

PETITIONER:
BALIRAM PRASAD

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 17/12/1996

BENCH:
N.P. SINGH, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar. J.
Leave granted.

With consent of learned advocates representing the respective parties the appeal was heard finally and is being disposed of by this judgment. The short question involved in this judgment. The short question involved in this appeal is as to whether the appointment of respondent no.7 as Extra Department Branch Post Master, bypassing the appellant was legally justified or not. The Central Administrative Tribunal, Patna Bench, Patna has taken the view that though the appellant was more qualified to be appointed on the said post respondent no.7 was rightly appointed as the appellant was disqualified due to the fact that his cousin brother was already working in the same Post Office as Extra Department Delivery Assistant. Consequently the Tribunal dismissed the appellant's application O.A.192 of 194 and confirmed the appointment of respondent no.7 on the said post.

Learned counsel for the appellant has contended that the aforesaid reasoning adopted by the Tribunal is patently erroneous and consequently the decision of the Tribunal deserves to be set aside.

Learned counsel for respondent no.7, who is the main contesting respondent, on the other hand submitted that the Tribunal was justified in dismissing the appellant's application both on the ground of limitation as well as on merits. He submitted that respondent no.7 was appointed on 16th July 1992. If any grievance was to be made about the appointment of respondent no.7 by the appellant then the application should have been moved within one year, that is, by 16th July 1993. Instead it was filed in January 1994. The appellant had failed to make out any sufficient cause for not filing the said application in time. The delay for the period from August 1993 to January 1994 remained unexplained and was rightly not condoned by the Tribunal. On merits it was submitted that the authorities had taken a decision on 17th October 1966 to the effect that employment of near relatives in the same office was to be avoided and as appellant's cousin brother was already working in the same Post Office, namely, the Branch Post Office, the appellant

could not be appointed even though he may be more meritorious than respondent no.7.

In our view the Tribunal was patently in error in dismissing the application of the appellant both on the ground of limitation as well as on merits. So far as the question of limitation is concerned it is true that the appointment of respondent no.7 was effected by the authorities on 16th July 1992 and consequently the application could have been filed before the Tribunal within one year from that date. But the appellant had already produced before the Tribunal material to indicate that he was not well from 20th August 1993 and he had recovered only by the end of December 1993. We fail to appreciate how this aspect was at all relevant. Learned counsel for respondent no.7 also rightly submitted that what was to be explained by the appellant was the delay from August 1993 to January 1994. If that is so the appellant had already produced the Medical Certificate showing his illness from 20th August 1993 to 22nd December 1993. If this period is excluded then the delay in filing the application remains minimal which deserves to be condoned in the interest of justice. We, therefore, hold that the appellant had made out sufficient and the said delay deserves to be condoned. That takes us to the merits of the controversy.

The Tribunal has itself noted that as compared to respondent no.7 the appellant was more meritorious. He had obtained 546 marks in the first division in Matriculation examination as compared to respondent no.7 who had passed in third division and got 404 marks. In Class VII examination the appellant had got 468 marks while respondent no.7 had got 220 marks. The appellant's annual income was Rs.17,000/- while respondent no.7's annual income was Rs.7,500/-. The Tribunal has rightly noted that they were impressed by the high marks secured by the appellant and in the normal circumstances has should have been the only choice for the post. However according to the Tribunal there were two handicaps from which the appellant suffered. The first handicap was that his cousin brother Bhola Prasad was working in the Post Office as Extra Department Delivery Assistant and the second handicap was about limitation. We have already dealt with the second handicap which according to the Tribunal was liable to non-suit the appellant. In our view no such handicap remained as the delay in filing the application deserves to be condoned in the interest of justice and we have done so. So far as the other handicap is concerned it is the only handicap which remains for consideration. In our view it is no handicap at all. The decision of the authorities dated 17th October 1966 reads as under:

"EMPLOYMENT of near relatives in the same office to be avoided. Instances have come to light where very near relations have been appointed to work as ED, BPM, ED, DA or ED Mail Carrier in the same office. As this is fraught with the risk of frauds, etc., this should be avoided."

It is difficult to appreciate how pursuant to the said decision the appellant could have been treated as not qualified to be appointed as Extra Department Branch Post Master in the Post Office. His cousin brother was working on a lower post of Extra Department Delivery Assistant. He would be performing a manual work of effecting delivery of postal articles to the addressees. Only because appellant's

cousin brother was working as a Peon in the said Post Office going such manual work it passes our comprehension how the appellant could not be appointed as Extra Department Branch Post Master in the said Post Office. There is no rhyme or reason underlying such an approach on the part of the authorities. To say the least it would be totally arbitrary and irrational. Even if there may be any risk of fraud etc. even non-relatives can be guilty of frauds while on the contrary relatives may not be prone to such frauds. But even if they are appropriate procedure can be adopted for detecting such frauds and bringing the guilty to book or even for effectively checking such tendencies by having appropriate vigilance machinery. But to refuse to appoint a more meritorious candidate only on the ground that his cousin brother was working in the same Post Office would, in our view, be totally an arbitrary exercise of power which cannot be countenanced on the touchstone of Article 14 of the Constitution of India. We asked learned counsel for the appointing authority as to whether there is any other disqualification of the appellant save and except the ground of his cousin brother being working as Peon doing the manual work in the Post Office. He fairly stated that there is no other ground excepting this ground. In our view such a ground cannot be sustained from any viewpoint and must be held to be totally arbitrary and irrational. The Tribunal was not justified in nonsuited the appellant on merits only on this ground. Learned counsel for respondent no.7 submitted that even if the appellant has a good case on merits he should not be disturbed as he is working at his own residence as Extra Department Branch Post Master since about four years and more. That is neither here nor there. Once it is found that the appellant was more meritorious as compared to respondent no.7 and deserves to be appointed on merits and his claim was not considered on a totally irrational and arbitrary ground the legal consequences resulting from the voiding of such an illegal exercise must follow.

In the result this appeal is allowed. The judgment and order rendered by the Central Administrative Tribunal, Patna in O.A. No.192 of 1994 are quashed and set aside. The said application is allowed. The impugned appointment of respondent no.7 as Extra Department Branch Post Master is quashed and set aside. The authorities are directed to appoint the appellant as Extra Department Branch Post Master in the place of respondent no.7 and allow him to work as such in accordance with rules and regulations of the Department, by running the Post Office on his premises. In the facts and circumstances of the case there will be no order as to costs.