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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 10TH day of MAY 2007

Original Application No. 285 of 2005

Hon'ble Dr. K.B.S. Rajan, Member (J)

Hon'ble Mr. P.K. Chatterji, Member (A)

Jokhai Prasad, S/o Sri Sita Ram, R/o Village & P.O.
Mukarimpur, Via Uruwa Bazar, Distt: Gorakhpur.

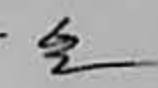
. . . .Applicant

By Adv: Sri A. Tripathi

V E R S U S

1. Union of India through Secretary, Ministry of Communication, & IT Department of Posts, Dak Bhawan, New Delhi.
2. P.M.G., Gorakhpur Region, Gorakhpur.
3. S.S.P.Os. Gorakhpur Division, Gorakhpur.
4. Shri Sunil Kumar Singh, S/o Shri C.B. Singh, R/o Vill. & P.O. Siswa Babu, Distt. Gorakhpur and employed as GDSBPM Mukarimpur, Via Urwa Bazar, Distt: Gorakhpur

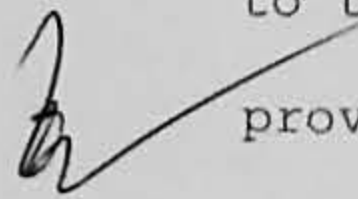
. . . .Respondents

By Adv: Sri S. Singh *for official Respondents* 

O R D E R

By Dr. K.B.S. Rajan, Member (J)

Briefly stated, the applicant in this case is aspirant for the post of GDSBPM at Mukarimpur Branch Office and amongst the candidates who applied for the said post, ~~He~~ *he* was meritorious candidate with percentage of 53.33 in the qualifying examination. Necessary income certificate was also made available to the respondents within stipulated period and also provision to House the Post Office and self



residence had been made by the applicant. It appears that respondent No. 4 is the second in the merit, he having secured 47.83% in the qualifying examination. He has also submitted necessary income certificate and also made provision for accommodation.

2. The applicant having come to know that he was not selected for the post of EDBPM despite his merit in the qualifying examination approached this Tribunal seeking following reliefs:

- "i. To issue an order, Rule or direction quashing and setting aside the impugned order of appointment of the Respondent No. 4, on the post of GDSBPM Mukarimpur, inspite of being lower in merit than the applicant having been made by the Respondent No. 3 vide his Memo NO. A-226/Ch.II dated 10.1.2005.
- ii. To issue an order, rule or direction in the nature of mandamus directing the respondents specially Respondent No. 3 to appoint the applicant against the physically handicapped quota, having higher merit than the respondent No. 4.
- iii. To issue such order, rule or direction granting such other reliefs to which the applicant may be found entitled.
- iv. To award cost of the suit against the respondents and in favour of the applicant."

3. The respondents have filed their counter affidavit and according to them though the applicant was meritorious in respect of education qualification he did not submit ~~his~~ any income certificate and also fail to provide suitable accommodation for Post Office as well as residence.

It has also been stated that the accommodation shown by him, on enquiry was found to be such that in one

room a Tea Shop was found and the other room was connected to go in the house by house owner and thus according to the house to Post Office and the accommodation was doubtful and not considered suitable. The applicant had filed his Rejoinder affidavit. In so far as the declaration of income is concerned he contended that the answering respondent was duty bound to make selection on the basis of merit and to obtain the declaration of income from the applicant before giving appointment later in accordance with the extant rules. As regard the accommodation version of the applicant as contended in para 9 of the Rejoinder affidavit is as under:

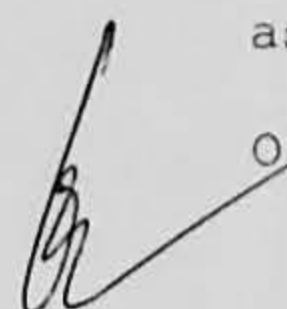
"That, the contentions of paragraph No. 9 of the C.A. are not admitted because it is incorrect and manipulated. The very word that residence was found doubtful in just a muckry. The applicant did his own ancestral house in the village and had offered an other location in the market location. There could be no question of doubt about housing accommodation for P.O. and Residence. The Respdts. admitted that the building in the market had a shop and the criteria for accommodation as per Deptt. Rule is that the accommodation should be suitable for commercial use and installation of P.C.O. The two accommodations offered were quite good and fulfilled the condition required by rules."

