

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 25th day of May 2006.

Original Application No. 1147 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

The Senior Superintendent of Post Offices,
AZAMGARH.

.....Applicant

By Adv: Sri S. Singh

V E R S U S

1. Sri Manzoor Alam Khan, S/o Sri M.A. Khan,
Extra Departmental Delivery Agent,
Postman at 8 P.O. Mundiar,
AZAMGAR.
2. Vth Additional District Judge,
AZAMGARH.
3. Vth Additional Munsif,
AZAMGARH.

.....Respondents

By Adv: Sri Ram Chandra

O R D E R

By K.B.S. Rajan, Member (J)

Approximately one score and six years ago, an examination was conducted for recruitment to the post of postman and village postman in which the respondent No. 1 was an aspirant to the post and as he was not declared successful in the examination on the ground that he could secure less than 50% in Paper C, whereas as per the circular dated 20-03-1979, one has to secure at least 50% in each of the

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four papers, he filed a civil suit No.167/1982 before the Munsif Court, Azamgarh, which had dismissed the suit holding as under:-

".....Following issues were framed by my predeces for in office. On the basis of pleadings of the parties.

1. Whether the marks obtained by the plff. in paper 'C' have been malafidely tempered with and reduced? If so, its effect?
2. Whether the present suit is barred by Section 80 C.P.C.?
3. Whether the plff. Is entitled to any relief?

FINDINGS

Issue No. 1

..... The copy of this paper will suffice to prove the said fact in order to prove his allegations the plff. has also summoned his answer book of paper 'C' which is paper No. 288, and it is clear from this answer sheet that plff. has obtained only 11 marks in paper 'C'. The marks obtained by him in this paper have neither been tampered with nor reduce and as such the allegation of the plff. to this effect is false and baseless.

.....The defdts in their written statement have said that there were 4 papers ABC and D having 50 marks each and under departmental rule candidate must secure 50% marks in each pear for declared qualifying. The plff has secured only 11 marks out of 50 in paper 'C' i.e. less than 50% and such he was not declared qualified.The present issue is therefore being decided in negative and against the plff.

Issue No. 2

Issue No. 3

In view of the findings given by me in disposal of issue No. 1 I hold that the plff is not notified to any relief claimed in the plaint."

2. The said respondent No. 1 moved the District Judge in Appeal No. 161/84 who had, after detailed discussion, quashed and set aside the decree of the Munsif and passed an order for quashing the result of the examination and to reschedule the result on the basis of seniority, holding that the applicant

cannot be declared unsuccessful as, in accordance with the provisions of Posts and Telegraphs Manual Vol. IV, the qualifying marks were only 35% and not 50%. Relevant portion of the judgment is as under:-

"चतुर्थ श्रेणी पोस्ट आफिस कर्मचारी की नियमावली अध्याय 1 प्रस्तुत किया, जो कागज सं० 43ग है। इसमें पृष्ठ 10 पर पैरा 3 में चतुर्थ श्रेणी कर्मचारियों की भर्ती के लिए ढग दिये गये है। और 4 पर्व की व्यवस्था है और 4 पर्वो 50.50 अंक के होंगे। कागज सं० 47ग पोस्ट मास्टर जनरल लखनऊ के पत्र की प्रतिलिपि है। कागज सं० 48 ग पत्र दि० 20.3.79 डाइरेक्टर जनरल पोस्ट आफ टेलीग्राफ के पत्र की प्रतिलिपि है जो कि अतिरिक्त विभाग अभिकर्ता को चतुर्थ श्रेणी कर्मचारियों के 8 भर्ती के सम्बन्ध में है। कागज सं० 52 सी निदेशक सामान्य पोस्ट एवं टेलीग्राफ के आदेश है जो कि अतिरिक्त विभाग अभिकर्ता को चतुर्थ श्रेणी कर्मचारियों के लिए जाने के सम्बन्ध में है। इसमें भी यही व्यवस्था है कि लिखित परीक्षा में हर पर्व की योग्यता नम्बर 50 प्रतिशत होना चाहिए।.....नियम के अनुसार योग्यता अंक 35 प्रतिशत अनिवार्य पर्व में था। यह पोस्ट एण्ड टेलीग्राफ मैनुअल कालम 4 चौथा एडीशन मे 1980-81 मे है"

3. The applicant had moved the High Court in second appeal and as by that time the Tribunal had been constituted, the High Court had held that the case should be dealt with by the CAT. Hence, this OA by the Post Master General.

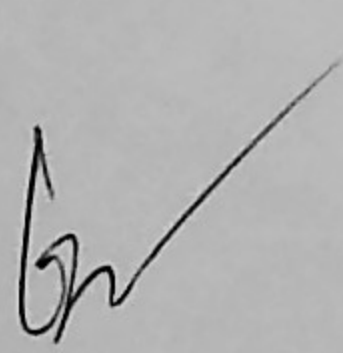
4. Briefly the facts are as under:

a. The Post Master General, UP Circle, Lucknow, issued a letter dated 25.09.1980 notifying the examination for promotion to the cadre of Postman/Village Postman. The applications were also invited from the Extra Departmental Agents and Class IV Staff of Azamgarh Division.

b. 16 vacancies of Postman Cadre and Village Postman Cadre were notified to be filled in the following manners:

