

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 29th day of Oct 2010

Original Application No. 1649 of 2005

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Chandra Prakash Khare, aged about 30 years, S/o Sri Manohar Lal Khare, R/o 240/II Civil Lines, Jhansi.

..... Applicant.

By Advocate: Sri A.K. Dave
Sri A.D. Prakash

VERSUS

1. Union of India through its Secretary, Ministry of Communication, Department of Post, New Delhi.
2. Post Master General, Agra Region, Agra.
3. Senior Superintendent of Post Offices, Jhansi.
4. Assistant Superintendent of Post offices, Jhansi.
5. Sanjeev Kumar Namdeo S/o Har Narayan Namdeo R/o H.No. 357/6, Civil Lines, Jhansi, U.P.

..... Respondents.

By Advocate: Shri Saurabh Srivastava
Shri Upendra Nath

ORDER

This OA has been filed seeking the following reliefs:-

"8.2 Direct the respondent no.3 to reinstate him in service as E.D. Packer with all consequential benefits in accordance with law."

"8.3 Quash the appointment of respondent no.5 as E.D. Packer if in place of the applicant."

2. Briefly stated the facts of the case are that the requisition was sent to the Employment Exchange of District Jhansi for sponsoring five candidates for vacant posts of Extra Departmental Packer to be filled up in the office of Senior Superintendent of Post offices Jhansi

(respondent no.3. Names of five candidates were sponsored and forwarded to Assistant Superintendent of Post Offices [respondent no.4]. The applicant was one of the candidates selected and appointed as E.D. Packer at Jhansi. His appointment was however cancelled allegedly without any notice and opportunity against which a representation was submitted and also an original application no.1238 of 1998 was filed before this Tribunal. The applicant was allowed to continue discharging his duties as an interim relief. In the mean time one Shri Sanjeev Kumar Namdev [Private respondent at serial no.5] in OA No.388 of 2001 challenged the appointment of the applicant.

3. Both the OAs i.e. 1238 of 1998 of the applicant and OA No.388 of 2001 of respondent no.5 were clubbed and decided together. Directions were issued to the respondents to consider merit of 'High School' examination and consider for appointment the individual who has scored higher marks in 'High School' examination by treating 'High School' examination as a preferential qualification subject to fulfilling of other conditions.

4. Allegedly the respondent nos.3 and 4 prevented the applicant from discharging his duties without any written orders and appointed respondent no.5. Writ petition in the High Court of Allahabad was filed by the applicant which was disposed of on 23.07.2004 with the observations that the Tribunal's order dated 23.02.2004 in OA No.1238/1998 has been passed without affording hearing to the applicant and allowed the applicant to file an application before the Tribunal with direction to the Tribunal to

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decide if such application is filed by giving a proper hearing to concerned parties.

5. The applicant, however, does not seem to have come before the Tribunal again. Instead he started a separate litigation before this Tribunal through the instant OA filed 23.12.2005.

6. The applicant claims to have discovered that the respondent no.5 was not a student of 'High School' but instead he had obtained 'Secondary Technical Certificate' in welding trade. In that, in Group 'A' he secured 249/500 i.e. less than 50% marks and 426/500 in trade examination comprising of the subjects such as engineering drawings, Rural Technology and trade written test etc.. Accordingly it was alleged that the respondent no.5 was undeservingly considered as a High School pass candidate and that under no circumstances the marks obtained i.e. 249/500 in Group 'A' should have been considered for determining the relative merit vis-à-vis applicant in the academic examination. The applicant was afforded a hearing by the respondents. However, when no reply was received a representation was submitted on 18.08.2005 and 13.09.2005 but having failed to obtain a reply this OA has been filed.

7. For proceeding further with this OA it will be necessary to refer to the terms and conditions stated in the requisition of the Assistant Superintendent of Post Offices Jhansi in his requisition dated 13.01.1997 to the Regional Employment Officer Jhansi. Under the heading 'academic qualification' it was stated that the minimum qualification was class 8th. However, preference will be

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given to the candidates who have passed High School. Any qualification over and above High School will carry no weightage (Annexure A-1/compilation-I). The Regional Employment Officer forwarded a list of the candidates at Annexure A-2). The name of the applicant and respondent no.5 is at serial no.1 and 5 respectively and under the column Educational Qualification both the candidates are shown to be 'High School'.

