

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 26^h DAY OF NOVEMBER, 2010)

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr D.C. Lakha, Member (A)**

Original Application No.190 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Radhey Shyam Mishra S/o Kamlesh Prasad Mishra, R/o Village & Post Deegh, District Sant Ravi Das Nagar.

..... *Applicant*

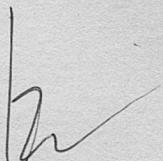
Present for Applicant : Shri Ashish Srivastava

Versus

1. *Union of India, through the Secretary Department of Post, Ministry of Post and Telecommunication, Dak Bhawan, New Delhi.*
2. *Post Master General, Allahabad Region, Allahabad.*
3. *The Superintendent of Post Offices, West Division, Varanasi.*
4. *Sub Divisional Inspector, (Postal) Gyanpur Sub Division, Varanasi 221304.*
5. *Shiv Shankar Yadav S/o Pancham Yadav, R/o Village & Post Deegh, district Sant Ravi Das Nagar.*

..... *Respondents*

Present for Respondentst : Shri S. Singh
Shri G.P. Yadav
Shri R.D. Tiwari



ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

As per Original application: Applicant is seeking appointment Extra Departmental Mail Runner, Post Office Katra Bazar Koirauna by giving him preference of being physically handicapped. The applicant, a physically challenged person learnt about the recruitment, submitted application on 17.01.2003 in the format application alongwith all other necessary documents (Annexure A-2). It is mandatory for the postal authorities to fill up certain number of posts from physically handicapped candidates in the appointment of Extra Departmental Agents as per the Rule vide Annexure A-3 Circular No. 21-8/92-ED & Trg. Dated 22.04.1994. The applicant has learnt that not even a single post in the division has been filled by the department in the reserved category of physically handicapped persons. The Postal Service Board has further decided that no specific posts will be reserved for this categories. The aforesaid decision of the Postal Services Board has not been given proper care. Vide letter dated Rectt./Sitapur-EDBD Godhana/01/09 dated at L.W. 20.09.2001 addressing to the all CPMG's in the U.P Circle and Sub Ordinates, the Chief Post Master General U.P Circle Lucknow expressed his resentment for not giving proper implementation of the Director General Post Communication dt. 22.4.1994 (Annexure A-4). Unfortunately the aforesaid letter was also not taken into the cognizance and left uncared by the recruitment authorities which has resulted that no appointment could be made under the preferential category of handicapped persons. The applicant submitted a detailed representation

on 07.04.2003 before the respondent NO. 4 (Annexure A-3). The applicant personally appeared before the respondent NO. 3 and made him aware with submission of the applicant in Sept. 2009. Respondent No. 3 after personally affording hearing to the applicant assured him and directed that the applicant shall be intimated after making necessary inquiry in the matter. Vide letter dated 21.10.2003, the respondent No. 3 directed the applicant to appear in his office at Varanasi on 04.11.2003 (Annexure A-6). The applicant appeared before respondent No. 3 on the date when the applicant was asked to show his disability certificates and physical verification of the applicant was also done by the respondent No. 3 and other officers. On 04.11.2003 again a letter was issued to the applicant by the respondent No. 3, that further inquiry shall be done on the next date fixed i.e. 25.11.2003 and the applicant was directed to appear personally (Annexure A-7). This was, however, later-on cancelled. The applicant was again called on 01.01.2004. The applicant appeared where again the applicant was verified with regard to his disability. When on 03.02.2004 the applicant appeared before respondent No. 3 he was intimated that nothing can be done in this matter as respondent No. 4 has already completed the selection and the appointment letters have been issued in favour of the respondent No. 5. As preference will be given to a preferential category i.e. the candidate belonging to preferential category even, if placed below the name of other candidates in the merit list, would be entitled to be appointed in preference to the other candidates. This O.A. is filed. The applicant is fully entitled for the benefit of preferential category being a physically handicapped candidates.

[Signature]

2. In the counter affidavit filed by respondent No. 1 to 4, respondents have stated that an advertisement for appointment on the post of G.D.S. M.D was issued vide S.D.I (P) Gyanpur letter No A/Katra Bazar/02 dated 27.12.2002 identifying the post reserved for OBC community. Shri Shiv Shanker Yadav, OBC candidate secured 56.2% highest marks in High School amongst all the 5 candidates. Shri Shiv Shankar, who was selected in the aforesaid selection, was finally appointed vide S.D.I Gyanpur Memo No. A/Katra Bazar/03 dated 1.7.2003 and since then he is working on the post. Shri Pancham Lal Yadav, who was retired on 26.12.2002 working as G.D.S MD Katra Bazar, was a OBC candidate, as such the vacant post was filled up only by OBC candidate in order to maintain the reservation quota. There are 3 physically handicapped officials already working in Gyanpur Division of this Division, one in general category and two in OBC category. Respondent No. 5 was fulfilling all the requisite conditions as per notification, therefore, he was selected for appointment on the said post.

3. In so far as private respondent is concerned, he has adopted the counter filed by the official respondents.

4. In the rejoinder affidavit, applicant submitted that it is not understandable as to how respondent No. 5 could be offered provisional appointment without proper notification and selection as Sri Pancham Lal Yadav the regular incumbent was retiring on 26.12.2002 was sent on leave and his son (respondent No. 5) was engaged in his place.

[Signature]

5. After filing of the rejoinder by the applicant, respondents had furnished the details and the same are given in the affidavit. Some of them reads as under:-

"Point NO.2.

