

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 19th DAY OF JULY 2010)

Hon'ble Mr. G. Shanthappa, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Original Application No. 1025 of 2004

(U/S 19, Administrative Tribunal Act, 1985)

Smt. Geeta Singh wife of Vinod Kumar Singh,
Resident of Village and Post Office Nasirabad
Kalan, District-Mau.

..... *Applicant*

By Advocate:- Shri Harindra Prasad

Versus

1. Union of India through Secretary
Ministry of Communication, Department of Posts,
Sansad Marg, New Delhi.
2. Senior Superintendent of Post Offices,
Azamgarh Division, Azamgarh.
3. Assistant Superintendent of Post Offices,
Mau Division, Mau.

..... *Contemnor/Oppositor Party*

By Advocate:- Sri R.K. Srivastava

ORDER

Hon'ble Mr. G. Shanthappa, Member (J)

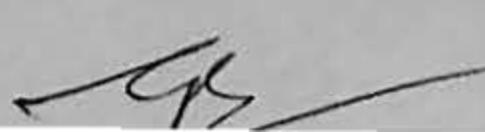
We have heard Shri Harindra Prasad, learned
counsel for the applicant and Shri R. K. Srivastava,
learned counsel for the respondents.



2. The above application is filed under section 19 of Administrative Tribunals Act 1985 seeking the relief of quashing the advertisement dated 13.08.2004 (Annexure A-8) and further relief of direction to the respondents to make any selection in pursuance to the advertisement dated 13.08.2004 for OBC category candidates on the single post of Branch Post Master, Narisabad Kalan District Mau and fill up the same by the General Category candidate.

3. It is an admitted fact from either side that the applicant was appointed as Branch Post Master in the office of Narisabad Kalan District Mau and is working since for the last five years. The condition of appointment was only substitute. The applicant was appointed as substitute of absentee on the risk, seniority and responsibility of the absentee and he will be entitled for allowances drawn against the post for specific period. As on today the applicant is working as Branch Post Master in the said post office.

4. The respondents have issued a notification dated 13.08.2004 (Annexure A-8) in which they have issued the notification to fill up the post under OBC on temporary regular basis. The applicant is challenging the first



notification on the ground that since the applicant is working as Branch Post Master in general category the said post should not be filled up under OBC category. The respondents in their reply statement at para 13 has stated that the post of Branch Post Master was advertised for OBC category candidates ~~as~~ according to ~~as~~ roster. The percentage of OBC candidate has not been filled in. The post of Branch Post Master Narisabad Kalan District Mau is permanent but for the sake of appointment the advertisement is made on the basis that the appointment will be purely temporary on regular basis. In case the vacancy is for OBC therefore the applicant being General candidate cannot apply for the said post under departmental rules.

5. We have carefully examined the notification at Annexure A-8 which is extracted hereunder:-

“ अधोहस्ताक्षरी द्वारा ग्रामीण डाक सेवक शाखा डाकपाल नसीराबाद कला लेखा रतनपूरा मज के पद पर अस्थाई चयन हेतु आवेदन पत्र आमत्रित किये जाते हैं इच्छुक अभ्यर्थी संलग्न आवेदन पत्र के प्रारूप में समस्त वांछित एवं उल्लिखित कागजातों/प्रमाणपत्रों सहित आवेदन कर सकते हैं।

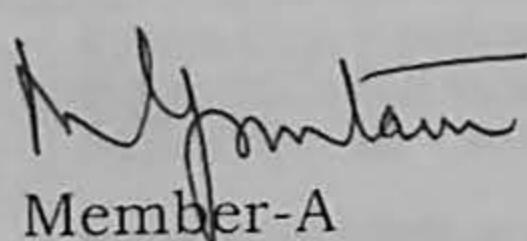
यह पद ओ०बी०सी० (पिछडा वर्ग) वर्ग के अभ्यर्थियों के लिए आरक्षित है। आवेदन पत्र बन्द लिफाफे में पंजीकृत डाक द्वारा अधोहस्ताक्षरी के कार्यालय में इस प्रकार भेजे कि वह दिनांक 12/9/2004 तक अवश्य मिल जाये निर्धारित तिथि 12/9/2004 के बाद प्राप्त आवेदन पत्रों पर विचार नहीं किया जायेगा। आवेदन पत्र के साथ आवेदक को निम्नलिखित अर्हताओं को पूरा करना चाहिए तथा उसके प्रमाण में वांछित प्रमाण पत्र संलग्न करे।

6. We have carefully examined the reply statement filed by the respondents. It is evident from the reply statement, "the post of Branch Post Master Nasirabad Kalan is permanent but for the sake of appointment the advertisement is made on the basis that the appointment will be purely temporary on regular basis". This procedure is not permissible as it was held by the Hon'ble Supreme Court that the temporary employee cannot be replaced by another temporary employee. On this ground the notification to fill up the post of Branch Post Master, Nasirabad Kalan District Mau temporary on regular basis is not permissible. Accordingly, the notification suffers from infirmity. If the respondents wanted to fill up the post of Branch Post Master, Nasirabad Kalan District Mau either under OBC or General or any other category on regular basis, they can do so. If the notification is to be published to fill up the post on regular basis then only the stand taken by the respondents in the reply statement for the post of Branch Post Master, Nasirabad Kalan District Mau is permanent but for the sake of appointment the advertisement is made on the basis that the appointment is purely temporary on regular basis. It is for the respondents to take a stand whether they want to fill up the said post on regular basis. In this present OA the notification to fill

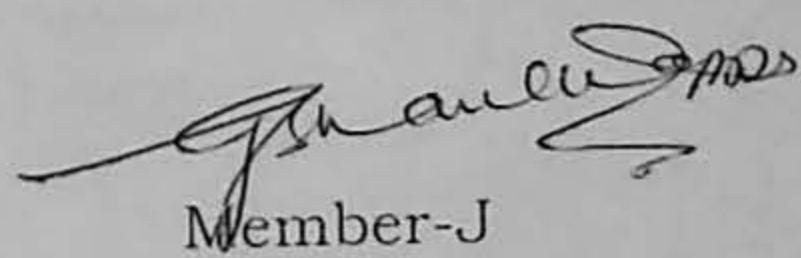
up the post of Branch Post Master, Nasirabad Kalan District Mau on temporary basis is not sustainable in the eye of law.

7. Accordingly the notification/advertisement is quashed. The respondents are at liberty to ~~make~~ ^{issue} fresh appointment on regular basis, by publishing a separate notification, if they want. Till the regular selection is made, the service of the applicant has to be continued.

8. With the above observations, this OA is disposed of.
No Costs.



Member-A



Member-J

/ns/