

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A.No./T.A.No. 869 of 1997

Date of decision

5/5/99

Badan Singh

Applicant(s)

C/A Shri O.P.Gupta, Advt.

COUNSEL for the
Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Shri N.B.Singh, Advt.

Counsel for the
Respondent(s)

C O R A M

Hon'ble Mr. S.Dayal V.C./Member(A)
Hon'ble Mr. S.K.Agrawal Member (J)

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters or not ? Yes
3. Whether their Lordship wish to see the fair copy of the judgment ? Yes
4. Whether to be circulated to all Benches ? No


(SIGNATURE)

MANISH/

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 869 OF 1997

Allahabad, this the 5th day of May, 1999.

CORAM : Hon'ble Mr.S.Dayal, Member(A)
Hon'ble Mr.S.K.Agrawal, Member(J)

Badan Singh,
S/o. Shri Pratap Singh,
R/o. Village and Post- Kumbhi,
District Kanpur Dehat.

.....Applicant

C/A Shri O.P.Gupta, Advocate

Versus

1. Superintendent of Post Offices,
'M' Division Kanpur,
at Head Post Office Kanpur.
2. Union of India through Secretary,
Ministry of Communication,
Government of India,
New Delhi.

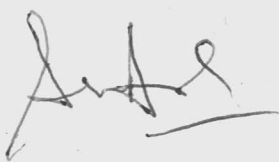
.....Respondents

C/R. Shri N.B.Singh, Advocate

O R D E R

(By Hon'ble Mr.S.K.Agrawal, Member(J))

In this original application the applicant makes a prayer to struck down the circular dated 4-9-82 issued by D.G.P. with regard to appointment through Employment Exchange only and to direct the Union of India that applicant has a legal right for consideration in view of the decision of Supreme Court.

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2. Facts of the case as stated by the applicant are that respondent No.1 sent a letter to Employment Exchange on 14-7-97 to sponsor the name of five suitable

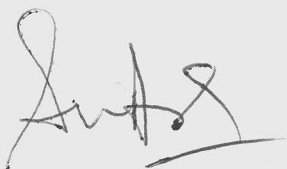
candidates for the selection of one post of EDBPM.

It is stated by the applicant that although the name of the applicant was also registered with Employment Exchange, but Employment Exchange did not sponsor his name, therefore he has applied to respondent No.1 on 7-8-97 directly, but applicant was informed orally by respondent No.1 that for the post of EDBPM selection will be confined to those whose names are sponsored by the Employment Exchange. It is stated that applicant sent his application well within stipulated period and he also fulfils all the requisite qualifications as required for the selection. Therefore, in view of the law laid down by Hon'ble Supreme Court of India in Excise Superintendent, Malkapatnam Vs. K.B.N.Vishweshwara Rao and Others 1996 SSC (L&S) Vol.II page 1420 the candidature of the applicant should also be considered and the circular and notification which are issued for this purpose be quashed.

3. Counter was filed. In the counter affidavit it was stated that in pursuance of requisition the Employment Exchange, Kanpur Dehat vide letter dated 1-8-97 sponsored a list of five candidates for the appointment on the post of EDBPM, Kumbhi. It is also stated that applicant has also filed the application direct on 7-8-97, but the name of the applicant was not sponsored by the Employment Exchange, hence his candidature is not likely to be considered and he was communicated accordingly.

4. Rejoinder was also filed.

5. On 22-8-97 this Tribunal directed the respondents to consider the candidature of the applicant provisionally for the post of EDBPM, Kumbhi provided



he fulfils all other eligibility conditions. It was also provided that result of this applicant shall not be declared even if he selected and he shall not be appointed on the post till further orders.

6. Heard the learned lawyer for applicant and learned lawyer for respondents and also perused the whole record.

7. The main question for consideration in this original application is whether the candidature of the person who has submitted application direct to the competent authority and whose name has not been sponsored by the Employment Exchange can be considered for the recruitment of the post of E.D.Mailman, Fatehpur.