8. Annexure A-3 of the OA a clarification from the A.D.G.(Training) Post, New Delhi on the subject of essential qualifications for the appointment of E.D.B.P.M./E.D.S.P.M. The clarification read as under:-

"It was clarified that the reasonable course would be to offer E.D. Appointments to the persons who secure maximum marks in the examination which made him eligible for the appointment provided the candidate has the prescribed minimum level of property and income that he has adequate means of livelihood apart from the ED allowance."

9. Reference is also made to the judgment and order dated February 2004 in OA No.1238 of 1998. In this order it was noted by this Tribunal that the initial appointment of the applicant was cancelled on allegations of unreliability of the VIIIth class mark sheet submitted by the applicant which is a basic qualification for the said job. Simultaneously the respondents averments were also noted that the results of the High School examination of the rival candidates were not considered as required in rules. To that extant an irregularity was committed.

10. In counter affidavit it has been submitted that all the candidates as per the list given at para 5 of the counter affidavit in

which and applicant name appears at serial no.1 and Shri Sanjeev Kumar Namdeo appears at serial no.5 had possessed academic qualification of 'High School'. As Shri Sanjeev Kumar Namdeo obtained highest percentage of marks in High School i.e. 60% as per the comparative chart prepared by the department and accordingly he has been appointed. It was once again submitted that the initial appointment of the applicant on 01.01.1998 was made on the basis of merit and marks obtained in class VIII examination by ignoring the regular rule of giving preference to higher education i.e. High School for arriving at comparative merit of the candidates.

11. Both official as well as Private respondents have taken a strong objection to the instant OA on the grounds of limitation. For this purpose they seem to count the date of cause of action, if any, arising to the applicant from the date of termination of the service with effect from one month after the order dated 07.06.2004 i.e. 7.7.2004 (Annexure CA-8). The instant OA having been filed on 23.12.2005.

12. The factual matrix narrated above indicates that there are two significant events before the filing of this OA. The first one was the dismissal of the applicant followed by filing of an OA No.1238/1998 and filing of OA No.388/2001 of respondent no.5 culminating with the order of the Hon'ble High Court of Allahabad dated 23.7.2004 (Annexure A-7) allowing liberty to the applicant to approach this Tribunal with an application to be heard since the impugned order in OA No.1238/98 dated 23.02.2004 was an ex parte order (Annexure A-6).

13. The second event starts with a representation by the applicant before the official respondents dated 08.01.2005 (Annexure-10) followed by communication to the applicant requiring him to appear before the Senior Superintendent of Post Offices, Jhansi on 30.01.2005 (Annexure-11). The fact that the applicant made a representation and that he was heard by the official respondents has not been denied (Para 37 and 38 of the CA).

14. What also emerges from the narration above is that the applicant did not approach this Tribunal again in OA No.1238 of 1998 as per the liberty granted by the Hon'ble High Court. He instead choose to challenge the validity of preferential qualification of the private respondents through a representation before the authorities. Evidence at Annexure-11 is adequate to suggest that the applicant was called for personal hearing on 31.01.2005. The averments made in Para 4.17 to 4.20 have not been categorically denied in the counter affidavit. The Tribunal is of the view that the cause of action leading to the filing of the instant OA by the applicant arise on 31.01.2005 and to that extent the OA is within time.

