

~~APR~~
~~OPEN COURT~~

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 9th day of January, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No.1211 of 1998

Anjani Kumar son of Shri Trijugi Nath R/O Village Jaswal,
Post Office Jaswal (via Menhdawal), District Sant Kabir
Nagar.....

.....Applicant.

Counsel for applicant : Sri D.N. Mishra.

Versus

1. The Union of India through the Secretary, Ministry of Tele-Communication, New Delhi.
2. Superintendent of Post and Telegraph Circle Basti, District Basti. (UP)
3. District Employment Officer, Siddharth Nagar.
4. Shatru Jeet S/O Kailash Nath, Village & Post Jaswal (via Menhdawal), District Sant Kabir Nagar.
5. Kailash Nath S/O Jag Narayan, R/O Village Jaswal, Post Office Jaswal (via Minhdawal), Tappa Patana, Tehsil Menhdawal, District Sant Kabir Nagar.

.....

.....Respondents.

Counsel for respondents : Sri S.C. Tripathi & Sri K.P. Singh.

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri D.N. Mishra, learned counsel appearing for applicant, Sri A. Tripathi holding brief of Sri S.C. Tripathi, learned counsel for ~~official~~ Respondent Nos.1 & 2 and Sri Vinod Kumar holding brief of Sri K.P. Singh, learned counsel for District Employment Officer, Siddharth Nagar, Respondent No.3. None appears for the private respondent Nos.4 and 5.

2. The challenge here ~~is~~ ⁱⁿ to the validity of the appointment of the 4th Respondent to the post of EDBPM vide order dated 7.4.98. The applicant has also prayed for issuance of a direction to the respondents to initiate a

(R&D)

fresh and fair selection process for appointment to the post of EDBPM, Jasawal, District Sant Kabir Nagar.

3. Shorn of unnecessary details, the facts necessary to highlight the controversy involved in the case are that the 5th respondent Kailash Nath S/O Jag Narayan, the EDBPM of the concerned Post Office retired from service whereupon the Superintendent of Post Office and Circle Basti, District Basti sent a requisition on 29.1.98 (C-II) to the Employment Exchange, Siddharth Nagar who sponsored the names of five candidates including the 4th Respondent Shatru Jeet S/O Kailash Nath besides S/Sri Amar Nath S/O Shri Ram, Shri Dina Nath Sharma S/O Shri Jagannath Sharma, Arvind Kumar S/O Shri Shatruhan Rai and Smt. Archana Rai W/O Shri Gangadhar Pandey. Among the candidates sponsored by the Employment Exchange to the Superintendent of Post Offices, Siddharth Nagar, S/Shri Amarnath, Shatru Jeet and Dina Nath had passed High School examination in 3rd Division and Arvind Kumar in Second Division while Archana Rai had passed the High School Examination in first Division.

4. The grievance of the applicant is two fold : first, that his name was not sponsored because of the manipulation of the party Respondent No.5 Kailash Nath, the former EDBPM, whose son Respondent No.4 has been appointed; and second, that the entire process of selection was violative of the fundamental right to equality of opportunity guaranteed by Articles 14 & 16 of the Constitution in that the selection and appointment has been made sans any advertisement in utter disregard to the law laid down by Hon'ble Supreme Court in Excise Superintendent Vs. KBN Visheshwar Rao, 1996 AIR SCW 3979 followed in Raj Kumar Vs. Shakti Raj, AIR 1997 SC 2110 and the modified instructions issued vide D.G. Posts No.19-4/97-ED & Trg. dated 19th August, 1998 pursuant to the law laid down by Hon'ble Supreme Court in KBN Visheshwar Rao Supra. Shri A. Tripathi, learned counsel representing Respondent Nos.

1 & 2 has submitted that the process of selection commenced vide the requisition issued by the Superintendent of Post Offices, Basti on 29.1.98 on the basis of the old instructions which did not require any advertisement in the newspapers and, therefore, proceeds the submission, the selection would not be vitiated on account of the law laid down by Hon'ble Supreme Court in the case of KBN Visheshwar Rao in that the modified instructions contained in D.G. Posts No.19-4/97-ED & Trg. dated 19th August 1998 would not apply retrospectively. Sri Vinod Kumar holding brief of Sri K.P. Singh, learned counsel representing the District Employment Exchange submitted that the applicant was called by the District Employment Exchange but he did not appear and, therefore, his name was not sponsored.

