

Civil Writ Jurisdiction Case No 8182 of 2013

**In the matter of an application under Article 226 of the
Constitution of India.**

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Smt Urmila Kumari W/O Shri Kamdeo Prasad Barnwal R/O Village
And P.O.- Karma Borwa, P.S.- Jhajha, District- Jamui, At Present
Posted As EDBPM, Karma Borwa EDBO in account with Jhajha S.O.
In Munger Postal Division

.... Petitioner/s

Versus

1. The Union of India through Chief Postmaster General, Bihar Circle, Patna
2. The Chief Postmaster General, Bihar Circle, Patna
3. The Superintendent of Post Offices, Munger Division, Munger
4. Shri Surendra Kumar Pandey S/O Shri Parmanand Pandey R/O Village And P.O.- Karma Borwa, Via Jhajha, P.S.- Jhajha, District- Jamui

.... Respondent/s

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For the Petitioner/s : Mr Arvind Kumar, Advocate

For Respondents 1, 2 & 3 : Mr Anshay Bahadur Mathur, CGC

For Respondent No 4 : Mr Amar Nath Jha, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

The writ petitioner Smt Urmila Kumari has come to this
Court challenging the order of the Central Administrative Tribunal (in
short, **the Tribunal**), Patna Bench passed on 02.04.2013 whereby her

appointment as an Extra Departmental Branch Post Master (now Gramin Dak Sevak) as made on 02.03.2000, has been set aside and private respondent No 4, in this application, has been directed to be appointed.

2 Heard the parties at length and with their consent, the writ petition is being disposed of at this stage itself.

3 On or about 15.09.1999, the Department of Post and Telegraph issued an advertisement calling for applications for appointment of Extra Departmental Branch Post Master. It is not in dispute that the eligibility condition stated that the applicant should be a Matriculate and should have properties or source of income. The reason was that this job that was to be entrusted was itself not sufficient to independently give enough income to the person. It was intended to be something that could be done in part time. It was not intended to be primary source of livelihood. Both the writ petitioner and private respondent No 4 applied. It is also not in dispute that private respondent No 4 had marginally higher marks in Matriculation than that of the writ petitioner yet the writ petitioner was selected and appointed in preference to private respondent No 4. The reason apparent is that the authorities were not satisfied with the papers of property as produced by private respondent No 4. Private respondent No 4 challenged the appointment of the writ petitioner by filing OA

180 of 2001 before the Tribunal. After notice when the matter was to be taken up for final hearing, instead of arguing the matter on merit challenging the appointment of this writ petitioner, the OA was sought to be withdrawn. The Tribunal, by order dated 14.01.2003, permitted the OA to be withdrawn to enable private respondent No 4, who was the applicant before the Tribunal, to pursue his representation before the authorities with regard to the papers he had submitted in respect of property. The matter was then considered by the Chief Post Master General, Bihar Circle, Patna who, by his detailed order dated 14.07.2004 (Annexure 4) rejected the representation of private respondent No 4. Private respondent No 4, before him, had challenged and produced new documents as well in support of the plea that he had landed property. He had also challenged the documents as produced by the writ petitioner. The Chief Post Master General clearly held that firstly the documents produced by private respondent No 4 were not correct. They related to land which were made available to him for plantation. It did not make him the owner of the land. He then produced others sets of papers which, upon enquiry from the Revenue Section of the State, were found forged and fabricated. Thus, all papers, as produced by private respondent No 4 in support of having landed property, were found to be incorrect or invalid. The papers, as produced by the writ petitioner, were accepted



to be valid. This representation having accordingly been decided, once again respondent No 4 approached the Tribunal by filing OA No 9 of 2007. Needless to note that this challenge was made three years after the representation was rejected. The Tribunal, by the order impugned dated 02.04.2013, has accepted the original application of private respondent No 4 and held that he was eligible for selection and, thus, directed the writ petitioner's appointment to be cancelled and instead respondent No 4 to be appointed.

4 Learned counsel for the writ petitioner submits firstly that respondent No 4 and the writ petitioner having applied for selection pursuant to the advertisement of the Department dated 15.09.1999 which undisputedly had a condition of eligibility with regard to property and source of income, he cannot now, after having failed to get selected, challenge the same condition. In other words, he cannot approbate or reprobate. Having tried to bring on record forged documents to support his claim, he cannot now turn around and challenge those conditions. The Tribunal failed to notice this. The Tribunal proceeded on the ground that subsequent to the selections which were made in the year 2000, the Tribunal was of the view that such a condition was not an essential condition for giving employment and, as such, private respondent No 4 being more meritorious ought to have been selected. We failed to understand how

the Tribunal, in the facts of the case, could raise that issue. Private respondent No 4 did not challenge the eligibility condition that was laid down in the advertisement. He took his chance. After the selection process was over and he was not selected, he could not be permitted to challenge the said clause. On this short issue itself, we have to allow the writ petition and set aside the order of the Tribunal. We may also add here that where a party has been found by the Chief Post Master General adopting unfair and fraudulent method to seek his appointment, he deserves no sympathy.

5 The writ petition is allowed. The order of the Tribunal, as impugned, is set aside. The appointment of writ petitioner is restored.

6 So far as consequential relief is concerned, for the period during which respondent No 4 has worked, he would be entitled to his remuneration and the period for which the petitioner had earlier worked, she would be entitled to her remuneration. That would balance the equities.

(Navaniti Prasad Singh, J)

**Patna High Court,
The 02nd of February, 2015,
NAFR, M E Haque/-**

(Jitendra Mohan Sharma, J)

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