated 3.5.94, as at Annexure-A/14, and the order dated 3.1.94, passed by Respondent No. 2 as at Annexure-A/II of OA-194/94, are hereby quashed. There shall be no order as to costs in both the O. As.

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