

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No. 904 of 2001**

Monday this the 21<sup>st</sup> day of April, 2008

**Hon'ble Mr. G. George Paracken, Member (J)  
Hon'ble Mr. K.S. Menon, Member (A)**

Sanjay Kumar S/o Shri Vijay Narain, R/o Village and Post Dheneja,  
District Chandauli.

**Applicant**

**By Advocate Sri Avnish Tripathi**

**Versus**

1. Union of India through its Secretary, Ministry of Communication, Depart of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Senior Superintendent of Post Offices, East Division, Varanasi.
4. Raj Kumar S/o Shri Ram Deo, R/o Village and Post Dheneja, District Chandauli.

**Respondents**

**By Advocate Sri Saumitra Singh**

**O R D E R**

**By K.S. Menon, Member (A)**

The applicant has filed this O.A. challenging the impugned order dated 06.09.2000 passed by respondent No.3 by which appointment to the post of Extra Departmental Branch Post Master, Dheneja, Chandauli was given to Sri Raj Kumar-respondent No.4. The applicant's contention is that while he ranked senior to respondent No.4 in terms of percentage of marks obtained and that he fulfilled all required conditions, his case has been ignored. He has, therefore, prayed that the impugned order be quashed and set aside, and that respondents be directed to appoint him as Extra Departmental Branch Post Master, Dheneja, Chandauli.

2. The facts of the case are that the post of Extra Departmental Branch Post Master, Dheneja, Chandauli fell vacant on 20.01.1998. The respondents, therefore, issued a notification to the Employment



Exchange as well as other State Government authorities calling for application from suitable candidates. Last date stipulated was 14.05.1999. The applicant submitted his application alongwith all the requisite documents, as mentioned in the said notification. The respondents thereafter called upon the applicant to submit his latest caste certificate as well as a copy of Khasra and Khatauni, which the applicant submitted on 02.11.1999. Thereafter respondents carried out the verification of all the applications that were received within the stipulated time. According to the applicant, comparative merit of the contesting candidates was as under: -

"1)	<i>Smt. Usha Kumari</i>	308/600
2)	<i>Shri Sanjay Kumar (applicant)</i>	305/600
3)	<i>Shri Siya Ram</i>	302/600
4)	<i>Shri Ajay Kumar Gaur</i>	298/600
5)	<i>Shri Raj Kumar Ram</i> (respondent No.4)	291/600

It is stated in the O.A. that since the applicant fulfilled all the required qualification for appointment on the post of Extra Departmental Branch Post Master, as mentioned in the Notification plus the fact that he was senior to respondent No.4 in terms of merit/marks obtained in the High School, the applicant should have been appointed.

3. The applicant's grievance is that the respondents should have normally given appointment to the person who secured maximum marks in the examination, provided he had the prescribed minimum level of property and income thereby ensuring adequate means of livelihood apart from the E.D. Allowance, in accordance with D.G. Post Circular dated 10.05.1991. The respondents ignoring the above provisions of the circular issued the appointment letter to respondent No.4 despite the fact that respondent No. 4 had obtained less marks than the applicant. Being aggrieved, the applicant submitted complaint/appeal to respondent No. 2 and 3 and also submitted a representation/complaint to the Chief Post Master General, U.P. Circle, Lucknow and to Ministry of Communications, New Delhi, which is stated to be still pending (annexure A-8). Since he received no reply to his representation/appeal and since the action of respondents was arbitrary, malafide and also against the E.D.A. (Conduct and Service) Rules, 1964, the applicant has prayed that the impugned order appointing respondent No. 4 deserves to be quashed and set aside.



4. The respondents in their preliminary objection filed alongwith counter affidavit have taken a stand that the applicant is not a Central Government employee hence the present O.A. is not maintainable and prayed that the O.A. be dismissed on this ground alone. They also submitted that the notification issued on 15.04.1999 in which the post of E.D.B.P.M. Dhaneja, Chandausi was advertised was reserved for S.C. community. The Employment Exchange in response had initially sent three names vide their letter dated 13.05.1994 and subsequently two more names were sent. In all, the following five candidates were in the field of consideration: -

- 1) *Smt. Usha Kumari*
- 2) *Shri Sanjay Kumar (applicant)*
- 3) *Shri Siya Ram*
- 4) *Shri Raj Kumar Ram  
(respondent No.4)*
- 5) *Shri Ajay Kumar Gaur*

The respondents on receipt of this application from the Employment Exchange got the verification of these applications carried out by the Assistant S.P.O. Mughalsarai, Sub Division, extract of verification report submitted by the aforesaid Officer is given in paragraph No. 11 A to 11 E of the counter affidavit. The verification report shows that the candidates at serial No. 1, 2 and 3 had secured better percentage of marks in the High School examination but did not have suitable accommodation for the proper functioning of the Post Office while the candidate at serial No. 4 (respondent No.4) although he had less percentage of marks in the High School Examination, had suitable accommodation for proper functioning of the Post Office. He also fulfilled all other requisite qualifications just like other candidates. In view of this, the respondents appointed Raj Kumar Ram (respondent No.4) on the post of E.D.B.P.M. w.e.f. 06.09.2000. They, therefore, maintain that all actions taken by them have been strictly in accordance with rules and policy laid down by the department. Therefore, there is nothing arbitrary, illegal in respect of appointment given to respondent No.4. They submit that O.A. is without merit and is liable to be dismissed.

