

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1998/99

New Delhi, this the 2nd day of November, 2000.

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampi, Member (Admn)

(18)

1. Sh. Bishamber Singh son of Shri Bhagwan Sahai
Extra Departmental Delivery Agent (EDDA)
Sarai P.O.
R/o Village Hirapur P.O. Nayagaon, Buland Shahar
2. Shri Badley Singh son of Shri Sulki Singh,
Extra Departmental Packer Sarai P.O.
R/o Vill. Agarpur, P.O. Sarai, Buland Shahar

Address for service of notices in the case of both the
applicants is, C/o Shri Sant Lal Advocate,
C-21 (B) New Multan Nagar, Delhi - 110056.

...Applicants.

(By Advocate : Sh. Sant Lal)

V E R S U S

1. The Union of India, through the Secretary
Ministry of Communications, Deptt. of Posts
Dak Bhawan, New Delhi - 110001.
2. The Director Postal Services
O/O the Postmaster General
Agra Region, Agra U.P. 282001.
3. The Superintendent of Post offices,
Bulandshahar Dn. Buland Shahar-203001

...Respondents.

(By Advocate : Sh. D.S.Mahendru)

O R D E R

By Hon'ble Mr. Govindan S. Tampi, Member (Admn)

The applicants seek to challenge their
non-selection to the posts of Postmen/Village Postmen
in Buland Shahar Distt.

2. Heard the learned counsel for the
applicants and the respondents, Sh. Sant Lal and Sh.
D.S.Mahendru respectively.

3. The applicants joined as Extra Depttl.
Delivery Agent (EDDA) and Extra Depttl. Packer (EDMP)
in Buland Shahar Postal distt. on 1-1-76 & 9-8-82
respectively. In terms of the calender of

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Examinations notified by the Chief Post Master General, UP Circle on 23-1-98, the heads of postal zones were to calculate and announce the vacancies, among others of Postmen and Village Postmen, for which exams were to be held on 22-11-98. Supdt. of Post Offices, Buland Shahar, issued the notification for his zone on 29-7-98, calling applications though he did not announce the number of vacancies. Both the applicants (one a SC and the other a OBC) applied for and took the examination held on 20-12-98 (not on 22-11-98) and were awaiting the results, when they found that three persons - two from Etah and one from Mainpuri - were appointed as Postmen by Supdt. Bulandshahar. Those individuals belonged to 1997 examination, but could not be selected due to their lower ranks in their own divisions, but were adjusted in Bulandshahar; as diverted by Post Master General, Agra. It was subsequently found by them that four candidates out of 1998 exams were selected in March 1999. The applicants on making enquiries found that they had scored 117 and 118 marks out of 150, i.e. 78 and 78.6% respectively as against the requirement of 45% qualifying marks. Inspite of their scoring high marks and their being from the reserved category, they were not selected for appointment, though there were four vacancies in their zone. Their representations have not borne any fruit. The applicants plead that the action of the respondents in not notifying the number of vacancies, in not selecting them inspite of their qualifying in the exams and appointing individual from the other divisions are wrong,

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arbitrary and improper. The applicants, therefore, seek to have the orders posting outsiders their Division quashed and give them the posting instead.

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4. In the reply, it is indicated by the respondents that the applicants were not selected as their relative positions were lower. According to them, four persons were selected, three from the Deptt. quota, meant for other communities all of whom had scored more than the applicants and one against the outside quota meant for OBC. There was no quota for S.C. category. There was nothing improper in that arrangement. It is further argued that in terms of the Deptt's policy, vacancies which remained unfilled in any given year in a division for any reason, could be filled by transfer of candidates from other divisions who had qualified, but could not be appointed in their own division. Such outside division candidates were allotted by the regional Post Master General. This was what had occurred in the instant case and it was correctly done. The applicants cannot have any ground for complaint, urge the respondents.

5. In the rejoinder, it is pointed out that the claims of the applicants about their marks and the fact of their qualifying in the exams are not denied. From the vacancy position, given by the respondents it was evident that 25% seniority quota has not been filled that one OBC candidate with lesser marks have been appointed and that three persons who qualified in other division in 1997 exams have been appointed in Bulandshahar Division, after the 1998 exams have

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conducted, but before declaring the results. This too has been done without indicating the number of unfulfilled vacancies of 1977, relating to Bulandshahar division. Further, the claims of the applicants - who are from Scheduled Castes and OBC - have been wrongly denied by appointment of candidates with lesser merit. This was incorrect and called for rectification.

