

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

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Allahabad : Dated this 12th day of April, 2002.
Original Application No. 606 of 1997.

CORAM:-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mrs. Meera Chhibber, J.M.

Krishna Dhar Dwivedi,

S/o Shri Ghanshyam Dhar Dwivedi,

R/o Village & Post Pachera,

District Allahabad.

(Sri Satish Dwivedi, Advocate)

.Applicant

Versus

1. Union of India through the Secretary,
Ministry of Communication, Govt. of India,
New Delhi.
2. The Senior Superintendent of Post Offices,
Allahabad.
3. Sub Divisional Inspector,
Post Offices, Sub Division, Koran,
District Allahabad.
4. Shri Chandra Bihari S/o Sri Brij Lal,
R/o Village and Post Pachera,
District Allahabad.

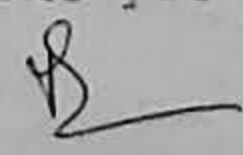
(Sri A.V. Srivastava, /Sri D.S. Shukla, Advocates)

. Respondents

O R D E R

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

In this OA the applicant has challenged the appointment of respondent no.4 to the post of Branch Post Master, Branch Post Office, Pachera, district Allahabad with a prayer to quash his appointment and direct the respondents to appoint the applicant on the post of branch post master as admittedly the applicant had scored the highest marks yet he has not been given



the appointment as it has been given to a Scheduled Tribes Candidate even though the post was not reserved for Scheduled Tribe nor could have been reserved it being a single post in the cadre. He has stated that his case was sponsored by the Employment Exchange, therefore, denying appointment to him is totally arbitrary, illegal and the OA deserves to be allowed.

2. The respondents have contested the claim and have stated that though the applicant scored the highest marks in the High School Examination but since the Quota of Scheduled Tribes Caste was not complete, therefore, in accordance with rule 7, para 3 and Method of Recruitment, respondent no.4, Chandra Behari, a S.T. Candidate, was appointed even though he was at Serial No. 2 in the merit. However, in view of stay granted by this Court, he has not been given the charge of the post. The question for adjudication is in very narrow compass, viz., whether respondent no.4 could have been appointed when he was at merit no.2 over and above the candidate who was at merit no.1.

3. We have heard both the counsel and seen the records as well. It is seen from the requisition sent to the Employment Exchange that it was specifically mentioned that minimum names of 5 candidates be sent and if some candidates of SC/ST or other backward category is registered that must be sent, otherwise it may be noted specifically that no person of SC/ST/OBC is registered with the Employment Exchange. Apart from it the respondents counsel had drawn my attention to the Chapter of Method of Recruitment Section III in Service Rules for Extra Departmental Staff in postal department wherein Rule 7(3) specifically states that preference should be given to SC/ST in appointments. Rule 7 for ready reference reads as under :-

"7.(2). It is observed that, in several circles,

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the orders for giving preference to Scheduled Castes/Scheduled Tribes, in the appointment of ED Agents, are being interpreted in different ways.

(3) It is hereby clarified that candidates belonging to the Scheduled Castes/Scheduled Tribes with the minimum educational qualifications prescribed in this Office Letter No.5-9/72-ED Cell, dated the 18th August, 1973, viz., VIII Standard for ED BPMs, VI Standard for ED DAs and ED SVs and working knowledge of the regional language and simple arithmetic for other EDAs (and working knowledge of English for ED Messengers) should be given preference over the candidates belonging to other communities, even if the latter are educationally better qualified, provided that the candidates belonging to Scheduled Caste/Scheduled Tribes are otherwise eligible for the post."

4. Apart from it the counsel for respondents also relied on the full bench judgement reported in 1999(2) ATJ Page 606 Hyderabad (FB) wherein after discussing everything, it has been held that :-

"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 categories 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 may be selected for appointment according to rules."

5. Thus a perusal of rules and the full bench judgement clearly show that the matter is already concluded and we respectfully agree with the same as full bench is binding on us.

6. The learned counsel for the applicant had relied on the judgement of Hon'ble Supreme Court in Post Graduate Institute of Medical Education & Research to say that single post could not have been reserved but neither the applicant has prepared his pleadings accordingly nor this is a case of reservation as such the above ruling would not apply in the present case. In fact the rules stipulated that preference is to be given to the SC/ST Candidates and the said rule has not been challenged by the applicant and so long the rule is in existence that

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has to be given effect to. Since the scheme of the rules itself is to give preference to the SC/ST Candidates over other candidates, no illegality can be found in the appointment given to respondent no.4 as he is admittedly a S.T. The concept of reservation and preference are two different things altogether because in case of reservation the other candidate would not even be considered whereas in the instant case all those who are sponsored and apply are considered by the same process of selection. However, if SC/ST candidate is available preference is given to him. Therefore, the appointment of respondent no.4 is in accordance with the rules. If the applicant is aggrieved of the preference given to the SC/ST Candidate then he ought to have challenged the rule 7 itself but a perusal of the OA shows that Rule 7 has not been challenged. Therefore, we find no ground to interfere in the matter As a result the OA is dismissed with no order as to costs. The stay is vacated. Let respondent no.4 be appointed forthwith. The official records be returned back by the Court.

Member (J)

Member (A)

Dube/