

(Reserved on 30.10.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 21 day of December, 2012.

Original Application Number. 119 OF 2005.

**HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)**

Kuldeep Kumar, S/o Shri Kailash Narain, R/o Mohalla Chaube,
Near Halwai Chowk, District - Budaun (U.P).

.....Applicant.

VER S U S

1. Union of India through the Secretary Ministry of Communication, Govt. of India, Department of Posts, 5, Dak Bhawan, New Delhi - 110011.
2. The Chief Post Master General, Department of Posts, U.P. Circle, Lucknow, U.P.
3. The Post Master General, Post Master General, Department of Post, Bareilly Zone, Civil Lines, Bareilly Cantt. (U.P).
4. The Superintendent of Post Offices, Badaun Division, Budaun (U.P).

.....Respondents

Advocate for the applicant:

Sri R.C. Pathak

Advocate for the Respondents:

Sri R.K. Srivastava

ORDER


Delivered by Hon'ble Mr. Sanjeev Kasushik, J.M.

By way of the instant original application filed under section 19 of Administrative Tribunals Act, 1985 the applicant has prayed for quashing order at Annexure A-1. Prayer has also been made for a direction to the respondents to offer

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appointment to the applicant on the post in question and to quash the appointment of respondent No.6.

2. Factual matrix of the case are that in response to the letter dated 03.10.1994 for appointment to the post of Extra Departmental Agent Packer (for short E.D.A Packer), at Halwai Chowk Sub Post Office, Budaun , the applicant applied in the prescribed format alongwith other necessary documents as well as testimonials. Although the applicant having highest marks was placed at Sl. No. 1 but he was overlooked and the respondents No. 5 appointed respondent No. 6. The applicant sent a legal notice under section 80 CPC before respondent No. 3 on 27.01.1995 (Annexure A-6). Thereafter the respondents sent a letter at Annexure A-1 to the application intimating him that the appointment of respondent No. 6 has been made in accordance with rule. The applicant also moved representation on 18.07.1995 substituted by reminder dated 16.08.1995 and 26.09.1995 but all in vain. Aggrieved by the inaction of the respondents the applicant filed Civil Suit No. 48/1996 before Civil Judge, Junior Division, Budaun which was dismissed on 30.11.2004 on the ground of jurisdiction (Annexure A-15). Hence the instant Original Application has been filed on the ground that the name of the applicant was sent by the Employment Exchange and he applied in the prescribed format



alongwith other necessary documents but the respondents ignored the merit of the applicant and appointed the respondent No. 6 on pick and choose basis . It is submitted that the appointment of Shri Anand Swaroop (respondent No. 6) is totally illegal, arbitrary and against the rules.

3. On notice, the respondents filed their Counter Affidavit and resisted the claim of the applicant. It is submitted that to fill up the post of E.D.A (Packer), Halwai Chok, Budaun, the Sub Divisional Inspector sent a requisition to the Employment Exchange on 30.08.1994 who sponsored the name of five candidates including the applicant. Thereafter the S.D.I (P), West Sub Division Budaun issued registered letter on 03.10.1994 to all the 5 candidates calling for applications on prescribed format alongwith requisite certificates latest by 17.10.1994 and only 4 forms including the applicant were received upto the cut off date. The education qualification of all the candidates were Junior High School /08 class pass. It is averred that as per the mark sheet of Junior High School Examination 1992, the applicant obtained highest marks amongst all the candidate whereas Shri Anand Swaroop with lesser marks was at Sl. No. 2. The genuineness of mark sheet of the applicant as well as respondent No. 6 were got verified from the Zila Basic Shiksha Adhikari, Budaun who vide his report



dated 12.01.1995 found the mark sheet of the applicant suspicious and forged whereas, the certified the mark sheet of Shri Anand Swaroop (Annexure CA-6). Thus Shri Anand Swaroop, who was found most suitable and meritorious, had been appointed on the post vide order dated 14.01.1995. It is further submitted that since the mark sheet of Junior High School submitted by the applicant was found suspicious and forged by the competent authority hence he is not entitled to claim for appointment on the post in question and sought dismissal of the O.A.

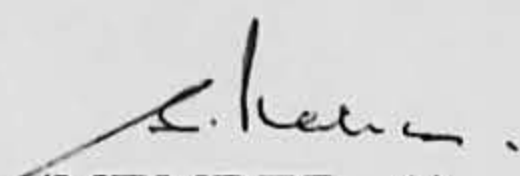
4. Learned counsel for the applicant denying the pleas taken by the respondents in their Counter Affidavit, filed Rejoinder Affidavit.

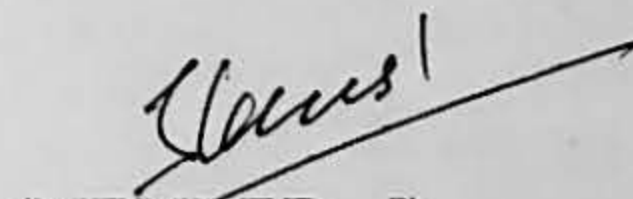
5. We have heard learned counsel for both sides at length and perused the pleading as well.

6. Undisputedly the name of the applicant alongwith other candidates was sponsored by the Employment Exchange. He was also served with the requisite form and in response to that the applicant submitted the same alongwith requisite documents including the mark sheet of Junior High School within time. Thereafter the respondents considered the applicant alongwith other candidates and for verification of

genuineness of mark sheet submitted by the applicant as well as the respondent No. 6, it was sent to the Zila Basic Shiksha Adhikari, Budaun, who submitted his report on 12.01.1995 to the respondents. A perusal of report dated 12.01.1995 shows that the mark sheet submitted by the applicant was found suspicious and forged by the competent authority whereas the mark sheet of the respondent No. 6 was declared genuine. Thus we find no force in the argument of the learned counsel for the applicant that the action of the respondents is arbitrary and malafide, as alleged in para 4(xviii). Though the applicant has alleged malafide against respondents but merely alleging malafide without proving the same cannot be looked into. Therefore, unless the allegation of malafie is proved the stand taken by the applicant of malafide is also not sustainable.

7. In view of the above the O.A is dismissed being devoid of merits. No costs.


(MEMBER- A)


(MEMBER- J)

/Anand/