

(2014) 02 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 4448-CAT and 5021-CAT of 2003

Suresh Kumar

APPELLANT

Vs

Central Administrative Tribunal
 Union of India Vs
Rajbir Singh

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2014) 3 SCT 240

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Arun Palli, J

Bench : Division Bench

Advocate : Arvind Singh, Advocate and Gurpreet Singh, Senior Panel Counsel, Advocate for the Appellant; Gurpreet Singh, Senior Panel Counsel and J.N. Gupta, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The dispute pertains to the appointment of an Extra Departmental Branch Postmaster (EDBPM), Bugana EDBO. One Rajbir Singh sought quashing of the appointment of Suresh Kumar on the ground that he fulfills all eligibility conditions and is lawfully entitled for selection/appointment to the post by the competent authority. On the post of EDBPM falling vacant for the Branch office at Bugana, applications were invited from eligible Scheduled Castes candidates on 16.03.2000. Six applications were received out of which four were found to be in order. Rajbir Singh claimed to have been placed at the first merit position. He submitted that he fulfills the following qualifications:

- (i) he belongs to SC category;
- (ii) he is the resident of village concerned;
- (iii) he has landed property; and
- (iv) he has independent source of income.

2. Rajbir Singh claimed that as a precaution he got certain landed property transferred from his father to himself even though he had already coparcenary right in the land. Despite this, Suresh Kumar was selected.

3. The Central Administrative Tribunal, Chandigarh Bench found that the appointment of Suresh Kumar ignoring merit of Rajbir Singh was illegal and set aside the selection of Suresh Kumar but simultaneously directed that Rajbir Singh who was more meritorious be appointed to the said post. The crucial question examined in the O.A. was whether the requirement of holding landed property was a legal pre-requisite or not and the finding was that it was not so.

4. Both the authority as well as Suresh Kumar filed writ petitions before this Court assailing the said decision of the CAT dated 16.09.2002 and interim order was granted staying the operation of the impugned order. As a result, Suresh Kumar has continued in the post.

5. Much water has flowed since the inception of the petitions including certain legal pronouncements. As per Annexure R-3, a Division Bench of this Court in CWP No. 15356-C of 1997 Union of India and another v. Prem Chand and others, decided on 23.03.1998 held that the qualifications prescribed vide circular dated 06.12.1993 were essential and mandatory qualifications and, thus, a property should be owned. However, in a subsequent judgment by the same learned Judge (as he then was) Karam Singh v. Central Administrative Tribunal, 2002 (4) SCT 104, it was clarified that the selection for appointment as EDBPM has to be based on merit and accommodation for running the agency was not a pre-condition but the rule requires the authority to make selection on academic merit. The selected candidate at merit No. 1 has to be asked first to provide suitable accommodation within a given time and prior existence of accommodation is not necessary.

6. The Full Bench of the Central Administrative Tribunal, Jodhpur Bench qua the requirement of both proof of income and property opined that the same has not to be produced at the time of submission of the application or the interview but the selection of EDBPM has to be on merit whereafter reasonable time can be given to submit proof of income/property as per rules/instructions.

7. The Division Bench of Kerala High Court in Director General of Post Offices Vs. Central Administrative Tribunal, Ekm. Bench, has opined that there was no discernible principle emerging from the stipulation that preference would be given to those who have landed property or immovable assets, and that their adequate means of livelihood are derived from those assets. People may derive income from sources apart from landed and other immovable assets and, thus, the stipulation has been held to be not advancing the purpose or object for selecting the best candidate. Any classification based on property has to be illegal being violative of Articles 14,16 and 21 of the Constitution.

