

Central Administrative Tribunal, Principal Bench

(2)

O.A. No.377/2004

New Delhi this the 4th day of March, 2005

HON'BLE Mr. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A. SINGH, MEMBER (A)

Shri Arvind Kumar Verma
S/o Shri Shree Pal Verma
Village & Post Office-Muradganj,
District Auraiya (UP).

....Applicant

By Advocate: Shri P.S. Mahendru.

Versus

1. Union of India

Through
The Secretary,
Ministry of Communications,
(Department of Posts),
Sanchar Bhawan,
New Delhi-110 001.

2. The Chief Postmaster General,
U.P. Circle,
Lucknow (UP).

3. The Assistant Superintendent of Post Offices,
Auraiya Sub Division,
AURAIYA. (UP).

...Respondents

By Advocate: Shri D.S. Mahendru.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA for quashing the order dated 4.8.2003 and
issue of the direction to the respondents to consider the applicant for appointment to the

he said so

post of Gramin Dak Sewak Mail Delivery (GDSMD) at Haiderpur Post Office, District Auraiya with consequential benefits.

2. Shortly stated the facts are that the post of GDSMD had fallen vacant in Haiderpur Post Office, District Auraiya. The vacancy was reserved for Scheduled Tribe candidates. The respondents called the Employment Exchange vide letter dated 8.5.2001 to sponsor names of ST candidates from whom the vacancy was to be filled in. Respondents also widely published the vacancies inviting applications from the open market. Employment Exchange did not sponsor any candidate but applications from the following persons were received directly:-

- (i) Shri Sushil Babu Dubey
- (ii) Shri Arvind Kumar Verma
- (iii) Shri Madho Singh
- (iv) Shri Mahendra Pratap Singh
- (v) Shri Adram

3. Since none of them was a ST candidate, authorities decided to fill in the vacancies from amongst other candidates. The names of the applicant Shri Arvind Kumar Verma and Shri Mahendra Pratap Singh were excluded from consideration on the pretext that they had not filed with their application, a certificate of the proof or evidence of the independent or additional source of income. Shri Sushil Babu Dubey, who allegedly fulfilled the conditions enumerated in the advertisement, was accordingly appointed as he had secured 48.16% marks in the High School Examination higher than the other candidates whose names were considered for appointment. The extant rule did not require proof or evidence of the independent or additional source of income in the appointment



to the post of Extra Departmental Delivery Agent (EDDA) but was necessary for appointment to the post of EDBPM/EDSPM. A complaint was received about irregular appointment of Shri Sushil Babu Dubey and Superintendent of Post Office, Etawah ordered termination of service of Shri Sushil Babu Dubey under Rule 8 of the GDS (Conduct & Employment) Rules, 2001. Shri Mahendra Pratap Singh who had secured the highest marks in the High School Examination, (i.e., 55%) among all the 5 candidates whose applications were received, was accordingly appointed vide Memo dated 12.2.2002. Shri Sushil Babu Dubey challenged this appointment in OA 567/2002 before the Tribunal. An enquiry was made into the complaint of Shri Sushil Babu Dubey and it transpired that the correct name of Shri Mahendra Pratap Singh was Shri Prabal Mahendra Pratap Singh and in order to lower his age and to increase his percentage in the High School Examination, he had reappeared at the examination in the changed name as Mahendra Pratap Singh. ASPO, Auraiya then terminated the service of Shri Mahendra Pratap Singh by letter dated 17.3.2003. In the meantime OA 567/2002 was disposed off and Shri Sushil Babu Dubey was appointed on the post of GDS, MD Gauhani Kalan in compliance with the order dated 4.7.2003. The applicant had already filed OA No.1109/2003 before this Tribunal which was disposed off on 2.5.2003 with the direction that his representation should be decided by the respondent No.3 by passing a speaking order. ASPO, Auraiya passed the requisite order dated 4.8.2003. The present application is filed assailing that order.

4. The applicant put forth his claim to the appointment on the post of GDS, MD firstly on the ground that the vacancy was reserved for ST candidate and since none of the persons who had applied for appointment belonged to ST category, vacancy was

Deemed as such

decided to be filled in by the authorities by OBC candidate. According to him he was the only OBC candidate amongst the 5 persons, therefore, was eligible to be appointed to the post. His second contention is that he had secured 48.83 percentage of marks in the High School Examination much more than the percentage of marks which was secured by Shri Sushil Babu Dubey, therefore, he was a better candidate and ought to have been considered for appointment. Thirdly, it is submitted that the rejection of his candidature by the respondents by order dated 4.8.2003 is ill founded since his application was excluded from the consideration on the sole ground that the proof of additional source of income or a declaration was not submitted along with the application. The Government Circular, copy of which is Annexures-D and E to the counter are very clear on this point wherein it has been stated that fulfillment of the condition of income/property should be restricted to candidates seeking appointment as ED BPM/ED SPM and in case the candidates are seeking appointment to the category of ED BPM/ED SPM, a declaration would continue to be obtained about vocation and private income as stipulated in the Office Letter No.43-66/Pen., dated 17.10.1966. It is submitted that a Full Bench of the Jodhpur Bench of the Central Administrative Tribunal in **Rana Ram Vs. Union of India and Others – OA No. 297/2000 dated 24.11.2003** has already held that the condition imposed pertaining to adequate means of livelihood in the Circular dated 6.12.1993 as invalid and it was held that “possessing of adequate means of livelihood in terms of the Circular dated 6.12.1993 of the department was neither an absolute condition nor a preferential condition requiring to be considered for the abovesaid post”. That case pertained to the filling up of the post of EDBPM. The learned counsel for the respondents also cited another observation of the Full Bench of this Tribunal in H.

