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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 20th day of April, 2004.

Original Application No. 1454 of 1997.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.
 Hon'ble Mr. D.R. Tiwari, Member- A.

Manoj Kumar Pandey S/o Sri Ram Raj Pandey
 R/o Vill. and Post- Aerayan, Distt. Fatehpur.

.....Applicant

Counsel for the applicant :- Sri M.K. Upadhyay

V E R S U S

1. Union of India through the Secretary (Posts),
 D/o Posts, M/o Communication, Dak Bhawan,
 Sansad Marg, New Delhi.
2. Superintendent of Post Offices,
 Fatehpur Division, Fatehpur.
3. Sub Divisional Inspector (Postal),
 Khaga Sub Division, Khaga, Fatehpur.
4. District Employment Officer, Fatehpur.
5. Sri Jai Prakash S/o Sri Suraj Din
 R/o Vill. and Post- Aerayan, Distt. Fatehpur.

.....Respondents

Counsel for the respondents :- Km. Sadhna Srivastava
Sri K.P. Singh

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

The applicant and 5th respondent alongwith certain other candidates were sponsored by the Employment Exchange, Fatehpur for consideration for appointment to the post of Extra Departmental Mail Peon (EDMP) at branch post office Aerayan, Fatehpur. The 5th respondent who belongs to SC category was selected and appointed to the post in question even though he was lower in order of merit judged on the

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basis of marks obtained in Junior High School (8th class) examination. The applicant, who belongs to other category that is to say general category, has instituted this O.A for issuance of an order quashing the appointment order dated 31.07.1997 issued in favour of 5th respondent coupled with direction to the respondents 2 and 3 to appoint the applicant on the basis of merit. The appointment order issued in favour of 5th respondent is sought to be justified on the ground that he being SC candidate was entitled to preference as per advertisement and the existing circulars issued by the department particularly in view of the fact that representation of SC candidates in the unit was inadequate.

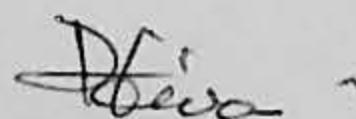
2. Sri M.K. Upadhyay, learned counsel for the applicant submits that the preference were to be given in favour of the SC/ST and O.B.C candidates subject to the condition that all other conditions were the same as visualise by para 5 of the notification dated 14.05.1997 (Annexure CA-1). In other words it has been submitted by the learned counsel for the applicant that preference to SC/ST and OBC candidates can be given only if candidates belonging to these classes are equal in the order of merit to those belonging to other category. We are not impressed by the submission made by Sri M.K. Upadhyay. The letter dated 26.05.1995 issued for M/o Communication, D/o Posts, New Delhi, a copy of which has been annexed as Annexure-CA-2, indicates that if SC/ST and OBC candidates satisfy all the minimum prescribed eligibility conditions including the educational qualification and the representation of that category is not adequate, the question of competing with other candidates does not arise and he has to be given preference over candidates irrespective of the percentage of marks secured subject only to the condition that he satisfies all the other prescribed eligibility criteria. Full Bench of Central Administrative Tribunal, Hyderabad Bench in M. Satyaseela Reddy Vs. U.O.I and Ors. 1999 (2) ATJ 606 has held as under :-

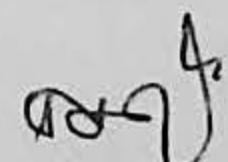
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"The condition that preference will be given to ST/SC/OBC would mean that the candidates belonging to ST/SC/OBC even if placed below the names of OCs (i.e., other candidates, or candidates belonging to general category) in the merit list, would be entitled to appointment in preference to OCs, though all the candidates belonging to general category or ST/SC/OBC would be entitled to equal consideration for the purpose of selection. If the name of no candidate belonging to ST/SC/OBC finds place in the merit list, or no eligible ST/SC/OBC candidate is available for the post, then only OC candidate be selected for appointment according to rules."

3. In paragraph 8 of the CA it has been stated that out of 93 EDAs in the unit the representation of SC candidates is only 14 which is less than prescribed percentage i.e. 21%. In that view of the matter the respondents were justified in giving preference to the respondent No. 5 who belongs to SC category.

4. In view of the above discussion, the O.A is dismissed with no order as to costs.


Member - A.


Vice-Chairman.

/Anand/