

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD  
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Original Application NNo. 218 of 1998

Allahabad this the 04th day of July, 2003.

QUORUM : HON'BLE MRS MEERA CHHIBBER, MEMBER-J  
HON'BLE MR D R TEWARI, MEMBER-A  
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Munna Lal son of Sri Buddhu Lal  
resident of village and post-  
Bakwan(Moth), District- Jhansi.

.....Applicant.

( By Advocate : Shri S S Tripathi )

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1. Union of India, through the Director General Post Offices, New Delhi.
2. The Post Master General, Agra Range, Agra.
3. Senior Superintendent, Post Offices, Jhansi Division, Jhansi.
4. Raj Kumar son of Sri Lakhon Lal, resident of Village and Post- Bakwan(Moth), District - Jhansi.

.....Respondents.

( By Advocate : Shri J S Parihar )

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O R D E R (Oral)

HON'BLE MRS. MEERA CHHIBBER, MEMBER J

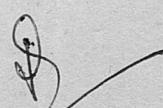
By this O.A., applicant has challenged the appointment given to the respondent no.4 on 05.11.1997 as Extra Departmental Branch Post Master(for short E.D.B.P.M.) at Branch Post Office, Bakwan(Moth), District Jhansi. He

has prayed that the said appointment may be quashed and direction be given to the respondent no.3 to make fresh recruitment and appointment from amongst the remaining candidates including the applicant and by including the candidature of respondent no.4

2. Brief facts as narrated by the applicant in this O.A. are that a permanent post of E.D.B.P.M. has fell vacant at Branch Post Office, Bakawan (Moth) District Jhansi, as such, said post was notified. Applicant applied for the said post as he was eligible for the said post. Thereafter, a list of ~~recruitment~~ <sup>Candidates</sup> was prepared according to merit, in which name of respondent no.4 was placed at serial no.1 while applicant's name was placed at serial no.2. The said list was prepared by the duly constituted Selection Committee.

3. The contention of applicant is that since father of the respondent no.4 namely Shri Lakhan Lal was also working as Extra Departmental Delivery Agent at Branch Post Office, Bakawan (Moth) much before the impugned selection, therefore, even though the applicant was a better candidate yet he was not placed at serial no.1 but respondent no.4 was placed at serial no.1 but, ~~respondent no.4 was placed at serial no.1~~. Thus, he has submitted that the selection of respondent no.4 is bad in law as he was closely related to Shri Lakhan Lal, who was already working as Extra Departmental Delivery

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Agent in the same office. Being aggrieved he made representation to the respondent no.2 on 13.11.1997, 01.12.1997, 03.12.1997 and 22.12.1997 requesting therein to cancel the candidature of respondent no.4 and to appoint the applicant but, no response was given on the said representations. He has relied on Section III of Post and Telegraph Extra Departmental Agents (Service and Conduct) Rules, 1964, wherein Rule 11 provides as under:- *b*

*near*  
"11-EMPLOYMENT OF ~~MEPE~~ RELATIVE IN THE SAME OFFICE TO BE AVOIDED : Instances have come to light wherefrom several relations have been appointed to work as E.D.B.P.M. and E.D.D.A. or E.D. Mail Carrier in the same office. As this fraught with the risk of fraud etc. thus, this should be avoided. D.G.P&T letter no. 43/36/64-Pen dated 17th October, 1966."

He has, thus, submitted that the appointment of respondent no.4 was in utter violation of Rule 11 of the aforesaid rules. He has, thus, prayed that the O.A. may be allowed and he may be granted the relief, as prayed for.

4. The respondents on the other hand have opposed this O.A. and have submitted that the father of respondent no.4 had resigned from the post on 03.12.1997, which was duly accepted by the respondents and as far as respondent no.4 was concerned, since he was best amongst the eligible candidates, therefore, he was selected as per his merit against the clear vacancy. They have annexed the resignation of respondent no.4's father as well as the merit list prepared by the respondents for the selection of E.D.B.P.M. They have also relied on the Judgment given by the Hon'ble

Supreme Court in the case of Baliram Prasad Vs.

Union of India and Others 1997 S.C.C. (L&S) 468

wherein it was held;

"A. Appointment - Eligibility - Qualifications - Extra Department Branch Postmaster - Appointment to the post of - Notwithstanding the authorities' decision to avoid employment of near relatives in the same office, a candidate related to (cousin brother of) a person working <sup>in</sup> the same Post Office as Extra Department Delivery Assistant held, not, ipso facto ineligible - Rather denial of appointment to a more meritorious candidate on that mere ground, held totally an arbitrary exercise of power and hit by Art.14 - Hence, in view of much better academic record, the appellant directed to be appointed in place of the respondent - Constitution of India, Art.14 - Arbitrariness - Particular Instances."

It is, thus, submitted by the respondents' counsel that this case is fully covered by the aforesaid Judgment, as such, the appointment of respondent no.4 cannot be said to be bad in law.

5. The respondent no.4 has also followed the same arguments as advanced by the official respondents.

6. We have heard both the counsel for the official respondents as well as for private respondent and have perused the pleadings as well.

7. Perusal of selection proceedings shows that respondent no.4 was at serial no.2 while the applicant was at serial no.3 in the eligible candidates list and Shri Sunil Kumar was at serial no.1 in the

said list but, as per their merit respondent no.4 stood at number 1 because he had secured 61% marks in the High School while applicant Shri Munna Lal had secured only 40% marks in the High School.

Shri Sunil Kumar had got 37.5% and Sri Haribabu Srivastava had got 59.1% marks so naturally respondent no.4 was having highest marks in the High School apart from meeting all the <sup>other</sup> requirements. Therefore, undoubtedly he was the person rightly selected at serial no.1 as per his merits. Annexure C.A.-3 shows that father of respondent no.4 Shri Lakan Lal had given his resignation on 03.12.1997, which was accepted by the department and even otherwise Hon'ble Supreme Court had the occasion to deal with the similar point and after considering all the various contentions raised by both the parties, Hon'ble Supreme Court has held as under:-

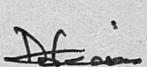
"Only because appellant's cousin brother was working as a Peon in the said Post Office doing such manual work it passes our comprehension how the appellant could not be appointed as Extra Department Branch Post Masyer in the said post office. There is no rhyme or reason underlying such an approach on the part of the authorities. To say the least it would be totally arbitrary and irrational. Even if there may be any risk of fraud etc. even non-relatives can be guilty of frauds while on the contrary relatives may not be prone to such frauds. But even if they are, appropriate procedure can be adopted for detecting such frauds and bringing the guilty to book or even for effectively checking such tendencies by having appropriate vigilance machinery. But to refuse to appoint a more meritorious candidate only on ~~the~~ ground that his cousin brother was working in the same Post Office would, in our view,

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are totally an arbitrary exercise of power which cannot be countenanced on the touchstone of Article 14 of the Constitution of India."

Not only the Hon'ble Supreme Court had held as mentioned above but, subsequently the Ministry of Communication issued an O.M. dated 17.02.1999 also, <sup>18</sup> whereby Office letter dated 17.10.1996 forbidding employment of near relative as E.D. Agents in the same post office as unconstitutional, was withdrawn (annexure C.A.-1).

8. In view of the above discussions, it is clear that the contention raised by the applicant is not at all sustainable that respondent no.4 could not have been appointed since his father was also working as Extra Departmental Delivery Agents. Accordingly, the contention is rejected. Since respondent no.4 was most meritorious candidate, therefore, we do not find any good ground to interfere in the case. O.A. is accordingly dismissed. No order as to costs.

  
Member (A)

  
Member (J)

/M.M./