Learned Counsel

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Lakshmana and Others Vs. The Superintendent of Post Offices, Bellary and Others, 2002-2003 A.T. Full Bench Judgments, 1987 where in the case of Ex.DBPM in the department of Posts it was held by the Full Bench that the condition imposed pertaining to adequate means of livelihood in the circular dated 6.12.1993 was invalid. It is argued by the applicant that when the stringent requirement which was applicable to the EDBPM was held to be invalid, the requirement of a declaration about the independent source of income as a condition precedent to the appointment to the post of GDS, MD Gauhani Kalan is unsustainable. It is submitted that the applicant could have been granted an opportunity to produce that certificate after the question of appointment was decided upon but his application could not have been excluded or rejected out rightly for the reasons which have been stated in the order of Assistant Superintendent of Post Offices, Auriya dated 4.8.2003, Annexure A-11.

5. In the counter, the respondent has refuted that the department decided to fill in the vacancy in the post of GDSMD from amongst the OBC candidates after ST candidates did not apply for it. It is alleged that the department decided to fill up the vacancy from amongst the other candidates. It has been disputed that applicant belonged to OBC category and pointing out to the certificate filed by the applicant as Annexure A-3 of the OA, it was contended that the applicant belonged to SC category but the claim of the applicant has not been and could not have been ignored for this reason. Even according to the respondents, the applicant had secured highest percentage of marks in the High School Examination after Shri Mahendra Pratap Singh. The percentage of marks of Shri Sushil Babu Dubey, who was the successful candidate, was, in fact, slightly lower than that of the applicant. Any way appointments of both Shri Sushil Babu Pandey and Shri Mahendra Pratap Singh



have been cancelled. Their services have already been terminated. There is vacancy in the post of GDSMD now.

6. As regards the declaration about the independent source of income, the respondents could not have rejected the application of the applicant simply because the declaration was not enclosed with the application. It is not a condition precedent to the appointment. The applicant could have even been asked to file the declaration regarding his independent source of income after the authorities had decided upon his appointment to the post of GDSMD. The contention of the applicant in this behalf has force. The respondents have not been able to defend their action particularly in view of the judgment of the Full Bench of this Tribunal in Rana Ram (Supra). The applicant is by far a better candidate than the other two candidates who were left in the zone of consideration after the termination of the service of Shri Mahendra Pratap Singh and Shri Sushil Babu Pandey. The respondents may consider his appointment to the post of GDSMD now. If selected for appointment, he could be asked to submit the declaration about his independent source of income either at the time of joining the service or a later stage.

7. In the counter in paras 5.1 to 5.8 the respondent has alleged that by letter dated 14.8.2003, the Postal Directorate had issued instructions that, no post of GDSMD would be filled up in any office that was two handed or more. It is submitted that the vacancy in the post of GDS Haiderpur cannot be filled up as Haiderpur EDSO is a triple handed office. The copy of the instructions are annexed as Annexure-H to the counter-reply. The relevant extract of these instructions are as under:-

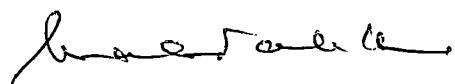
“ In this connection it is requested that no vacant posts of Grameen Dak Sewaks may be filled up in any office that is two handed or more till further instructions are forwarded by this office. Total number of such vacant posts may kindly be intimated at the earliest”.

Reserve

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8. These instructions were issued on 14.8.2003 whereas the representation of the applicant was rejected by order dated 4.8.2003, Annexure A-1. These are the subsequent instructions which cannot be ignored by the respondents-authorities. It is submitted that Haidepur EDSO is a triple handed office, which fact has not been controverted by the applicant in the rejoinder. The applicant has alleged that the averment in paras 5.1 to 5.8 is contrary to the case set up in para 4.9. In para 4.9 of the counter it was denied that there was vacancy in the post of GDSMD and it was alleged that upon disposal of OA 567/2002 Shri Sushil Babu Dubey was appointed to the post of GDS, MD Gauhani Kalan in compliance with the order of this Tribunal dated 4.7.2003. There does not seem to be any contradiction in the case of the respondents, as disclosed in paras 5.1 to 5.8 and para 4.9 discussed above. The instructions about not filling the vacancies in the office which are two handed or more are subsequent to the decision taken by the respondent. In the case of the applicant, the respondents-authorities have to abide by it. The vacancy in this case is in a triple handed office and the authorities will not be able to fill it in view of the instructions of the Directorate.

9. In view of the above fact we quash the order of Assistant Superintendent of Post Offices dated 4.8.2003, Annexure A-1 to the OA and direct the respondent that in case they at any time decides to fill up the vacancy in the post of GDSMD in Haiderpur Post Office, District Auraiya, they shall consider the case of the applicant for appointment to the post first in the light of observation of this Tribunal and in case the respondents decide to appoint the applicant, he would be given time to file the declaration about the



independent source of income. The parties shall, however, are left to bear their own costs in the peculiar facts and circumstances of the case.


(S.A. SINGH)

MEMBER (A)


(M.A. KHAN) 4/3/05
VICE CHAIRMAN (J)

Rakesh