

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

REGISTRATION T.A. NO. 583/87

(W.P. 4123/1980)

D.S.Tewari Petitioner

Versus

1. The Union of India
2. The Mofassil Superintendent Post Office Kanpur.
3. Muneshwar Dass son of Not known Presently Posted as Mofassil Superintendent Post Office, Kanpur.
4. Sri Anand Prakash son of Lalita Prasad, Resident of Village-Gopalpur Narwal, District Kanpur Respondents

Hon'ble Mr. K. Obayya, A.M.
Hon'ble Mr. S. N. Prasad, J.M.

(By Hon'ble Mr. S. N. Prasad, J.M.)

The above writ petition has been received here by way of transfer under section 29 of the Administrative Tribunals Act, 1985.

2. The petitioner has prayed for quashing the order of appointment of respondent no. 4 Sri Anand-Prakash dated 25.4.1990 and has also prayed for quashing condition no. 7 in the notification dated 31.3.1980 (Annexure No. 3 to the writ petition) giving priority to Scheduled Caste etc.

3. The allegations of the petitioner as mentioned in the petition, inter alia briefly stated are that the petitioner and respondent no. 4 are residents of the village namely Gopalpur wherein a Branch Post Office was functioning and one Anirudha Singh Awasthi

was the Branch Post Master thereof, who resigned on 22.9.1979 and as a result thereof the Inspector, Post Office, of the Region handed over the charge of the aforesaid post to the petitioner on the same date on adhoc basis. In the second week of October 1979, notification was issued by the respondent no. 2 inviting applications for appointment as Branch Post Master village-Gopalpur and that notification disclosed the requisite qualification and conditions for appointment, that notification also disclosed that preference was to be given to local residents (Annexure no. 1 to the writ petition). In response to the above notification, besides other applicants, Lalita Prasad Kureel father of the respondent no. 4 also was one of the applicants and the aforesaid Lalita Prasad Kureel was appointed by the respondent no. 3 due to caste consideration though the aforesaid Lalita Prasad Kureel did not fulfil the requisite qualification and aforesaid Lalita Prasad Kureel was dismissed from service of the U.P. Govt. Roadways having being found guilty of serious financial irregularities, and was not found a fit person to be handed over the charge of the above posts, and thus this being so the respondent no. 3 (posted as respondent no. 2) having no alternative recalled his order dated 18.12.1979 vide his order dated 31.3.1980 and issued a fresh notification inviting application for the post but deliberately, maliciously and arbitrarily with a very significant change in notification wherein specifying that preference shall be given to the local residents, retired Armed Personnel, SC/ST/Backwards castes (Annexure 3 to the writ petition). In response to the notification dated 31.3.80 applicant and as well as the respondent no. 4 Anand Prakash



submitted applications besides other applicants. Though the petitioner was having better educational qualification and had also experience of running the post office very efficiently yet respondent no. 3 due to caste consideration appointed respondent no. 4 as the Branch Post Master, Gopalpur vide order dt. 25.4.80, though the copy of the aforesaid order dt. 25.4.80 had not been made available to the petitioner nor the same has been despatched from the office of the respondent no. 3, but the efforts are being made to first take over the charge from the petitioner, hence the necessity arose for filing the above petition with the prayers as specified above.

4. The respondent no. 3 has filed counter affidavit with the contention, inter alia, that the charge was handed over to the petitioner only on provisional basis to fulfil on stop-gap basis till regular appointment was made, and the post of the EDBPM, Gopalpur Lalita-Prasad Kureel fulfilled the requisite qualifications and having been found eligible and suitable was appointed. Since it was brought to the notice of the authorities that the integrity of Sri Lalita Prasad Kureel was doubtful his appointment order was cancelled by the order dated 31.3.1980 and simultaneously notification dated 31.3.80 was issued calling for the applications from the eligible candidates and it is false that the respondent no. 4 or the aforesaid Lalita Prasad Kureel did not fulfil the requisite qualification and their appointment was made due to caste consideration, but in fact the appointment of the respondent no. 4 was made after due process of selection keeping in view ~~all~~ the

