

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application 547 of 1997

Dated: This the 28th day of October, 2004

HON'BLE MRS. MEERA CHHIBBER, J.M.
HON'BLE MRS. ROLI SRIVASTAVA, A.M.

1. Mahipal Singh son of Shri Ram Bharose Lal,
R/o Village Trilokpur, Post-Deori Jeet,
Bihawar Budaun working as E.D. Mail Peon,
Deori Jeet, District Budaun.
2. Narendra Pal Singh S/o Shri Ved Ram Singh,
Resident of Village and Post Gountra-Budaun,
working as EDBPM Gountra.
3. Ataur Rahman S/o & Abdul Haqim, Gram and Post
Sagrampur, Budaun, Working as EDBPM Sagrampur,
Budaun.

....Applicant.

By Adv. : Shri Anupam Shukla,

VERSUS

1. The Union of India through its Secretary Ministry
of Communication Dak Bhawan, New Delhi.
2. The Chief Post Master General, Department of Post,
Lucknow.
3. The Superintendent of Post Offices, Budaun Division,
Budaun.

...Respondents.

By Adv. : Shri S.C. Tripathi

O R D E R

By Hon. Mrs. Meera Chhibber, J.M.

This Original Application has been filed by
three applicants, who have sought the following
relief(s):

- " to direct the respondents to consider the
petitioners for the post of Postal/sorting
Assistants for the year 1996 in the District

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Budaun in terms of the amended rules and clarification dated 24.9.1992 and 07.6.1996 issued by the Department of Post, New Delhi and in case they are successful declare the results and issue appointment letter to the petitioner for the post of Postal Assistant/Sorting Assistants in the Department of Post for the year 1996.

- (ii) to direct the respondents to produce the original and complete records of the examination of 1996 for the Posts of Postal/Sorting Assistant for the year 1996 including the Tabulation Sheets.
- (iii) to declare the provisions contained in the Notification dated 24.9.92 issued by the Director General of the Department of Post, New Delhi in case the Tribunal came to the Conclusion that the provisions relating to recruitment of ED Agents from the Departmental quota for the post of Postal/Sorting Assistant are abnoxious and ultravires to the Article 14 of the Constitution of India.
- (iv) to fill up the remaining three vacant post for the post of Postal/Sorting Assistants for the year 1996 from the Departmental quota for ED Agents. From the ED Agents, who appear on the interview and test of 1996 year.
- (v) to pass any other suitable order, direction or relief which may be deemed necessary under the circumstances of the case.
- (vi) to award the cost of this petition."

2. It is submitted by the applicants that they are Extra Departmental Agents in the District Budaun and had ^{appeared in test but were not} considered for the post of Postal Assistant, which was advertised in the notification of 1996.

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There were eleven vacancies to be filled from open market while three vacancies were to be filled by E.D. Agents, two out of these vacancies were reserved for general category candidates while one vacancy was reserved for scheduled caste candidate. Written test ^{was B} held on 14.07.1996, which was followed by interview on 15.10.1996 but when the final results were declared none of the E.D. Agents, were declared as passed. Counsel for the applicant submitted that this case requires interpretation of the Rule, which was amended on 24.09.1992. According to him, the E.D. Agents who had got 10% less mark than the last candidate selected from open market for the current selection, should have been found suitable for the post of Postal Assistant whereas respondents have taken the result of last recruitment to be the cut of mark.

3. Counsel for the respondents, on the other hand, have submitted that applicants did appear in the written examination as well as interview but the results from E.D. Quota was not declared as none of the candidate secured qualifying marks i.e. below 10% of last selected candidate of last recruitment year as ^{was B} required under communication dated 24.09.1992 from D.G. Post, New Delhi. They have, thus, submitted that there is no merit in the G.A., the same may be dismissed.

4. Counsel for the applicant also submitted that the provision contained in notification dated 24.9.1992 are ultra vires to Article 14 of the Constitution of India, therefore, it is liable to be quashed and set aside.

