

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 163 of 2005

Allahabad, this the 14th day of December, 2010

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Kapil Deo Mishra, son of Vijay Bahadur Mishra, Resident of Village and Post Bhadkhin, Police Station-Sureri, District Jaunpur.

Applicant

By Advocate: Mr. A.K. Upadhyay

Vs.

1. Union of India through Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Superintendent of Post Office, Jaunpur.
3. Post Master General, Allahabad.
4. Smt. Sangeeta Singh, wife of Shri Akshay Lal, Resident of Village-Bhadkhin (Rampur) District-Jaunpur.

Respondents

By Advocate: Mr. Saurabh Srivastava

ORDER

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Under challenge in this O.A. is the order dated 25.04.2003 passed by respondent No. 2. Further prayer has also been made that after quashing the order dated 25.04.2003, applicant may be appointed on the post of

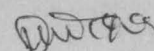
Order

Extra Departmental Sub Post Master, Bhadkhin, Tahsil Mariyahun, District Jaunpur. Further prayer has also been made to quash the order dated 02.06.2004 passed by respondent No. 3.

2. The facts of the case may be summarized as follows:

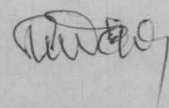
-

A vacancy occurred on the post of Extra Departmental Sub Post Master, Bhadkhin, Tahsil Mariyahun, District Jaunpur on account of retirement of one Sri Shyam Narain Mishra in the month of November 2002. The advertisement was issued, inviting applications from the eligible candidates up to 14.12.2002. The requisite qualification for the post of Extra Departmental Sub Post Master was Matriculation, having adequate means of livelihood, space to serve as the agency premises for postal operation as a small Post Office with provision of installation of P.C.O., and the applicant may be permanent resident of the Village, where the Post Office is located. The post was of general category. In response to the advertisement of respondent No. 2, the applicant also submitted an application. On scrutiny, the application of the applicant along with other persons was found in order. The applicant had secured about 70% marks in Matriculation and he was highest on the merit list.



Income certificate was also filed issued by two Gazetted Officer along with extract of Khatauni, valuation of land etc. The applicant was having the income of ₹ 1000/- per month. It is stated that the applicant ought to have been considered for appointment as he was possessing all the requisite qualification, required for the post of Extra Departmental Sub Post Master (for short EDSPM) but the result was not declared hence applicant to file an O.A. No. 348 of 2003. The Tribunal vide order dated 10.04.2003 directed the respondents to decide the representation of the applicant within a period of two months but, the representation of the applicant was not decided. The respondent No. 2 issued an anti dated appointment letter 24.04.2003 appointing the respondent No. 4 on the post of EDSPM. The appointment was made wrongly ignoring the merit of the applicant. The applicant's candidature was rejected on the ground of income certificate as it was found unsatisfactory. Illegality was committed by the respondents hence, the O.A.

3. The respondents contested the O.A., and filed the Counter Affidavit. The respondents denied from the allegations made in the O.A. Further prayer has also been made that in response to the advertisement in order to fill up the post of EDSPM, '8' applicants submitted their



applications but on scrutiny only '3' applications of the candidates namely Kapil Deo Mishra-applicant, Chandra Prakash Singh and Smt. Sangeeta Singh were found in order on the basis of marks obtained in the High School examination. The O.A. No. 348/2003 was decided with directions to the respondents to decide the representation of the applicant. Smt. Sangeeta Singh was also the candidate, who fulfilled all the requisite conditions for being appointed on the post, in question. A direction was given in order to give appointment to Smt. Sangeeta Singh on the post of GDS BPM, Bhadkhin (Rampur), Jaunpur vide order dated 02.06.2004. It is stated that the applicant alleged his income as ₹ 1000/- per month but this income cannot be said to be derived from landed property as he has no piece of land in Jaunpur district. Considering all the facts and circumstances, the candidature of respondent No. 4 was found more suitable, and she was appointed. It is stated that appointment of respondent No. 4 had been made under the Rules. It is correct that a candidate who is having maximum percentage of marks in High School or equivalent examination is to be appointed if he fulfills other necessary conditions viz. income and source of income etc. The reason due to which candidature of the applicant was not found fit, has been specifically mentioned in the order

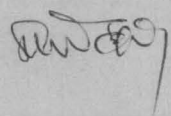
Handwritten signature

of respondent No. 3. The applicant was not fulfilled^{ing} one of the requisite condition i.e. source of income. The applicant had landed property in his own name but he has got no income from that very agricultural land, which stands recorded in his name. The income certificate issued by Tahsildar Mariahu, District Jaunpur, was accepted by respondent No. 4 otherwise there was no question for verification in respect of income of the applicant. It is prayed that the O.A. be dismissed.

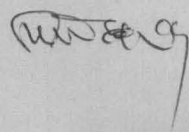
4. In response of the Counter Affidavit, Rejoinder as well as Supplementary Affidavits were filed.

5. We have heard Mr. Khem Tripathi holding brief of Mr. A.K. Upadhyay, Advocate for the applicant and Mr. N.P. Singh, Advocate holding brief of Mr. Saurabh Srivastava, Advocate for the respondents. We have perused the entire facts and circumstances of the case.