4. Learned counsel for the applicant argued that the extant rules are very clear in as much as "the sole criteria for selection to the post of categories of GDS will henceforth be merits subject to orders on reservation and fulfilling other eligibility conditions for providing for space for BO, taking up residence for the BO village before appointment etc." He has referred to relevant

orders on the subject namely order dated 06.12.1993 (Annexure A-3) read with order dated 17.09.2003 (Annexure A3/2). As regards the income certificates the learned counsel had invited our attention to the certificate issued by Tehisildar vide annexure A-7 and we find that such income certificate is dated 25.09.2004, while the last date of receipt of application dated 01.10.2004. Thus the requirement to furnish the income certificate within time has also been fulfilled.

5. Learned counsel for the respondents on the other hand contended that in so far as income certificate is concerned the same should have been from the revenue authority. And, in so far as the accommodation is concerned the department had conducted an inspection and arrived at decision that accommodation in possession of the applicant would not meet the requirement for running the Post Office.

6. Arguments were heard and the documents perused. Admittedly, the applicant ^{is} ~~has~~ meritorious so far as education qualification is concerned and according to the rule cited above subject to his fulfilling other conditions he should have been appointed. And, other conditions ~~are~~ income certificate as well as availability of accommodation to house the Post Office. As regards the income certificate, as

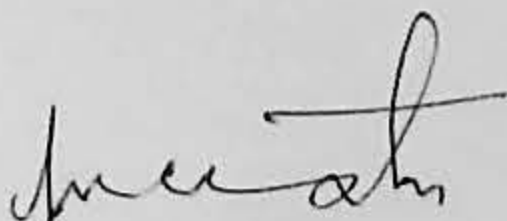


stated above, the applicant has produced the same form the Tehsildar and we do not find any reason as to why it would not have been submitted to the authorities within stipulated time. As such income certificate was filed within time and as regard the objection from the respondents that the certificate should have been from the Revenue authority, we have no doubt in our mind that Tehsildar is one of the Revenue authority. As regards the accommodation, to a pointed question to the respondents' counsel as to whether the respondents have indicated to the applicant about so called insufficiency of space to run the Post Office, it is stated that perhaps the respondents had not informed the applicant. In other words, the decision that the accommodation is doubtful and unsuitable have been verified behind the back of the applicant; this is illegal. If any doubt has arisen it was for the respondents to first approach the applicant to find out whether he would be in a position to arrange for alternate accommodation or make the existing accommodation suitable to run the Post Office. Instead the decision was taken as if the applicant was incapable of making such arrangements and appointment is given in utter disregard of the rule. Thus non selection of the applicant by the respondents to the post of EDBPM Mukarimpur Branch Office is illegal and the applicant is entitled to be appointed on the said post.

7. In view of the above the OA is allowed. Order dated 14.01.2005 appointing respondent No. 4 to the post of EDBPM, Mukarimpur Branch Office is quashed and set aside. The respondents are directed to offer the appointment to the applicant and if need^{be}, they may satisfy themselves about the availability of suitable accommodation for running the Post Officer by the applicant. This drill shall be performed within a period of three months from the date of communication of this order.

8. Before parting with this case we observed~~d~~ that by now the respondent No. 4 must have put in adequate years of service as GDSBPM and by the time he ^{is dislodged} ~~has dis-charge~~ and the applicant is appointed in his place, his service would be nearing three years. Justice demands that the said respondent may be considered for any other suitable post in the nearby locality when^{ever} the vacancy arises and the respondent No. 4 applies for the same. The respondents shall keep informing the said private respondent No. 4 if such vacancy arises.

9. With the above direction the OA is disposed of.
No cost.



Member (A)



Member (J)

/pc/