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6. During the hearing, Sh. Sant Lal forcefully reiterated the pleas made by him with specific reference to the fact that when the applicants had qualified in the examination for being selected and had scored good marks, their chances were thwarted by bringing candidates from other divisions. This was a back door approach which hurt the legitimate chances of the applicants. He also pointed out that two of the persons who have been appointed on transfer had declined to join in Bulandshahar. In reply the learned counsel for the respondents, Sh. D.S. Mahendru points out that they had acted in accordance with the instructions in force and that nothing incorrect or illegal has been committed.

7. We have given careful consideration to the matter. In this case while the applicants who applied for the qualifying examination and came out successful plead that their claims have been overlooked and outsiders have been brought in to their detriment, the respondents state that they had acted correctly and the outsiders were brought in for filling up the vacancies of the earlier year. In this context it would be necessary to have a look at the relevant

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portion of the recruitment rules. Schedule annexed to the Rules - 1989 dealing with method of recruitment reads as below :-

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"Method of Recruitment--

(1) 50% by promotion failing which by ED Agents on the basis of their merit in the Departmental Examination.

(2) 50% by ED Agents of the recruiting Division or unit in the following manner, namely :-

(i) 25% from among ED Agents on the basis of their seniority in service and subject to their passing the Departmental examination, failing which by ED Agents on the basis of merit in the Departmental examination.

(ii) 25% from amongst ED Agents on the basis of their merit in the Departmental examination.

(3) If the vacancies remained unfilled by EDAs of the recruiting Division, such vacancies may be filled by the EDAs of the Postal Division falling in the zone of Regional Directors.

(4) If the vacancies unfilled by EDAs remain unfilled by the EDAs of the recruiting units, such vacancies may be filled by EDAs of the Postal Divisions located at the same station. Vacancies remaining unfilled will be thrown open to EDAs in the Region.

(5) Any vacancy remaining unfilled may be filled up by direct recruitment through the nominees of the Employment Exchange".

Reading of the above makes it clear that the Deptt. has reserved to itself the right for filling up unfilled positions or vacancies from outside stations or division, but this should be only when candidates are not available in the recruiting units or divisions. It is, therefore, necessary that the number of vacancies (atleast the tentative number) should have been identified and notified by the recruiting agencies. Otherwise it would amount to arbitrariness and lack of transparency. It is on record

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that the recruitment agency at Bulandshahar, who had conducted the recruitment exam in December 1998, had not indicated the vacancy position for the year, but had only shown it to be four (4) and averred that there were unfilled vacancies of 1997, for which outsiders have been brought in. It is really surprising, to say the least, to find that the vacancies of Bulandshahar for 1997, if any, are being sought to be filled in 1999 by outsiders, months after the examination for filling up the vacancies of 1998 have been conducted in the Division. If at all such exercise had to be undertaken it should have been done, before identifying the vacancies of 1998 and initiating action for filling up the same. That was the only action possible in law. Obviously what has been done is irregular and the respondents are attempting to cover up their mistake by arguments which are clearly after thought. It is also on record that both the applicants have got comparatively higher marks and marks definitely higher than what has been obtained by the fourth candidate, who has been posted against OBC quota, while the applicant No.2 is himself from the OBC group (and the applicant No.1 is from S.C. group). Obviously, therefore, there has been an attempt to keep out the applicants by wrongly interpreting recruitment rules which enable to bring in of outsiders, if the vacancies remain unfilled. This has also not served the purpose, as reportedly those who have been brought in have declined to join Bulandshahar or have gone back to the Division, they came from. The entire exercise undertaken has only enabled the Depttl. to keep out the applicants from

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getting their placements in their own division. This was patently an unjust action and has to be set aright.

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8. In view of the above findings, we hold that the application succeeds and is accordingly allowed. The order posting on transfer to Bulandshahar, three candidates from outside divisions of 1997 examination for filling up the vacancies of 1998, for which exam were held in December 1998, is quashed. The respondents are directed to correctly workout, notify and consider the case of the applicants for appointment against those posts, on the basis of their performance in the examination conducted in December 1998, in accordance with the rules and instructions governing reservation applicable if any. We also award to the applicants costs for this OA quantified at Rs. 3000/-.

(Govindan S. Tampi)
Member (Admn)

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Independent
(V.Rajagopala Reddy)
Vice-Chairman (J)