

67

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1176 of 1996

Allahabad this the 12th day of May 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Smt. Suman Devi aged about 18 years, W/o Shri Ravi
Bhushan Yadav, R/o Village Sarai Paltu, Pargana Bela
Daulatabad, Tehsil - Lalganj, District Azamgarh.

APPLICANT

By Advocate Sri Rakesh Verma

Versus

1. Union of India through the Secretary, Ministry of Communications, New Delhi.
2. The Senior Superintendent of Post Offices, Azamgarh Division, Azamgarh - 276001.
3. Kailash Yadav S/o Late Sri Lachharam Yadav R/o Vill 8 P.O. Sarai Paltoo, Lalganj, Azamgarh.

RESPONDENTS

By Advocate Km. S. Srivastava
(for respondents no. 1 and 2)

By Advocates Sri R.N. Singh
Sri V.K. Chandel

(for respondent no.3)

O R D E R

By Hon'ble Dr. R.K. Saxena, Judicial Member

This is the petition moved under Section 19
of the Administrative Tribunals Act, 1985 by one
Smt. Suman Devi to seek the quashment of the letter
dated 11.10.1996 issued by the respondent no.2 for
inviting the applications from open market for the

post of Extra-Departmental-Branch-Post-Master, (for short E.D.B.P.M.), Sarai Paltoo in District Azamgarh; and to seek further direction to respondent no.2 to complete[&] the selection process in pursuance of the requisition dated 21.5.1996.

2. The facts of the case are that the post of E.D.B.P.M., Sarai Paltoo in District Azamgarh fell vacant. Accordingly the process of selection was initiated by the respondent no.2 by sending a requisition dated 21.5.96 to the District Employment Officer, Azamgarh, requesting therein to sponsor the names of the suitable candidates on or before 24.6.96. It appears that in pursuance of the said requisition, the names of 5 candidates including the name of the applicant, were sponsored by the Employment Exchange. The list of the candidates who were sponsored, has been brought on record as annexure A-7. In this list, the name of the applicant finds place at serial no.2. The contention of the applicant is that respondent no.2 issued a letter dated 11.6.1996 to the applicant to submit a formal application for the post. Accordingly the applicant submitted application alongwith the copies of the testimonials.

3. It appears that the respondent no.2, however, wrote a letter dated 11.10.1996 inviting the application for the said post of E.D.B.P.M. from open market. It is this action of the respondent no.2 which has been assailed by saying to be arbitrary and illegal. It is contended that so long as the names of the candidates which were sponsored by the Employment Exchange, were not considered and were not found ^{unfit} fit, the respondent no.2, it is convassed, could not undertake the second source that is by way of inviting the applications from the open market for appointment. Hence this O.A. was filed.

4. The notices were issued to the respondents after it was admitted on 08/11/1996. The respondents filed the counter-reply justifying the action of the respondent no.2. It is admitted that the requisition was sent to the Employment Exchange and names of the 5 candidates including the applicant, were sponsored. It is stated that after the names were received from the Employment Exchange, the candidates were asked to submit their applications and accordingly the candidates at serial no.1, 2, 4 and 5 had submitted their applications but the letter so issued to the respondent no.3, was received back with the remark that he had left for foreign country. It is further stated that when the

:: 4 ::

process of selection with respect to the applications of 4 candidates was on, a complaint was received on 21.6.1996 against some of those candidates including the applicant. The Post-Master-General, Gorakhpur also reviewed the case and it was found that the selection should not be held. On the directions of the Post-Master-General, Gorakhpur further applications from the open market were invited. In response thereof, the applications of six candidates were received and the process of selection was underway.

5. The applicant submitted rejoinder, reiterating the facts of the O.A. and also disputing the points which were raised in the counter-reply.

6. In this case one Kailash Yadav was impleaded as respondent no.4 and he filed counter-reply justifying the notification by which the applications were invited for the post from open market. It is averred that father-in-law of the applicant who was the Assistant-Post-Master in Sub-Post-Office, Gambheerpur and Branch Post Office Sarai Paltoo, manipulated to get the name of the applicant and of his two sons sponsored by the Employment Exchange. It is, therefore, contended that for fair selection, the applications were rightly invited from the open market. These averments have been replied by way of rejoinder filed by the applicant.

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2

7. We have heard the learned counsel for the parties and have perused the record.

8. The controversy in this case is whether the respondents in general and respondent no.2 in particular were competent to invite the applications from the open market. The position had been different before the Judgment in the case 'The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh Vs. K.B.N. Visweshwara Rao & Ors. 1996(6) SCALE 676', given by their Lordships of Supreme Court. The earlier position was that the requisition should be sent to the Employment Exchange and if the names of the candidates in sufficient number are not received or those candidates are not found fit, only then the competent authority could exercise the option of inviting the applications from the open market. Their Lordships of Supreme Court considered the situation in which the names of the candidates used to be sponsored. The observation is extracted below. It reads;

"It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/

establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

9. In view of this observation and the law being laid down, it is clear that the concerned authorities meaning thereby the appointing authority ^{which,} ~~who~~ no doubt sent the requisition for the names being sponsored by the employment exchange but at the same time it is also expected of the appointing authority to invite applications from open market by giving wide publicity so that best and talented persons may come therein. In view of this legal position, we direct the respondents to consider the names which are sponsored by the employment exchange and should also consider the names of those candidates who had applied in response to the notification which was issued for moving the applications for the post of E.D.B.P.M. With this direction, the matter(O.A.) stands disposed of. No order as to costs.