5. Heard, learned counsel for the parties and perused the record.

6. On the point of maintainability of the O.A. the contention of the respondents is not correct nor in accordance with Rule 14 (1) of Administrative Tribunals Act, 1985, which states as under: -



**14. *Jurisdiction, powers and authority of the Central Administrative Tribunal.*-**

*Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts [except the Supreme Court ( ) in relation to -*

*(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian."*

From the above, it is evident that recruitment from open market would logically imply that applicant is not a Government servant but he is aggrieved by the selection process or recruitment method adopted by the respondents department and hence this Tribunal would be the appropriate forum to challenge such an action by the respondents. We, therefore, do not find any merit in the contention of the respondents implying that this O.A. is not maintainable and accordingly reject the contention of the respondents.

7. The applicant in his rejoinder submitted that EDA (Conduct and Service) Rules, 1964, which was amended on 06.12.1993, clearly provides that any candidate who is selected, must before appointment to the post take up his residence in the village/delivery jurisdiction of the E.D. Post Office. However, respondents have assessed that the applicant has no suitable accommodation even before his selection. The applicant is of the view that appointment has to be made first and thereafter if the selected candidate fails to offer a suitable accommodation for running of a Post Office, then the next candidate having the requisite qualification should be considered for appointment. He says, therefore, that submission of the respondents that he has no suitable accommodation as per the verification conducted, before he was actually appointed is not in consonance with the aforesaid departmental circular. He has further alleged that the respondents had a malafide intention by asking the S.S.P.O. to carry out a re verification of the applications. We have perused the rules on the subject, which state that fulfillment of income/property should be confined only to candidates seeking appointment as E.D.B.P.M./E.D.S.P.M. and in accordance with the clarification issued vide D.G. Post letter dated 18.09.1995 should only be in the rarest of cases. If a candidate at the



time of making an application does not satisfy the income/property condition but acquires this qualification subsequent to the submission of the application and sends a written request enclosing documentary evidence in continuation of his application and the same is received within the stipulated date, the recruiting authorities should entertain the same. However, if such an intimation is received after the last date prescribed or the development regarding acquisition of this qualification itself takes place after the last date prescribed is over, the same should not be entertained. Similar procedure may also be followed in case it becomes necessary to fill in the post of EDBPM/EDSPM through open advertisement. In other words, in this case also, if an intimation accompanied by documentary proof is received subsequent to the submission of the application but within the stipulated date, the same should also be entertained and acted upon. Besides on the question of verification of fulfillment of condition prior to appointment, following is the provision contained in D.G., P&T, New Delhi letter dated 14.08.1985: -

**"(5) *Verification of conditions for appointment to be done prior to appointment.* -**

*One of the pre-conditions for appointment to the post of EDBPM/EDSPM relates to the verification of property and income. A number of cases have come to light where such verification was carried out only after the candidates were appointed. This practice of verification after appointment is not in order and needs to be discontinued immediately. The particulars regarding property and private income should be verified before and not after the appointment. This should be brought to the notice of all appointing authorities for strict compliance."*

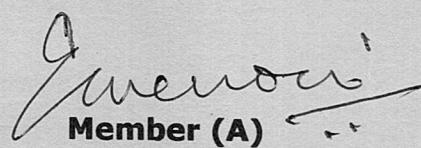
It therefore transpires that liability of the candidate to provide an accommodation suitable for running of a Post Office stipulated is an essential pre-requisite qualification. There is no dispute about the fact that if all things being equal, percentage of marks obtained in High School examination would be considered as a clinching factor for selection. In view of this, applicant's contention that he should have been selected first on the basis of High School marks and then be called upon to fulfill the condition regarding property for running the Post Office, is without merit and is accordingly rejected.

8. Regarding the point made about the malafide intention of the respondents, there is nothing on record to substantiate this contention of the applicant. The respondents are at liberty to get the verification done in whatever manner they think fit and are liberty to get the verification report from the Officer concerned. The said verification report, which is at annexure CA-5 appears to be a very detailed one on

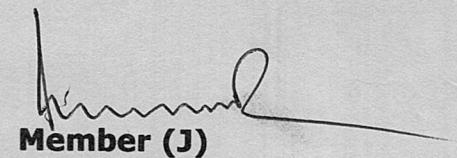


the basis of which the respondents rightly made their selection. The action of the respondents cannot therefore be faulted. This charge of the applicant is also not sustainable and, therefore, rejected.

9. In view of the above analysis it is seen that the O.A. is without any merit and we do not find any reason to interfere with the impugned order dated 06.09.2000 besides as mentioned above the respondent No.4 has been satisfactorily working on that post since that date. The O.A. being devoid of merit is accordingly dismissed. No cost.



**Member (A)**



**Member (J)**

/M.M/