8. Learned lawyer for the applicant has submitted that applicant has directly submitted the application within time specified with all necessary documents to the competent authority, therefore, in view of the decision of Apex Court in Excise Superintendent, Malkapatnam Krishna District, A.P. Vs. K.B.N.Vishwaseshwara Rao and others reported in 1996 (VI) SCC 216 the candidature of the applicant alongwith others should have been considered and thereafter result be declared accordingly. On the other hand learned lawyer for respondents has objected to this arguments advanced by learned lawyer for the applicant and contended that as per rule 14(2) of Recruitment of E.D.Agents the person whose name is sponsored by the Employment Exchange can only be considered by the appointing authority for the appointment of E.D.Agents, therefore, respondents have rightly rejected the application of the applicant filed direct to the respondents and the same was communicated to the applicant vide letter dated 30-12-97.

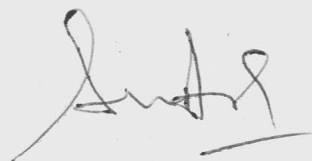
9. In case of Excise Superintendent, Malkapatnam Krishna District, A.P. Vs. K.B.N.Vishwasheswara Rao reported in 1996 (VI) SCC 216 Hon'ble Apex Court has distinguished the case of Union of India and others Vs. N.Hargopal and others reported in AIR 1987 SC 2227 and held -

"It is common knowledge that many a candidates is 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 is deprived of the right to be considered for appointment to a post under state."

10. The similar view was also taken in case of Arun Tewari Vs. Zila Mansavi Shikshak Sang, AIR 1998 p.331.

11. In case of Union of India & Others Vs. Hargopal (Supra) and in Delhi Development Horticulture Employees Union Vs. Delhi Administration, Delhi 1992 SCC P.99 the Apex Court approved the recruitment through Employment Exchange as a method of preventing mal-practice but in case of Excise Superintendent Malkapatnam, Krishna Distt. A.P. Vs. K.B.N.Vishweshwera Rao & Ors (Supra) the Apex Court distinguished the case reported in 1987 (3) SSC 308 UOI & Ors. Vs. N.Hargopal & others on the basis of special facts of the case.

12. It is also pertinent to mention that Govt.of India Ministry of Communication, Department of Post vide order dated 19-8-98 has issued instructions regarding recruitment of E.D.Agents after the Supreme Court judgement and amended the existing instructions regarding the

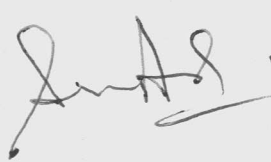


recruitment of E.D. Agents. According to these instructions it has been provided as under :-

"In the context of selection of candidates to work as EDAs, the issue relating to notification of the vacancies to the local employment exchange has been further examined in the light of OM No.14024/2/96-Est(D) dated 18-5-98 of the Ministry of Personnel, Public Grievances and Pensions (DOP&T). It has now been decided that in respect of all vacancies of EDAs, excluding those where the process of recruitment through employment exchange/open advertisement has already commenced, in addition to notifying through the Employment Exchange, the vacancies shall be simultaneously notified through public advertisement and the candidates nominated by the employment exchange as also those responding to the open advertisement will be considered. In case the notification and public advertisement so issued fail to elicit any response within the stipulated date or if the effective number of candidates responding is less than 3, the vacancy will be re-notified to the employment exchange and advertised calling for nominations etc. within 15 days and all the candidates offering their candidature will be considered in accordance with the instructions issued by this office from time to time. Since the posts of ED Agents falling vacant are isolated and scattered and publication of the same through Newspapers is considered cost prohibitive, the existing method of giving wide publicity by way of public advertisement in this behalf will continue to be followed.

These instructions will come into force with immediate effect."

13. On the basis of above legal position and facts we are of the opinion that applicant was entitled to be considered for the post of E.D.B.P.M., Kumbhi alongwith

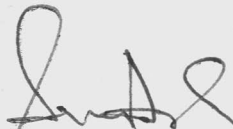


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others, although his name was not sponsored by the Employment Exchange.

14. We, therefore allow this original application and direct that applicant is entitle to be considered for the post of E.D.B.P.M., Kumbhi in response to requisition dated 4-9-82 alongwith others strictly in accordance with rules and thereafter the result be declared by the respondents.

With the above directions this original application is disposed off with no order as to costs.


MEMBER(J)


MEMBER(A)

satya/