- i. to be filled from Class IV staff
 - Scheduled Caste - 4
 - Other castes - 6
 - ii. to be filled from Extra Departmental Agents.
 - Scheduled Caste - 2
 - Other Caste - 4
- c. In pursuance of notification, as 82 applications including the application of the Respondent No. 1 and 12 from Class IV Staff were permitted to appear in the said examination.
- d. Respondent No. 1 was one who hails from Extra Departmental Agents. Examination was held on 22.02.1981 and the result of the said examination was declared vide memo dated 19.05.1981.
- e. 14 candidates including 8 candidates from Class IV were declared successful but the Respondent No. 1 who hails from Extra Departmental Agents, could not succeed and hence he was not declared successful. He was communicated with the marks obtained by him in the examination which is as under:

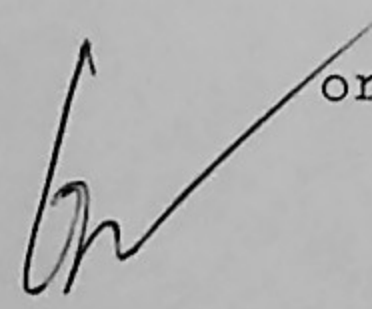
Paper-A	13+25
Paper-B	37
Paper-C	11
Paper-D	37
- f. The respondent No. 1 filed a Suit No. 167 of 1982 before the Munsif, Azamgarh challenging the aforesaid selection and prayed for setting aside the selection. In the alternative the Respondent No. 1 prayed for a direction/decreed to the



Respondents/Applicants to declare the Respondent No. 1 selected for promotion for the above post having secured more than 50% marks in the examination.

- g. The applicants contested the Suit. The policy provided that the qualifying marks in the examination in each of 4 papers is 50%. The Respondent No. 1 Secured only 11 marks out of 50 in Paper-C which is much less than 50% and therefore, he was not declared successful.
- h. After hearing both the parties, the Trial Court dismissed the Suit of the Respondent No. 1 and held that the marks obtained by him in Paper-C has neither been malafide tampered nor reduced.
- i. Aggrieved by the said Judgment and order the Respondent No. 1 filed Civil Appeal before the District Judge, Azamgarh, numbered as Civil Appeal No. 161 of 1984 and the District Judge proceeded to set aside the Judgment of the Trial Court decreed the suit of the Respondent No. 1, allowed the appeal and held that 35% marks was necessary in accordance with the Post of Telegraph Manual Volume IV for the promotion to the cadre of postman.
- j. Under the Departmental Rule the candidates must secure 50% marks in each paper only then he can be declared successful.

5. Respondent No. 1 contests the OA justifying the order of the District Judge.

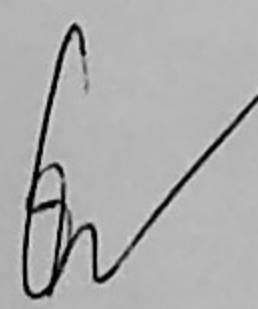


6. Rejoinder, supplementary counter etc., have been engaged, each one reiterating his own side.

Arguments were heard and the documents perused. The District Court has held that as per Post and Telegraph Vol IV (4th Edn, 1980), that the minimum marks to be secured is 35 and the applicant had secured the same. That there is a provision in the Postal Manual has not been disputed by the applicant. The findings of the District Judge, therefore, cannot be negatived. As regards tampering, the District Judge has rendered his finding, as extracted above, which goes in favour of the applicant.

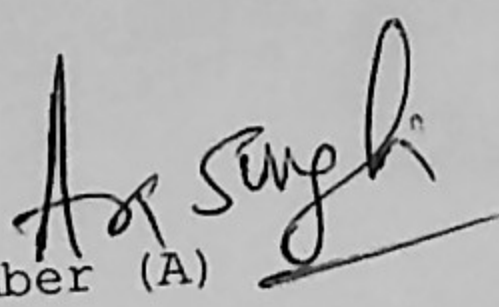
7. The lone question to be answered is about the seniority on the basis of which the recruitment ought to take place. This appears slightly puzzling, for when a competitive examination takes place, and the EDDA are allowed to participate, what is seen is the number of marks obtained and not the seniority. To that extent the district judge's judgment appears to be incorrect. However, the findings as far as the marks obtained by the respondent and the requirement of 35% is concerned, no fault could be found.

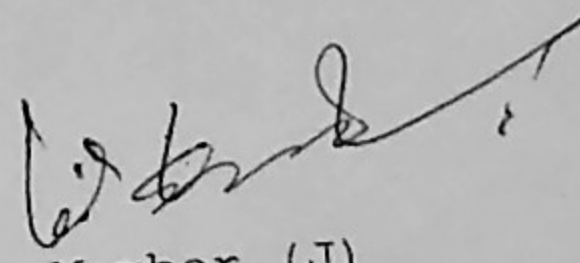
8. In view of the above, no illegality could be discerned from the District Judge's order in so far



as quashing of the result is concerned. However, in respect of preparation of list of selected candidates on the basis of seniority, the same cannot be possible. The only way is to reschedule the list of successful candidates on the basis of merits and if the applicant secures adequate marks compared to others, he should be accommodated to the post of Postman. However, as held in a number of cases, the applicant cannot be entitled to back-ages, on the principle of No work, No pay. The applicants shall implement the order of the District judge, with the above modification within a period of six months from the date of communication of this order.

9. With the above direction, the OA is disposed of. No cost.


Member (A)


Member (J)

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