

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD.

Original Application No.236 of 1998.

Allahabad this the 16th day of January 2004.

Hon'ble Mr. V.K. Majotra, Vice Chairman  
Hon'ble Mrs. Meera Chhibber, Member-J.

Prem Narain  
s/o Shri Chhote Lal,  
R/o Village Sona, P.O. Bhimpur,  
District Kanpur Nagar.

.....Applicant.

(By Advocate : Sri Bechu Ram)

Versus.

1. Union of India  
through Secretary (Posts)  
Ministry of Communication,  
Dak Bhawan, Sansad Marg,  
New Delhi.
2. Postmaster General,  
Kanpur Region,  
Kanpur.
3. Sr. Superintendent of Post Offices,  
Kanpur City Division,  
Kanpur.
4. Assistant Superintendent of Post Offices,  
Kanpur East Sub Division,  
Kanpur Nagar.
5. Sanjay Kumar,  
S/o Shri Vishram  
R/o Village & P.O. Bhimsen,  
District Kanpur Nagar,  
presently posted as E.D.M.P. Bhimsen.

.....Respondents.

(By Advocate : Sri S.C. Tripathi)

O R D E R

(By Hon'ble Mr. V.K. Majotra, V.C.)

Applicant has challenged Annexure A-1 dated  
8.7.1997 whereby respondent No.5 was appointed as Extra  
Departmental Mail Peon (In short E.D.M.P) Bhimsen Post  
Office, District Kanpur Nagar.

2. Learned counsel of the applicant submitted that

*was b*  
the requisition for the said post made to the Regional Employment Exchange, Kanpur vide letter dated 05.04.1997 in which it was not stated that the post was reserved. However, respondents proceeded to appoint respondent No.5 on the said post treating the same as reserved. Learned counsel pointed out that instead of selecting the applicant as more meritorious candidate, respondents have bypassed him and appointed a reserved category candidate, respondent No.5 in violation of instructions contained in Annexure A-6 dated 26.05.1995. Learned counsel relied upon 2001 (3) A.T.J 380, Prithvi Pal Singh Vs. J&K State Services Selection Board, Jammu contending that as the post was not shown as reserved in the requisition, a reserved candidate cannot be appointed in preference to a General candidate who is more meritorious. Learned counsel further relied upon 1999 (2) A.T.J 606 M. Satyaseela Reddy Vs. Union of and India and others stating that reservation of the post for a particular category means total exclusion from consideration of other categories, even if more qualified or better merited. As reservation of the post had not been indicated in *the b* requisition, preference could not have been given to the respondent No.5 as reserved category who was less meritorious.

3. On the other hand, learned counsel of the respondents stated that in response to the requisition to the Employment Exchange, the Employment Exchange sponsored three candidates including the applicant and respondent No.5. There had been a shortfall of representation of S.C. candidates. Respondent No.5, a S.C. fulfilled the eligibility conditions as per Departmental Rules and as such the Competent Authority after completing all formalities appointed him on the post of E.D.M.P Bhimsen. Learned counsel relied upon C.A.-1 and C.A.-2 to contend that it is clearly mentioned in these

instructions that preference will be given to S.C/S.T/O.B.C keeping in view the adequate representation in the E.D.A's cadre of the unit as such respondents took <sup>h</sup> action to appoint respondent No.5 in preference to the applicant who belongs to S.C. category.

4. We have considered the rival contentions carefully, It is true that in the requisition letter the specific declaration of giving preference to reserved categories is not mentioned. However, Annexure CA-1 D.G.P.&T, letter dated 8th March 1978 containing <sup>h</sup> instructions regarding giving preference to SC and ST in appointments states that "wherever possible, first preference should be given to Scheduled Caste/Scheduled Tribe candidates, apart from P & T and other Government employees for appointment as ED Agents even if educational qualification has to be relaxed <sup>h</sup>; it should be ensured at least minimum fixed percentage as laid down for other Groups C and D cadre for these communities in employment of ED staff is achieved. Vide Annexure CA-2 dated 3.10.94 such preferential consideration has been accorded to candidates belonging to O.B.C's. Learned counsel for the respondents has contended that as the respondents had noticed shortfall of two posts in reserved category, respondent No.5 was given preference vis-a-viz the applicant even though the applicant was more meritorious as a general candidate.

5. We have carefully perused Annexure A-3 dated 05.04.1997 which is requisition related to the post <sup>it</sup> in question in which has been specifically mentioned that for candidates belonging to SC/ST/OBC their representation shall be considered in accordance with Departmental Rules.

*h*

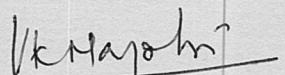
6. In the case of Prithvi Pal Singh (supra), it was pointed out that wherever posts were meant for different categories, a specific mention regarding this ~~has to be~~ made in the advertisement notice but in the case of selection in question, no such mention was there in the notice. In the present matter, it is not that in ~~requisition~~ the requirement of reservation was mentioned ~~for~~ the post in question, it was not mentioned as such the facts are distinguishable and the ratio of the case of Prithvi Pal Singh (supra) will not be applicable to the present case. So far as the case of M. Satyaseela Reddy (supra) is concerned although it is held that reservation of a post means total exclusion from consideration of other categories, even if more qualified or better merited. It has been held that while giving preference all eligible candidates irrespective <sup>of</sup> ~~of~~ their categories, are simultaneously considered for any post on equal footing and are subjected to a common and uniform process of selection. If no person belonging to any particular preferential category is available or selected, no question of giving preferential treatment to such a category of persons arises. Where such a person is available or selected he gets the benefit of preferential appointment irrespective of his position in the select list or merit list. While we have held that the facts of the case of Prithvi Pal Singh (Supra) are distinguishable, as a matter of fact the ratio of M. Satyaseela Reddy (Supra) supports the case of respondents ~~for~~ selection of respondent No.5. We find that the requisition did state that representation of reserved categories will be taken into consideration while selecting the candidates against the requisitioned posts. Instructions contained in Annexure CA-1 and Annexure CA-2 also lay down that Government policy of giving representation to reserved categories shall be

followed and it has to be ensured that minimum fixed percentage laid down for Groups 'C' and 'D' cadres in employment of ED staff shall be achieved. Although respondents have not clearly mentioned in the requisition that post in question is reserved yet requisition states that representation of reserved categories as per relevant rules will be taken into consideration. According to the respondents there has been a shortfall of 2 candidates in the representation of S.C. candidates. In this <sup>16</sup> backdrop if respondents have proceeded to give preference to respondent No.5, a S.C. candidate, who was otherwise eligible, the action of respondents cannot be faulted with. In our considered view, respondents have followed the relevant instructions in selecting and appointing the respondent No.5 and have not committed any irregularity and illegality. On ~~the~~ behalf of the applicant cases of Prithvi Pal Singh (Supra) and M Satyaseela Reddy (supra) have been relied upon. While the facts of the case of Prithvi Pal Singh (Supra) are distinguishable, the case of M. Satyaseela Reddy (supra) does not lend any support to the applicant's case.

7. Having regard to the facts and circumstances of the case as discussed above, this O.A. is dismissed being devoid of merits.

No costs.

  
Member-J.

  
Vice-Chairman.

16.01.04

Manish/-