

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 928 OF 2004

ALLAHABAD, THIS THE 24<sup>th</sup> DAY OF AUGUST, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)  
HON'BLE MR. S. C. CHAUBE, MEMBER(A)

Umesh Chandra son of Shri Raj Kishor Tiwari,  
Resident of Village Karmaha,  
District-Maharajganj.

.....Applicant

(By Advocate : Shri H.P. Pandey)

V E R S U S

1. Union of India through Post Master General Gorakhpur.
2. Senior Superintendent of Post Offices, Gorakhpur Division, Gorakhpur.
3. Madhusudan Mishra son of Ratanakar Mishra Vill and Post Karmula Distt. Mahrajganj.

.....Respondents

(By Advocate : Shri H.C. Dubey)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A. applicant has sought the following reliefs:-

- (a) issue writ of certiorary quashing the impugned order dated 03.09.2003 passed Post Master Generl, Gorakhpur the respondent No.1.
- (b) Issue direction to the respondents to consider the applicant ujder the reserved quota of the physically handicapped persons under provisions. The Disabilities Act, 1995.

(c) Issue any other order or direction as this Hon'ble Court may deem fit and proper under the present circumstances of the case."

2. Applicant has challenged the order dated 03.09.2003 whereby his request for appointment on the post of Gramin Dak Sevak Branch Post Master Karmaha(Mahrajganj) has been rejected on the ground that he was at serial No.4 in the merit list as certificate filed by the applicant with regard to his income is not of the petitioner but is in the name of his father and the post was not identified for physically handicapped person.

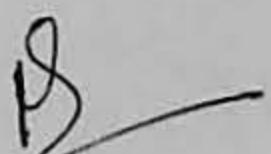
3. It is submitted by the applicant that under the quota of disabled person under the persons with the disabilities(Equal Opportunity of protection of right and full participation) Act, 1985. Applicant should have been given preference since he was a physically disabled person and should have been appointed on the above said post because under the said Act 3% of the vacancies are required to be reserved for disabled persons. Since respondents have flouted the provisions of aforesaid Act, therefore, the action of respondents are bad in law and he is entitled to get the appointment. It is submitted by the applicant that respondents ought to have explained as to why the post was not identified. On the contrary, it was stated in the notification that the post will not be filled by handicapped persons.

4. We have heard counsel for the applicant and perused the pleadings as well.

5. The brief facts are as follows ; a post of Gramin Dak Sevak Post Master Karmaha became vacant in the year 1997 accordingly, a notification dated 12.02.1997 was issued

whereby applications were called and the Employment Exchange was requested to send the names of 3 to 5 persons who fulfilled the conditions. Respondents received 3 names from the Employment Exchange and two persons applied directly. Accordingly the selection process was started. When a case OA 440/97 was filed by the applicant in which an interim order was passed on 20. 04.1997 directing the respondents not to declare the result of selection till the disposal of O.A. Subsequently, another order was passed on 10.11.1997 whereby respondents were directed to consider the application of applicant as well for selection but the results may not be declared till the disposal of the O.A. As per this direction, applicant was also included in the selection process, a chart was prepared on the basis of marks obtained by the candidates in high-school wherein applicant figured at Sl. No.4. Ultimately, O.A. No. 440/97 was rejected vide order dated 23.09.2002 by observing that since respondents have also considered the applicant, this O.A. has become infructuous. Respondents were accordingly allowed to declare the results prepared on the basis of selection (Pg.20 at 21). As per the merit list since Shri Madhusudan Mishra was found to be most suitable, he was given the appointment letter dated 31.10.2002. Being aggrieved applicant once again filed O.A. No.327/2003, which was ultimately dismissed as withdrawn vide order dated 08.04.2003 at his request as he wished to approach the departmental authorities (Pg.24). Thereafter applicant gave his representation, which has been rejected by the impugned order as stated above.

6. In the instant case, applicant has sought a direction to the respondents to consider him under the reserved quota of physically handicapped persons whereas in the notification



which was issued for filling up the post, this post was not reserved for physically handicapped persons. If applicant was aggrieved, he ought to have challenged the said notification seeking the relief that respondents should be directed to declare the post as reserved for physically handicapped persons. <sup>As in 18</sup> None of the orders, produced by the applicant, he pressed for this relief nor such a relief was given to him by the court. On the contrary he got his first O.A. dismissed by declaring it as infructuous. Since his candidature was also being considered along with the other candidates. It is also relevant to note that in the meantime the said post has already been filled by giving appointment letter to one Shri Madhusudan Mishra as back as on 31.10.2002. Applicant has not even challenged the appointment of said Shri Madhusudan Mishra and once he has been appointed on the said post after the interim orders were vacated by this Tribunal giving liberty to the respondents to give appointment on the basis of selection made by them, naturally his appointment cannot be upset now without the same having been challenged by the applicant.

7. In view of the above discussion, the relief as prayed by the applicant cannot be given to him since this O.A. is devoid of merit. The same is dismissed at the admission stage itself with no order as to costs.

  
Member (A)

  
Member (J)

shukla/-