15. Heard learned counsel for the parties and perused the material on record. It is to be noted that the applicant as also the respondent no.5 both claim to possess a qualification of 'High School'. The first question to determine is whether or not the qualification possessed by the private respondent no.5 can be said to be 'High School' in view of the fact that it was a qualification which is claimed as equivalent to high school for the purpose of

admission in Class XI. Learned counsel for the applicant invited our attention to Annexure -1 to the OA being the requisition of the Assistant Postal Superintendent Jhansi made to the Regional Employment Officer which specifically and repeatedly uses the expression "High School". Nowhere the communication has used the expression 'High School or equivalent'. He also submitted that even in the list of names forwarded by the Employment Exchange (Annexure A-2) the qualification shown against the name of the applicant and also private respondents has been shown as 'High School'. This according to the counsel for the applicant amounts to deliberate mis-statement of the correct qualification of the respondents and has an effect of misleading all concerned. Further even for a moment if it was to be assumed that the qualification possessed by the respondents was equivalent to high School, no consideration should have been given for the subjects which are not common in the syllabus of the two different qualifications and much less the marks obtained in Secondary Technical Course in 'wielding trade'. The percentage achieved by him in Group A, he secured only 249/500 which is less then 50% would have been considered. This happens to be less then the percentage of marks of the applicant. The marks obtained in Group B trade 426/1500 ought to have been ignored since they cannot be considered as marks in the 'High School' examination and has the effect of presenting a distorted picture in favour of the respondent no.5 of the percentage achieved by him.

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 16. Some what similar issue came up before the Hon'ble Supreme Court in ***Yogesh Kumar Vs. Govt. of NTC, Delhi, (2003)***

3 SCC 548. The Hon'ble Supreme Court held as under:-

8. This last argument advanced also does not impress us at all. **Recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.** Merely because in the past some deviation and departure was made in considering the BEd candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and BEd are available yet they chose to restrict entry for appointment only to TTC-pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as BEd qualification is concerned, in the connected appeals (CAs Nos. 1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that BEd qualification cannot be treated as a qualification higher than TTC because the nature of the training imparted for grant of certificate and for degree is totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from BEd category and very few from TTC category. Whether for the aforesaid reasons, BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates for the present vacancies advertised as eligible. In our view, the Division Bench of the Delhi High Court was fully justified in coming to the conclusion that BEd candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any BEd candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.

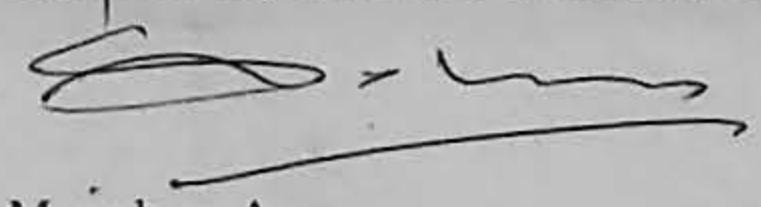
(Emphasis supplied)

17. In the instant OA the respondent no.5 did have a qualification which is good for his further studies. However, the same should not have been compared with high school particularly when the syllabus and the subjects are different, the applicant possess a qualification which matches the exact description in the letter of requisition whereas the qualification of the respondents shown in the records/letters of the Employment Exchange is some

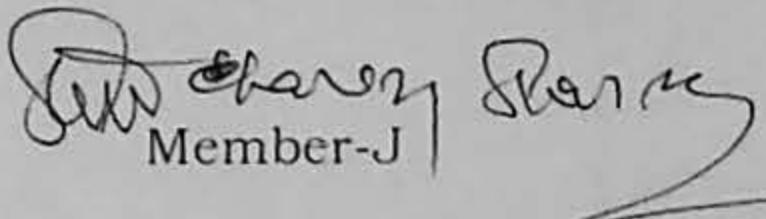
what misleading in as much as it discloses only half the truth by describing the qualification as High School instead of describing the full implication of the qualification i.e. being 'considered equivalent to High School for the purpose of admission in the higher classes. In our opinion, therefore the applicant's case is fully supported by the ruling of Hon'ble Supreme Court (Supra). The applicant has, therefore, succeeded in making out a case that he stands higher in the merit vis-à-vis the private respondent no.5 on the basis of the marks obtained in High School examination.

18. In view of the above, the respondents are directed to offer appointment to the applicant within a period of four weeks of receipt of certificate copy of this order. The case of the private respondent no.5 made be dealt with as per the extant rules of the department in this regard.

19. The OA is, therefore, stands allowed. No Costs.



Member-A



Member-J

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