

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 41 of 2004

Allahabad this the 17th day of January 2006

Hon'ble Mr.A.K. Bhatnagar, Member (J)
Hon'ble Mr.D.R. Tiwari, Member (A)

Makhanju Bind Son of Late Matru Bind, R/o Village Bhela, P.O. Samodhpur, District Jaunpur.

Applicant

By Advocate Shri M.K. Sharma

Versus

1. Union of India through its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad.
3. Director Postal Services, Office of P.M.G. Allahabad Region, Allahabad, U.P.
4. Assistant Superintendent of Post Offices, Shahganj, Sub Division, Jaunpur.
5. Superintendent of Post Offices, Jaunpur.
6. Sri Vishnu Chandra Yadav S/o Sri Raja Ram Yadav, resident of Village and Post Khutahan, Jaunpur, presently posted on the post of EDDA (Village Post Man) in Unch Gaon Post Office, Sub Post Office Patti Narendrapur, Jaunpur.

Respondents

By Advocate Shri R.K. Srivastava

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O R D E R(Oral)

By Hon'ble Mr. A.K. Bhatnagar, J.M.

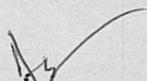
By this O.A., the applicant has prayed for the following reliefs: -

"8(i) to quash the order dated 15.12.2003 passed by the respondent no.3, Director, Postal Services Office of P.M.G., Allahabad.

(ii) to issue an order or direction calling for the appointment order of the respondent no.6 issued by the respondent no.4, Sahayak Adhikshak, Dakghar, Shahganj, Jaunpur, through Office Memorandum No.A/Unch Gaon dated 7.1.2003 or if any to quash the said order dated 7.1.2003 of the respondent no.4 (since the copy of the aforesaid order is not available to the applicant),

(iii) to issue an order or direction commanding the respondents to quash the appointment of respondent no.6 made on the EDDA post in Unch Gaon Post Office, Jaunpur and to appoint the applicant on the post of E D D A in Unch Gaon Post Office, Shahganj, Jaunpur with immediate effect.

2. According to the applicant, he applied for appointment on the post of E.D.D.A. in pursuance of notification-dated 04.09.2002. Although he was having higher marks than respondent no.6 in the High School examination but the respondents appointed respondent no.6. Aggrieved by the action of the respondents, applicant filed O.A. No.602 of 2003 challenging the selection proceedings of respondent no6, which was disposed of with a direction to the respondents to decide the representation of the applicant by a reasoned and speaking order within a period of 2 weeks. The applicant filed his representation, which was decided by Order dated 15.12.2003 by Director, Postal Services in compliance of the Order of this Tribunal, rejecting the claim of the applicant. Hence, he filed the present O.A.



3. We have heard the arguments of learned counsel for the applicant as well as the respondents and perused the records available before us.

4. It is an admitted fact that the applicant had secured higher marks in High School Examination from the U.P. Board by securing 311 out of 500 i.e. 62.2% marks whereas the respondent no.6 Vishnu Chandra Yadav secured 300 out of 600 marks i.e. 50% marks in the High School Examination. Although, applicant was first in order of merit but he was denied appointment merely on the ground that he was not eligible due to the reason of income/property qualification. The respondents have admitted this fact in paragraph no.21 of the counter affidavit. Learned counsel for the applicant submitted that the appointment of respondent no.6 on consideration of his income/property is contrary to the Rules, which provide appointment on the basis of marks obtained in the Matriculation examination and the applicant ought to have been appointed as per law laid down by the Full Bench of the Tribunal. Learned counsel further submitted that the case of the applicant is fully covered by the Judgment dated 24.11.2003 of this Tribunal in O.A. No.1041 of 1996 and the order dated 10.08.2005 in O.A. No.368/98, which have been decided in the light of Full Bench decision of this Tribunal in H. Lakshmana and others Vs. The S.P.O. and others 2003 (1) A.T.J. 277, in which it has been held that "it may not be permissible to debar a citizen from being considered for appointment to an office under the State solely on the basis of his income or property-holding. Since the employment under the State is really conceived to serve the people (that it may also be a source of livelihood is secondary) no such bar can be created. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Article 16." Moreover, the applicant has also very clearly stated in paragraph no.26 of the rejoinder affidavit that after the death of his father he inherited all the landed property of

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his father by the order dated 25.12.2003 passed by the Revenue Officer, which was also submitted to the respondents' department. This fact has also not been controverted by the respondents. It has also been noticed that notice to respondent no.6 was issued on 06.02.2004 and no undelivered notice has been returned back and no counter affidavit on his behalf has been filed.

5. Under the facts and circumstances, we are of the considered view that the present case is squarely covered by the Judgments cited above. Accordingly, the O.A. is allowed. The impugned order dated 15.12.2003 is hereby quashed and respondents are directed to offer appointment to the applicant within a period of 1 month from the date of receipt of a certified copy of this order after canceling the appointment of respondent no.6. No order as to cost.

A. Deo
Member (A)

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Member (J)

/M.M./