

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 1186 OF 1998

Allahabad, this the 29th day of July, 1999.

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

Nilendra Kumar Tiwari,
S/o. Shri Jagdeo Prasad Tiwari,
R/o.Village and Post Mahajpur.
District Kanpur City-I.

.....Applicant

(By Shri B.Ram, Advocate)

Versus

1. Union of India through Secretary (Posts),
Ministry of Communication, Dak Bhawan,
Sansad Marg, New Delhi.
2. Senior Superintendent of Post Offices,
City Division,
Kanpur.

.....Respondents

(By Shri N.B.Singh, Advocate)

O R D E R (Reserved)

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

In this original application the applicant makes a prayer to set aside the instructions 13 or 14 issued by the ED Post letter No.45-22/71-SPB/1/PEN dated 4-9-82 and to direct the respondents to consider the candidature of the applicant for the post of E.D.B.P.M. Mahajpur, Kanpur, for which last date for submission of the application was fixed as 5-11-98.

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2. In brief the facts of the case as stated by the applicant are that the respondents sent a requisition to Employment Exchange, Kanpur for sponsoring the names of persons for the appointment of E.D.B.P.M. Mahajpur

Kanpur. The name of the applicant was not sponsored, therefore applicant sent his application on 30-10-98 through registered post which was received by the respondents well within time, but respondents have refused to consider the candidature of the applicant orally on the ground that his name was not sponsored by the Employment Exchange. The contention of the applicant is that he submitted his application very within time, therefore, he has a right to be considered and in this way he sought the relief as prayed for.

3. On 3-11-98 by an interim order respondents were directed to consider the candidature of the applicant alongwith others whose names were sponsored by the Employment Exchange if the applicant has filed his application well in time and the applicant fulfils the required qualification for the post. It is also directed not to declare the results till further orders and any appointment made to the post shall be subject to the orders of this Tribunal.

4. Counter was filed. In the counter it is admitted that applicant has also submitted his application direct and his application was received in time, therefore vide interim order of this Tribunal the candidature of the applicant was considered alongwith others but result has not been declared.

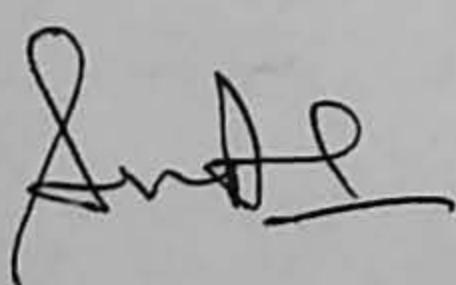
5. Heard the learned lawyer for the parties and perused the whole record.

6. The judgement of Apex Court as given in Excise Superintendent, Malkapatnam, Krishna District, A.P. Vs. K.B.N.Vishweshwara Rao & others reported

in 1996 (6) SCC 216 it was held -

"Having regard to the respective contentions we are of the view that the contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate 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 the State. Better view appears to be that it should be mandatory for requisitioning Authority/Establishment to intimate the Employment Exchange and Employment Exchange should sponsor the names of the candidates to the requisitioning department for selection strictly according to the seniority and reservation as per requisition. In addition the appropriate department or undertaking or establishment should call for the names by publication in the newspaper having wider circulation and also display on their office notice boards or announcement on Radio, television and Employment News bulletins and then consider the cases of all the candidates who have applied. If this procedure is adopted fair play would be subserved. The quality of opportunity in the matter of employment would be available to all eligible candidates."

7. A circular was also issued dated 14-8-98 by Govt. of India, Ministry of Communication, Department of Post, copy of which has been endorsed to all concerned which is also based upon the judgement of Supreme Court in the matter of Excise Superintendent, Malkapatnam Krishna District, A.P. Vs. K.B.N. Vishweshwara Rao & Others reported in 1996 (6) SCC 216. In the circular



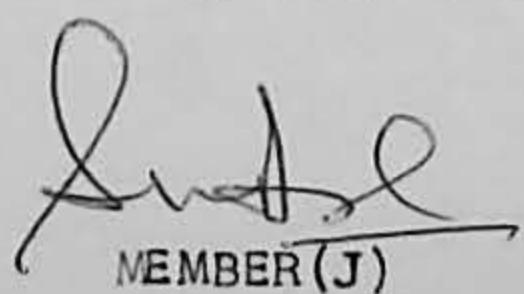
it has been provided specifically as under :-

"It has now been decided that in respect of vacancies of EDA's 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 candidates nominated by the Employment Exchange as also those responding to the open advertisement will be considered."

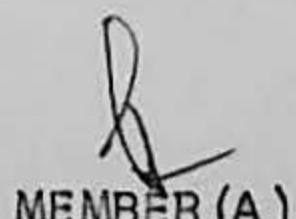
8. In the instant case the applicant has submitted his application direct to the respondents although his name was not sponsored by the Employment Exchange, but in view of the law laid down by Hon'ble Supreme Court of India in Excise Superintendent, Malkapatnam case the applicant is entitled to be considered for the post although his name was not sponsored by the Employment Exchange.

9. The respondents have already considered the candidature of the applicant by the orders of this Tribunal dated 3-11-98. We, therefore direct that applicant is entitled to be considered for the post of E.D.B.P.M. Maharajpur, Kanpur in response to the requisition alongwith others strictly in accordance with the rules and thereafter the result be declared by the respondents.

10. With the above directions this original application is disposed off with no order as to costs.



MEMBER (J)



MEMBER (A)

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