5. Having heard counsel for the parties we veer around the view that the entire selection process destructive of the fundamental right guaranteed by Articles 14 and 16 of the Constitution. Hon'ble Supreme Court in KBN Visheshwar Rao has held as under :-

"It is common knowledge that many a candidates are 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 candidates are 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 the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, tele-

vision and employment news-bulletins; and then consider the cases of all the candidates who have applied. If that procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

6. The decision aforesaid has been followed in Raj Kumar Supra wherein it has been specifically held that vacancies should not only be notified but the name should be called from the employment exchange and in addition wide publicity should be given in the media inviting applications from qualified persons for selection. It goes without saying that any other procedure for selection and appointment to a post under State would defeat the fundamental right of equality of opportunity guaranteed by Articles 14 and 16 of the Constitution. In the instant case though following the judgment in KBN Visheshwar Rao, the department issued the modified instructions contained in D.G. Posts No.19-4/97-ED & Trg. dated 19th August 1998 yet the appointments were made following the old instructions which were incompatible with the fundamental right guaranteed by Articles 14 and 16 of the Constitution in that they did not provide for giving wide publicity to vacancies by means of advertisement in the newspapers etc. The submission made by Sri A. Tripathi that since the process of selection had commenced prior to issuance of the modified instructions, the old procedure was rightly followed, cannot be accepted for the reason that the law laid down in KBN Visheshwar Rao being declaratory in nature, should be taken to be the law from the very commencement of the Constitution. The executive instruction as it stood prior to the modified instructions contained in letter dated 19th August 1998 was void and still-born being hit by the prohibition contained in Art.13(2) of the Constitution, and, in no case, it could nullify the effect of the judgment of Hon'ble Supreme Court in KBN Visheshwar Rao rendered in the year 1996 for the enforcement of the judgment

was not dependant on issuance of any instruction. The law laid down by Hon'ble Supreme Court in KBN Visheshwar Rao was in fact binding on its own force independently of the modified instructions contained in the letter dated 19th August 1998 issued in supercession of the earlier instructions contained in D.G., P&T Letter No.45-22/71-SPB.1/Pen. dated 4th September, 1982. The effect of calling for names only through employment exchange was that the applicant and many other qualified candidates were clearly denied opportunity of being considered for employment. The selection and appointment of 4th respondents having been made in violation of Article 14 and 16 of the Constitution is, therefore, illegal and void. The view we are taking finds support from the law laid down in Behram Khurshed Vs. State of Bombay, (1955) 1 SCA 618, Deep Chand Vs. State of U.P. & ors., AIR 1959 SC 648, A.K. Garg Vs. State of U.P. & another, 2002 (2) AWC 1489 and Sanjeev Kumar Vs. DIOS Ghaziabad & ors, 1996 UPLBEC (4) 2626.

7. We also find substance in the submission made by Sri D.N. Mishra that even otherwise the selection and appointment of the 4th respondent was contrary to the law which provides that selection should be made on the basis of the marks in matriculation or equivalent examination. Among the candidates sponsored by the employment exchange, Smt. Archana Rai had passed the High School, Examination in first division while the 4th respondent had passed the High School and intermediate examination in 3rd division. As provided in the rule, no weightage need be given for any qualification higher than matriculation. On that reckoning also, the selection and appointment of 4th respondent was contrary to law. In the circumstances, we need not go into the plea of the appointment having been made on extraneous consideration at the behest of the 5th respondent.

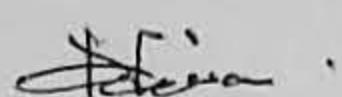
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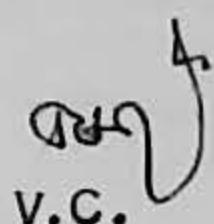
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8. In view of the above discussion, the O.A. succeeds and is allowed. The appointment of 4th respondent is quashed. The Superintendent of Post Offices Basti is directed to make fresh selection and appointment in accordance with law. It is, however, made clear that this judgment will not prejudice the claim, if any, of the applicant for alternative appointment under the Rule 13 (2) of EDDAs Conduct and Service Rule, 1964 or under the corresponding provisions contained in the new GDS (Employment & Conduct) Rules, 2001.

No order as to costs.



A.M.



V.C.

Asthana/-