5. We have heard both the counsel and perused the pleadings as well. Perusal of notification dated 24.09.1992 shows that these are the Rules framed by the President in exercise of the powers under provision to Article 309 of the Constitution of India and the relevant rules, which is

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challenged by the applicant for ready reference reads as under:

"In the Schedule to the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules 1990 against the post of Postal Assistants/Sorting Assistants (in offices other than Foreign Post Organisation), in column 11, in item (b) for the words "failing which by direct recruitment" the following words shall be substituted namely:-

Failing which the unfilled vacancies shall be offered to Extra Departmental Agents of the Recruiting Divisions/Units subject to their fulfilling the following conditions, and if vacancies remain unutilised by the EDAs they shall be filled by direct recruitment of other open market candidates, fulfilling the age and qualification condition laid down in columns 7 & 8.

- (a) They possess the minimum educational qualification of 10 + 2 standard (Senior Secondary), and have out in a minimum service of 3 years.
- (b) Only those extra Departmental Agents would be eligible for being considered who have secured, not less than 10% marks in comparison to the last open market candidate considered i.e. if in the last recruitment the last open market candidate selected had secured 75% marks, the Extra Departmental Agents to be considered should have obtained at least 65% marks, Bonus marks as admissible to open market candidates will also be admissible to those Extra Departmental Agents who are Graduates or Post Graduates, and
- (c) They should be within 35 years of age (40 years for SC/ST Communities) as on the crucial date-fixed for the last open market recruitment."

3- Perusal of this, clearly shows that earlier the post of Postal Assistant was to be filled up by way of direct recruitment and it was only to help the Extra Departmental Agents to get further channel of promotion, that Extra Departmental Agents were given 50% of the quota out of which 25% ^{to be P2} were filled on the basis of Seniority and suitability and 25% ^{to} were to be filled by way of examination. Here also it was to help the Extra Departmental Agents because they were from the lowest strata and were not able to compete ^{with P2} open market candidates. Therefore, relaxation was given to them that even if they have 10% lesser marks than the last

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candidate from the open market in last recruitment, they would still be considered for being appointed as Postal Assistant. Therefore, this amendment was made for bringing ^{chances and B} more avenues to the Extra Departmental Agents for their benefits. As far as whether this rule was to be given interpretation with reference to the current selection ~~of~~ the last selection held by the Department, it does not require much deliberation because the rule itself is clear as it clearly states that only those E.D.As. would be eligible for being considered who have secured not less than 10% marks in comparision to the last open market candidates considered i.e. in the last recruitment.

The last open market candidate selected, had secured 75% marks. The E.D.As. to be considered, ^{therefore} should have ~~been~~ obtained at least 65% marks. This makes it abundantly clear that comparision had to be with the last recruitment from open market candidate as it had to be done from the last recruitment which gets further clarified if Annexure C.A.-5 is seen which has been annexed by the respondents with their C.A. This shows that these vacancies of Postal Assistants, which could not be filled from open market ~~of~~ the departmental candidates were directed to be filled from E.D.As. provided, they had got at least 10% less marks than the open market candidate of last recruitment.

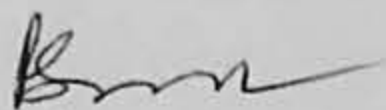
It is also clear from Annexure C.A.-5 that the vacancies of 1995 could not be filled from the departmental candidates, therefore, the E.D.As. were given a chance to be considered for these vacancies, therefore, the relevance of last recruitment is clear from this paragraph. We, therefore, find no substance in the contention raised by respondents' counsel that notification dated 24.9.92 is ultra-vires.

On the contrary, this rule has been framed to help the E.D. As. to get further promotion as Postal Assistant. ^{therefore} the contention is rejected. *[Signature]*

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4. Admittedly all the three applicants appeared in the examination but since they could not get the minimum marks as were required under the notification dated 24.9.92, they cannot have any grievance nor can claim ^{appointed} to be/ as Postal Assistant.

5. In view of the above discussion we find no merit in the O.A. ~~and~~ ^{the} same is accordingly dismissed with no order as to costs.



Member-A



Member-J

Brijesh/-