6. Certain facts are admitted by both the parties. It is an admitted fact that as a consequence of retirement of one Shyam Narain Mishra in the month of November 2003, the post was advertised in order to fill up the post of EDSPM Bhadkhin, Tahsil Mariyahun, District Jaunpur. Several persons submitted applications in response of the



advertisement but it is also an admitted fact that applications of three candidates were found in order namely the applicant, Chandra Prakash Singh and Smt. Sangeeta Singh. It has been alleged by the respondents that as others conditions are also required to be fulfilled by the candidates in order to make appointment. It is a fact that applicant secured 70% marks in the High School examination. But securing highest marks in the High School examination is not the only criteria in order to appoint a candidate on the post of EDSPM, a candidate must also fulfill the other qualifications like income, space etc. The applicant had been residing at Jaunpur and possessing no agricultural land at Jaunpur. It is an admitted fact that the applicant is permanent resident of District Jaunpur but having no land within the district of Jaunpur. The certificate was obtained from the Tahsildar concerned, and according to the income certificate, page 23, income of the applicant has been shown by the Tahsildar as ₹ 1000/- per month but the Tahsildar has not mentioned that how the applicant is getting the income of ₹ 1000/- per month as he is not possessing any land in the District of Jaunpur. The extract of Khatauni was filed by the applicant, and according to extract of Khatauni, applicant was possessing about 13 hectare agricultural land in the District of Varanasi but there was



no mention of income from this agricultural land situate in Varanasi district. Moreover, it is also a fact that the income certificate was obtained of the Tahsildar, Mariyahun but no effort was made by the applicant in order to obtain the income certificate of the concerned Tahsildar, Varanasi where the agricultural land of the applicant is situated. The candidature of the applicant was rejected by respondent No. 2 merely on the ground that the Tahsildar, Mariyahun at the time of issuing income certificate to the applicant - Kapil Deo Mishra. No mention was made that he has possessing the land at the district Varanasi. Hence, the certificate of income filed by the applicant was not found satisfactory and as the application was incomplete hence the same was rejected.

7. There is the Judgment of Hon'ble Apex Court reported in *2007 STPL (LE) 38011 SC Smt. Kiran Singh vs. Union of India and others*. Para-20 of the Judgment of Hon'ble Apex Court is also relevant and material to be reproduced, which is as follows: -

"20. In the facts and circumstances of the case, in our view the order of the CAT which has been affirmed by the High Court is manifestly erroneous and cannot be sustained. The appellant and respondent No. 5 both have qualified the High School Examination by securing first division. The eligibility and criterion for the selection of the candidate to the post of EDBPM as per the Service Rules was not only the merit between the two candidates in High School Examination but the additional criterion was that the candidate must be one

revised

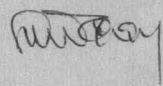
who has "adequate means of livelihood derived from landed property or immovable assets" if the candidate is otherwise eligible for appointment. The instructions governing the eligibility of the candidates also provide that no weightage will be given for any higher qualification. The appellant has fulfilled the essential qualification and required eligibility criterion and as such her selection to hold the post in question was valid whereas respondent No. 5 was not eligible to be appointed on the post for lack of income criterion in terms of the Circular."

Hence in view of the Judgment of Hon'ble Apex Court, securing highest marks in the High School examination is not the only criteria for giving appointment on the post of EDSPM but the instructions governing the eligibility of the candidate is provided that no weightage was given for the High School examination. Additional criteria was also required that the candidate must be one who has adequate means of livelihood derived from landed property or immovable assets hence the income is also a material criteria in order to decide the eligibility. But the applicant was not possessing any land within the District Jaunpur rather he was possessing agricultural land in the District Varanasi. No mention was made by him in the application but although the extract of Khatauni was filed. No report was obtained of the concerned Tahsildar regarding the income of the applicant. It was found that the application is defective for not showing the agricultural land owned and possessed in the District of Varanasi, and the application of the applicant was

AWJ

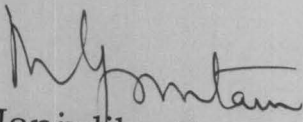
rejected, and after rejecting the application of the applicant, the only eligible candidate who was fulfilling the requisite conditions, was Smt. Sangeeta Singh-respondent No. 4. No allegation has been made against Smt. Sangeeta Singh about the candidature of the applicant except that she secured lesser marks in comparison to the applicant in the High School examination and if the candidature of the applicant is to be deemed 'not valid and not found in order', then ^{at} the first position is ^{of} Smt. Sangeeta Singh, and the appointment was given to Smt. Sangeeta Singh as she was the next senior candidate in the merit list.

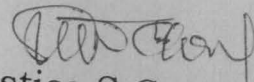
8. For the reasons mentioned above, we are of the opinion that the candidature of the applicant was rejected on the ground that the application was defective and certain material/particulars were not mentioned. The applicant possessed the agricultural land at Varanasi but no certificate was obtained of the concerned Tahsildar that he has got the agricultural land at Varanasi, and he had got the income from that and hence the candidature of the applicant was rejected, and next in the seniority was Smt. Sangeeta Singh-respondent No. 4. We are of the opinion that Smt. Sangeeta Singh was rightly appointed as she was the only eligible candidate after the candidature of the



applicant was rejected. The O.A. lacks merits hence liable to be dismissed.

9. O.A. is dismissed. No cost.


[Manjulika Gautam]
Member - A


[Justice S.C. Sharma]
Member - J

/M.M/