

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 14th day of January 2004.

Original Application no. 05 of 1998.

Hon'ble Maj Gen K.K. Srivastava, Member-A
Hon'ble Mr. A.K. Bhatnagar, Member-J

Smt. Indra Rekha Mall, W/o Sri Sudama Mall,
R/o Vill Unaula Doyam,
P.O. Unaula Doyam,
Distt. Gorakhpur.

... Applicant

By Adv : Sri R.P. Singh

V E R S U S

1. Union of India through the Secretary,
Govt. of India, Ministry of Communication,
NEW DELHI.
2. Post Master General,
GORAKHPUR.
3. SenioraSupdt. of Post Offices,
GORAKHPUR.
4. Sri Prasidh Narain Singh Chaudhary,
S/o late Sri R.B. Singh,
Vill & Post Unaula,
Distt. Gorakhpur.

... Respondents

By Adv : Km. Sadhna Srivastava

O R D E R

Maj Gen K.K. Srivastava, A.M.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has challenged the selection of respondent no. 4 for the post of Extra Departmental Branch Post Master (in short EDBPM) Unaula Distt. Gorakhpur. The applicant has prayed for quashing the order dated

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8/15.12.1997 appointing respondent no. 4 as EDBPM Unaula and has also prayed for direction to the respondents to give appointment on the said post to the applicant.

2. The facts, in short, as per the applicant are that the respondent no. 3 issued notification on 30.6.1997 for appointment of EDBPM, Unaula as the post fell vacant on the same date due to retirement of previous incumbent. The applicant belongs to Back-Ward community. In pursuance to the notification, the names of four candidates including the applicant were sponsored by the Employment Exchange. As directed by respondent no. 3 vide letter dated 29.7.1997 the applicant applied on 12.8.1997. The grievance of the applicant is that though she was the most merited candidate and fulfilled all eligible conditions yet respondent no. 3 appointed respondent no. 4. Before the selection she got apprehension that her claim was being ignored, therefore, she filed a representation before respondent no. 2 i.e. Post Master General, Gorakhpur. However, no action was taken by the respondents and respondent no. 4 was appointed. Aggrieved by the same, the applicant filed this OA, which has been contested by the respondents by filing counter affidavit.

3. Sri R.P. Singh, learned counsel for the applicant submitted that the action of respondent no. 3 is discriminatory because the applicant secured 54% marks in High School examination whereas respondent no. 4 secured only 50% marks. Such an action of the respondents is violative of Article 14 and 16 of the Constitution of India. Learned counsel

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for the applicant has placed reliance on the order of this Tribunal dated 23.12.1996 passed in OA no. 501 of 1995, Lalji Vs. Union of India & Ors.

4. Resisting the claim of the applicant, Km Sadhna Srivastava, learned counsel for the respondents submitted that the applicant was required to submit her application with all requisite documents upto 12.8.1997. She did submit her application on 12.8.1997, but she did not submit any document regarding landed property in her name to prove that she had independent source of livelihood. The applicant attached only a letter of Development Authority Gorakhpur showing that a piece of land has been allotted to her on loan. During enquiry it was found that she purchased a piece of land in her own name on 27.8.1997 i.e. 15 days after the last date of submission of application form. Learned counsel argued that since the applicant was fulfilling all the conditions of appointment, the respondents have committed no error of law in appointing respondent no. 4. Learned counsel for the respondents placed reliance on the judgment of Hon'ble Supreme Court in case of Rekha Chaturvedi (Smt) Vs. University of Rajasthan & Ors, 1993 SCC (L&S) 951.

5. We have heard learned counsel for the parties, carefully considered their submissions and closely perused records.

6. A short controversy involved in this case is whether the applicant had independent source of income or not on the last date of submission of application form i.e. 12.8.1997 and therefore fulfilled the eligibility criteria



In counter affidavit the respondents have specifically stated that the applicant did not have landed property in her name which could be a source of independent income of the applicant. She only attached the letter of Development Authority Gorakhpur that a piece of land has been allotted to her on loan. This fact has been admitted by the applicant in para 4 of the rejoinder affidavit and the ground taken by the applicant in rejoinder affidavit that she had a piece of land in her name is not enough to establish that she had independent source of income and, therefore, since the applicant lacked in the **essential** qualification of having independent source of income on the date of submission of application form, in our considered **Opinion** no illegality has been committed by the respondent no. 3 in selecting respondent no. 4 and issuing the appointment letter in his favour.

7. Learned counsel for the applicant has placed reliance on the case of Lalji (*supra*). In this case the applicant has challenged the appointment of respondent no. 4. The case cited by learned counsel for the applicant is easily distinguishable and the law laid down therein is in no way applicable in the present controversy.

8. Learned counsel for the respondents has placed reliance on the judgment of Hon'ble Supreme Court in case of Rekha Chaturvedi (*supra*). We would like to reproduce the law laid down in para 11 by the Hon'ble Supreme Court in this case :-

"...It is for this purpose that we ~~lay~~ ^{lay} down the following guidelines for the future selection process:

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B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualification acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualification in question, with reference to the last date of making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualification and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

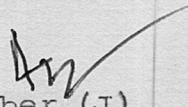
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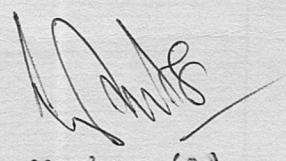
D ...

E ... "

9. In view of the law laid down by Hon'ble Supreme Court we have no hesitation in observing that the applicant did not fulfil the ~~eligibility~~ criteria and therefore, she was not entitled for appointment as EDBPM, Unaula, Distt. Gorakhpur.

10. In the facts and circumstances the OA is devoid of merit and the same is accordingly dismissed with no order as to costs.


Member (J)


Member (A)

/pc/