Whether the post against which respondent No. 5 has been appointed was notified to be filled only by OBC.

CLARIFICATION:

The Post in question GDS MD, Katra Bazar, Varanasi was notified, which was to be filled up by OBC candidate.

Point No. b

If so, copy of advertisement be placed on record.

CLARIFICATION:

In reply to the said point, a copy of notification dated 27.12.2002 is annexed herewith as Annexure 1 to this affidavit.

Point No. c

If the post has been earmarked for OBC, the level at which such a decision has been taken. Again, whether such a decision is not conflicting with the provision of order dated 05.10.1994 (Annexure 4).

CLARIFICATION

In reply to the said point, copy of memo No. Rectt/Sitapur EDBO Goudhna/01/09 dated 20.09.2001 issued by Chief Post Master General U.P Circle, Lucknow is available, which has already been annexed as Annexure 4 to the Original Application.

Point No. d.

Attempts made to fill up the post by Physically handicapped persons for completion of the prescribed percentage as contained in Annexure 4 in the order.

Clarification.

In reply to the said point, it is submitted that there is no reservation for physically handicapped in GDS Cadre.

6. Supplementary affidavit against counter was also filed by the applicant reiterating same contention as in the counter.



7. This is in pursuance of order dated 23.11.2006 of this Tribunal, compliance report has already been filed.

8. In their supplementary counter affidavit dated 28.3.2009, some clarifications have been given which are as under:-

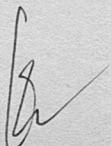
- “(a) After superannuation of Pancham Lal Yadav, Shri Shiv Shankar Yadav was provisionally appointed vide S.D.I (P) Gyanpur memo No.A/Katra bazar/02 dated 18.12.2002 to manage the work.
- (b) After the notification, 10 applications for the said post were received, out of which, 5 applications were from the OBC candidates, Shri Shiv Shankar yadav, OBC candidate secured 56.2% highest marks in High School amongst all the 5 candidates. The advertised post was reserved for only OBC community since the applicant belongs to General community, hence his application was not considered by the appointing authority. Shri Shiv Shankar, who was selected in the aforesaid selection, was finally appointed vide S.D.I Gyanpur memo No.A/Katra Bazar/03 dated 01.07.2003 and since then he is working on the post.
- (c) It is relevant to mention here that Shri Pancham Lal yadav, who was retired on 26.12.2002 working as G.D.S. M.D. Katra Bazar, was a O.B.C. candidate, as such the vacant post was filled up only by OBC candidate in order to maintain the reservation quota.
- (d) The respondent NO. 5 was provisionally appointed as G.D.S. M.D. Katra Bazar vide Sub Divisional Inspector Gyanpur letter dated 18.12.2002 and after the selection process, he was finally appointed on the said post vide memo No. A/Katra Bazar/03 dated 01.07.2003.
- (e) Since the post was reserved for O.B.C. community and the applicant belongs to other community, hence he is not eligible for the said post.

9. Counsel for the applicant argued that the physically handicapped quota has not been filled up at all and in a Welfare

State disregard or ignoring the Welfare of the physically challenged people which should not be tolerated specially when Welfare legislations are being passed by the Government. The clarifications given by the respondents vide notification dated 15.2.2007 in response to the direction given vide order dated 23.11.2006 would bring out the entire picture. Counsel for the applicant also submitted that on 2.9.1997 fresh circular was issued by the Director General. Counsel invited our reference to 1997 Vol-1, ATJ page 125 (page 15).

10. Respondents have contended that the applicant has not challenged the notification. The post was to be filled up from O.B.C. and not physically handicapped. Applicants belongs to O.B.C.

11. Arguments have been heard and documents perused. Though applicant claims that the preference should be given to physically handicapped person, unless the department identifies a particular post to be filled by physically handicapped, this Tribunal cannot insist upon for appointment of physically handicapped person against a particular post. The post, as a matter of fact, is what is called Mail Runner and as such it is also to be considered whether this post could be earmarked for physically handicapped. As long as the post is not earmarked for physically handicapped, the applicant cannot stake any claim against this post under physically handicapped quota. However, if the applicant wishes to apply as General candidate, he could have done it, but here again the post



was meant for OBC. When a person is not eligible to a particular post, he cannot challenge the selection as a public interest litigant.

In this regard the following decisions are appropriate to be referred to:-

(i) *Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra, (1998) 7 SCC 273, at page 282 :*

18. The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of "service matters" found in Section 3(q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word "his" cannot be ignored. Section 3(b) defines the word "application" as an application made under Section 19. The latter section refers to "person aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3(q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgment of the Orissa Administrative Tribunal in *Amitarani Khuntia v. State of Orissa*⁶. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgment is relevant:

"... A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.

Tribunals are constituted under Article 323-A of the Constitution of India. The above article empowers Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or



controlled by the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well defined in the Act. It does not enjoy any plenary power."

We agree with the above reasoning.

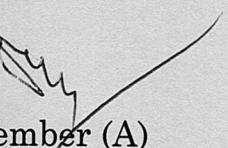
(ii) *Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590, at page 596 :*

Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*⁸ this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision.

The applicant, who is not eligible to apply against the post, cannot question the appointment of private respondent. It is the prerogative of the respondents to prescribe any condition.

12. In view of the above, O.A. lacks merit and, therefore rejected.

No costs.



Member (A)



Member (J)

Manish/- *