

(17)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 910 OF 1997
ALLAHABAD THIS THE 21ST DAY OF NOVEMBER, 2003

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN
HON'BLE MR. D. R. TIWARI, MEMBER-A

Virendra Pal Sharma,
aged about 28 years,
S/o Devadutta Sharma,
r/o Mirapur,
District - Bareilly.Applicant

(By Advocate Shri A. Shukla)

Versus

1. Union of India,
through its Secretary,
Ministry of Communication,
Dak Bhawan,
New Delhi.
2. The Senior Superintendent,
Post Offices, Bareilly Division,
Bareilly.
3. The Post Master General,
Bareilly, District-Bareilly.
4. The Chief Post Master General,
Lucknow.
5. Shri Ram Bahadur,
S/o Govinda Ram,
E.D.B.P.M., Mirapur, Rafigabad,
(B.R. Factory), Bareilly.Respondents

(By Advocate Shri B. Ram, Shri M.K. Upadhyay,
Shri K.P. Singh)

ORDER

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN

The applicant and two others including the respondent no.5 Shri Ram Bahadur, were the applicants for appointment to the post of Extra Departmental Branch Post Master (in short EDBPM) in the Branch Post Office Mirapur, Raifiabad in District Bareilly. The applicant had secured 56.5% marks as against 43% marks secured by the 5th respondent in the High School Examination. The third candidate Shri Prem Pal had secured 46% marks in the High School Examination. The 5th respondent Shri Ram Bahadur was, however, selected for appointment on account of the fact that his monthly income was Rs1000/- per month from the immovable property and as against that monthly income of the applicant was Rs500/-. It was on the basis of the income that the 5th respondent was considered to be suitable in preference to the applicant who had the highest marks in the High School Examination.

2. The appointment of the 5th respondent was made on the basis of provision contained in Section III-'Method of Recruitment' para 3 of which provides that the person who takes over the agency (E.D.S.P.M. & E.D.B.P.M.) must be one who has adequate means of livelihood and further that the person selected for the post of E.D.S.P.M./E.D.B.P.M. must offer space to serve as the agency premises for postal operations. The validity of this very provision came up for consideration before the Full Bench of Central Administrative Tribunal, Bangalore Bench in the case of H. Lakshmana and Ors. Vs. The Superintendent of Post Offices, Bellary and Ors. reported in 2003(1)ATJ277 decided on 02.12.2002. The Full Bench held that it would not be permissible to debar a citizen from being considered for appointment to an office under the state solely on the basis of his income or property holding in as much as the employment under state is really conceived to serve the

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people and that the person must also have a source of livelihood is secondary. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Article 16 of the Constitution. The circular of 06.12.1993 imposing the condition of adequate means of livelihood was struck down as unconstitutional.

3. It is, however, submitted by the learned counsel for the respondents that the Full Bench Judgment came in December 2002 whereas the appointment of the 5th respondent was made on the basis of the then existing rules long back in March 1996. Be that as it may that the declaration of law is always retrospective unless the court directs its decision to have prospective effect. In the Full Bench referred to above no such direction was given that its decision would have a prospective effect. The denial of appointment on the basis of adequate means of livelihood cannot be sustained in view of para 2 of the 'Method of Recruitment' which provides that the selection should be based on the marks secured in the Matriculation or equivalent examinations. As stated supra on the basis of marks secured in the High School Examination, the applicant was entitled to be selected and appointed but the same has been denied to him merely on the ground that the monthly income of the 5th respondent from immovable property was more than that of the applicant. The appointment of the 5th respondent in the circumstances cannot be sustained.

4. It has been then submitted by the learned counsel for the applicant that the 5th respondent has worked for about seven years and, therefore, the respondents may be directed to consider him for alternative appointment. The Rules provide that ED agent who are appointed provisionally and subsequently discharged from service due to administrative reasons and if at the time of

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discharge they had put in not less than three years' service they should be given alternative appointment. The 5th respondent was, no doubt, not appointed "provisionally" but having regard to the fact that he has worked for about seven years and his appointment was made on the basis of the rules as they stood prior to the judgment of the Full Bench, we direct the respondents to consider him for an alternative suitable appointment, as early as possible, upon occurrence of vacancy on the suitable post.

5. The O.A. succeeds and is allowed. The respondents are directed to offer appointment to the applicant forthwith and consider the 5th respondent for an alternative appointment.

6. Parties are directed to bear their own cost.

Abbas
Member-A

Parveen
Vice-Chairman

/Neelam/