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(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 25 OF 1998

alongwith

ORIGINAL APPLICATION NO.192 OF 1998

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

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

Virendra Dubey,
Son of Sri Shyam Narain Dubey,
Resident of 437, Prvi Pani,
Peetanpur, Distt. Fatehpur .....Applicant
(in O.A.25 of 98)

and

Rafi Ahmad,
S/o. Sri Wajid Ali,
R/o. Vakarganj,
Fatehpur ..... Applicant
(in O.A.192/98)

(C/A Sri R.P.Singh, Advocate)

VERSUS

1. Union of India through
the Secretary, Ministry of Posts &
Telegraphs, New Delhi.

2. Senior Superintendent of R.M.S.
'A' Division, Allahabad.

3. Inspector R.M.S., A-First
Sub-Division, Allahabad. ..... Respondents

(C/r. Sri N.B.Singh, Advocate)

ORDER

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

As the facts of these two applications are common and similar therefore by this judgement original application No. 25 of 1998 and 192 of 1998 will be disposed off.

In original application No. 25 of 1998 and

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original application No.192 of 1998 filed under section 19 of Administrative Tribunal Act, 1985 the applicants make prayer to quash the order dated 30-12-97 and direct the respondents to consider the candidature of the applicant for the post of E.D.Mailman, Fatehpur and also to quash the instructions No.13 & 14 contained in D.G. P & T letter dated 4-9-82.

2. In brief facts of the cases as stated by the applicants are that due to the vacancy on the post of E.D.Mailman respondent No.3 sent a requisition to Employment Exchange, Fatehpur vide his letter dated 18-11-97 requesting that names of 15 suitable candidates may be sent within 30 days. It is stated that applicant also fulfils all the requisite qualifications and is eligible for consideration for the appointment to the post of E.D.Mailman and his name is also registered with Employment Exchange, but Employment Exchange, Fatehpur did not sponsored his name. The applicant thereafter directly filed an application dated 25-12-97 to respondent No.3 which was received in the office of respondent No.3 on 27-12-97. The applicant alongwith his application had also submitted all the requisite documents but respondent No.3 refused to consider the applicant's candidature for appointment on the post of E.D.Mailman on the ground that his name has not been sponsored by the Employment Exchange, Fatehpur. It is stated that depriving the right of consideration to the applicant respondents have clearly violated Article 14 and 16 of Constitution of India. It is further stated that this issue has come up for consideration before Hon'ble Supreme Court in Excise Superintendent

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Malkapatnam Krishna Vs. K.B.N.Vishwasheshwara Rao and others 1996 Vol.6 SCC 216 where Hon'ble Supreme Court held that persons who have applied directly they should also be considered. It is, therefore, requested that respondents be directed to consider the applications submitted by the applicant for selection for the appointment of E.D.Mailman, Fatehpur, alongwith others who were sponsored by the Employment Exchange and quash the order dated 30-12-97.

3. Vide order dated 3-9-98 this Tribunal issued an interim order and directed the respondents to consider the candidature of the applicant for the post of E.D.Mailman, Fatehpur alongwith other candidates sponsored by the Employment Exchange, but the result shall not be declared during the pendency of this original application.

4. Counter was filed by the respondents. In the counter affidavit it was stated that in persuance of requisition the Employment Exchange/Fatehpur sent the list of 15 candidates in that list, the name of the applicant was not sponsored, therefore as per instructions of Director General, Post Offices, contained in letter dated 4-9-82 the candidature of the applicant was not considered and he was communicated accordingly.

5. Rejoinder was also filed retiterating the facts stated in the original application.

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

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7. The main question for consideration in these original applications 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 applicants 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.Vishwasheshwara Rao and others reported in 1996 (VI) SCC 216 the candidature of the applicants alongwith others should have been considered and thereafter result be declared accordingly. On the other hand learned lawyer for respondents has objected to this arguements 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 ED. 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.Vishwasheshwara 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

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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 and others Vs. N.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 District, 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

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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 and circumstances of this case we are of the opinion that respondents must have considered the candidature of the applicant who has filed the application direct within time specified, although his name was not sponsored by the employment exchange, if he is otherwise eligible for the post.

14. As regards instructions No. 13 and 14 contained in DGPT letter dated 4-9-82 is concerned after the Apex Court Judgement in Excise Superintendent case Govt.of India has already issued a circular in connection with the recruitment of ED Agents, therefore the prayer to quash the aforesaid instructions No.13 and 14 as contained in DGPT letter dated 4-9-82 has became infructious after issuance of instructions vide order dated 19-8-98 of Govt.of India, Ministry of Communication, Deptt.of Post.

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15. We, therefore allow these original applications partly and direct that the applicants are entitle to be considered for the post of E.D.Mailman, Fatehpur in response to requisition dated 18-11-97 alongwith others strictly in accordance with rules and thereafter the result be declared by the respondents.

16. With the above directions these original applications are disposed off with no order as to costs.

MEMBER(J) MEMBER(A)

satya/