8. The department of Posts in fact appears to have taken note of these judgments and issued a fresh circular on 17.09.2003, which reads as under:

I am directed to invite your kind attention to this office letters No. 17-104/93-ED & Trg. dated 6.13.93, No. 17-366/91-ED & Trg. Dated 26.5.95 and No. 17-104/91-ED & Trg., dated 18.9.1995 wherein detailed instructions and clarifications regarding the condition of income preferably derived from landed property or immovable assets, for recruitment to the posts of ED BPMs/SPMs (now called GDS BPMs/SPMs) were laid down. Subsequently this condition was extended to all categories of GDSs, vide Note-II(iii) below Rule 3 of the Department of Posts (Conduct and Employment) Rules, 2001, when the P & T ED Agents (Conduct and Service) Rules, 1964 were replaced by the said rules.

2. The preferential condition of income derived from landed property or immovable asset as laid down vide letter dated 6.12.1993, which was extended to all GDSs vide Department of Posts (Conduct and Employment) Rules, 2001 has come for judicial scrutiny before various benches of the Hon"ble Central Administrative Tribunals and High Courts.

3. Against the aforesaid backdrop, the whole matter has been re-examined in this office in its entirety in consultation with Ministry of Law, which has also termed the above condition as violative of Constitutional provisions. The above matter was placed before the Postal Services Board. The Postal Services Board considered the above issue and also the issue of enhanced security in view of increased cash handling liability of GDSs. Keeping in view all the relevant considerations and after careful deliberation, the Postal Services Board has decided as follows:

3.1 The condition of income preferably derived from landed property or immovable assets, for recruitment to the posts of Gramin Dak Sevaks (GDSs), including GDS BPM/SPM, will be deleted.

3.2 As GDS is a part-time employee, a candidate applying for the post of any category of GDS will have to supplement his income from other employment sources so as to have adequate means of livelihood to support himself and his family. A certificate to this effect will have to be obtained from the candidate before he/she is given an appointment letter.

3.3 In view of increase in cash handling liability and line limit of the GDSs, security amount (which is Rs. 4,000/- at present will be enhanced to Rs. 10,000/- for GDS SPM/BPM and Rs. 5,000/- for other categories of GDSs. The Security will be in the form of Fidelity Bond or NSC pledged to the Department in the name of the President of India.

3.4 The above enhanced security deposit will be effective from the date of next renewal of security bond for the existing GDSs and with effect from date of employment for the new GDSs.

4. In view of the above decisions of the Postal Services Board, the sole criteria for selection to the posts of all categories of GDSs will henceforth be the merit subject to orders on reservation and fulfilling other eligibility conditions like

providing of space for BO, taking up residence in the BO village before appointment etc.

5. Further, as a corollary to the decision at 3.1 above of the Postal Services Board, necessary amendment deleting the provision contained in Note II(iii) below Rule 3 in the Department of Posts (Conduct and Employment) Rules, 2001, is being issued separately.

6. This order will come into force from the date of issue.

9. We may, however, note that as per Clause 6 of the circular, it comes into force from the date of issue. In view of the aforesaid legal position, we are of the view that the matter needs to be re-examined by the Government authorities in the conspectus of the aforesaid pronouncements and the circular issued. This is so, as even if the merit of Rajbir Singh is declared at sr. No. 1 and that aspect has to be examined, the absence of landed property in his name at the time of furnishing the application cannot stand in his way. The consistent view is that even if the provisions hold, after deciding merit, time has to be given to make the necessary arrangements. However, the Kerala High Court has in fact held that such a provision would be unconstitutional. We are, thus, only inclined to modify the impugned order to the extent that it is granted the EDBPM post to Rajbir Singh without the concerned authorities finally determining the merit. Since considerable water has flown, the only requirement at the present stage would be to determine the merit inter se the two candidates before us determining whether Suresh Kumar would continue in the post of EDBPM or whether the candidature of Rajbir Singh is more meritorious on the parameters of the concerned authorities, the qualification being capable of being complied with after inter se merit is decided.

The necessary decision be taken by the concerned authorities within a maximum period of two months from today and till said decision is taken, Suresh Kumar would continue to act as EDBPM.

The writ petitions are allowed to the aforesaid extent leaving the parties to bear their own costs.