

BALIRAM PRASAD  
v.  
UNION OF INDIA AND ORS.

DECEMBER 17, 1996

[N.P. SINGH AND S.B. MAJMUDAR, JJ.]

*Administrative Tribunals Act—Section 21—Application for setting-aside an appointment—Limitation—Application not filed within one year of appointment—Medical Certificate on record showing applicant was ill for certain period—If such period is excluded, period of delay would be minimal—Held, cause made out was sufficient to condone the delay.*

*Constitution of India—Article 311/14—Appointment—Refusal to appoint meritorious candidate—Cousin-brother was working in same office as peon—Decision of authorities to avoid employment of near relative in same office—Held, exercise of such power without rhyme and reason is arbitrary and hit by Art. 14.*

The appellant filed an application before the Central Administrative Tribunal, challenging the appointment of the respondent no. 7 as Extra Department Branch Post Master, bypassing the appellant. This application was dismissed by the Tribunal on two grounds: first, as it was time-barred and second, the appellant was disqualified due to the fact that his cousin was already working in the same Post-Office as Extra Departmental Delivery Assistant. Consequently, this appeal by special leave.

The contention of the appellant was that the reasoning adopted by the Tribunal in dismissing the application was patently erroneous and was liable to be set aside. On the other hand, respondent no. 7 contended that he was appointed on 16th July 1992 and the application whatsoever, against his appointment, needed to be made before the Tribunal, could be made within one year of the appointment i.e. by 16th July 1993; instead the appellant filed the application in January 1994 and failed to make out any sufficient cause for such delay. As far as the merit was concerned, the authorities had decided on 17th October 1966 that the employment of near relatives in the same office was to be avoided. As the appellant's cousin brother was already working in the same Post Office, he could not be

**A** appointed even though the appellant was more meritorious than the respondent No. 7, and the Tribunal was justified in dismissing the application of the appellant.

Allowing the appeal, this Court

**B** HELD : 1. The Tribunal was patently in error in dismissing the application of the appellant on the grounds of limitation as well as on merits. On the question of limitation, it was not relevant to consider the delay for the period earlier to 16th July 1993, as the application could be filed by this date. A medical certificate showing illness of the appellant from  
**C** 20th August, 1993 to 22nd December, 1993 was also on record. If this period was excluded, then the delay in filing the application remains minimal which in the interest of justice deserved to be condone.[202-A-B; 202-D]

1.1. On merits, the Tribunal had itself noted that as compared to respondent no. 7 the appellant was more meritorious. The decision of the  
**D** authorities taken on 17th October 1966 reads as : "Employment of near relatives in the same office be avoided. ----- As this is fraught with the risk of frauds etc., this should be avoided." Even if there may be any risk of fraud etc. even non-relative can be guilty of frauds, while on the contrary relatives may not be prone to such frauds. But even if they are, appropriate  
**E** procedure can be adopted for detecting such frauds and bringing the guilty to book or by having appropriate vigilance machinery to check such tendencies. But refusal to appoint a more meritorious candidate only on the ground that his cousin brother was working in the same Post-Office, without underling any rhyme and reason, would be totally arbitrary exercise of power which cannot be held permissible under Article 14 of the  
**F** Constitution of India. [202-E; H; 203-A-B; 203-D-F]

In this view, the Tribunal was not justified in dismissing the application of the appellant. Hence, the order of the Tribunal is set aside.[204-B]

**G** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16753 of 1996.

From the Judgment and Order dated 2.3.95 of the Central Administrative Tribunal, Patna in O.A. No. 192 of 1994.

**H** A. Sharan and A.P. Singh for the Appellant.

M.K. Dua, T.C. Sharma, C.V.S. Rao for the Respondents.

The Judgment of the Court was delivered by

**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 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 1994 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.

A 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. The Tribunal has noted that there was no explanation of delay from January 1993 to August 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 cause for condoning the delay in filing the application and the said delay deserves to be condoned. That takes us to the merits of the controversy.

E 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 he 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 addresses. Only because appellant's cousin brother was working as a Peon in the said Post Office doing 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 non-suiting 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

A 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.

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B.K.S.

Appeal allowed.