Rules and Regulations. It has further been stated in the counter affidavit of the respondent no. 3 that as per D.G.P.A.T communication no. 43-32/78/pen. no weightage is to be given either to the immovable property or to educational qualifications of the applicant beyond High School. It has been further stated that the only requirement regarding the educational qualification is that the candidates should be VIII class passed preference being given to those candidates who are matriculate and no weightage is to be given if a candidate is ^{having} more than High School educational qualification. The copy of the aforesaid letter of the D.G.P.A.T. communication dt. 20.1.1979 is annexure 1 to the counter affidavit. There is no ~~any~~ ^{any} validity and illegality in the aforesaid notification dated 31.3.1990 and the appointment of the respondent no. 4 Anand Prakash has been made properly and ~~legally~~ in accordance with all the Rules and Regulations and there is no irregularity and in view of the above circumstances the petitioner's petition is liable to be dismissed with costs.

5. We have heard the Learned Counsel for the parties at length and have been taken through all the relevant papers on records. We have carefully gone through the records of the case.

6. The Learned Counsel for the petitioner while drawing our attention the Annexure No. 1 and 2 to the writ petition has argued that the petitioner has passed High School, Intermediate and B.A. in first division and possess huge immovable property,



whereas the respondent no. 4 does not possess any immoveable property in the village concerned in his name, and has no independent [✓] source of income, and the educational qualification of the respondent no. 4 ~~is~~ is far below than that of the petitioner, but even then the respondent no. 4 Anand Prakash, who is son of Lalta-Prasad Kureel as referred to above has been appointed by the respondent no. 3 due to caste consideration ignoring all the Rules and Regulations, and has further argued that the preferential matters regarding preference being given to Scheduled Castes/Scheduled Tribes as mentioned in para 7 of the notification dated 31.3.1980 (Annexure 3 to the writ petition) have been deliberately and purposefully got added at the instance of the respondent no. 3 merely with a view to give favour to the respondent no. 4, and as such the ^{~said~} appointment order dated 25.4.1980 be quashed and para 7 of the aforesaid notification dt. 31.3.1980 be also quashed as the same is in contravention of article 14 and 16 of the Constitution of India.

7. The learned counsel for the respondent no. 4 while drawing our attention to the aforesaid papers and particularly annexure no. 3 to the writ petition and annexure no. 1 to the counter affidavit (which is copy of the letter dt. 20.1.1979 from D.G.P. ~~and~~ [✓] New Delhi to all Heads of Postal Circles) and to the provision contained under section [✓] of "Method of Recruitment" governing the appointment and other services conditions of ED Agents vide page 59 to 61 under heading "preferential categories", ^{has} argued that not only in this instant

case but since long ago as per policy and programmes of the government ~~and~~ it has been clearly laid down that wherever possible first preference should be given to the SC/ST candidates, and has further argued that there has been no irregularity or any deviation in the process and in the selection of the candidates, and has further argued that since the respondent no. 4 ~~had~~ fulfilled all the conditions and qualifications that is why he was selected and appointment letter was issued, but despite his bonafide selection he has not been able to get charge of the post from the petitioner due to the interim order passed by the Hon'ble High Court on 20.5.1980 to the effect that the petitioner shall not be reverted from the post of Sub Post Master, and has further argued that since the petitioner was ordered to work provisionally ~~on~~ adhoc basis ~~and~~ is obvious from the perusal of para 2 to the petition itself, the petitioner has got no right and as such the petition should be dismissed.

8. This is worthwhile making mention of this fact that section 11 Method of Recruitment governing the appointment and other service conditions of ED Agents have been elaborately detailed in para 6 vide page 56 to 60 of the Suamy's Compilation of service rules for Extra Departmental Staff in Postal Department wherein at page 60 it has been clarified that candidates belonging to the Scheduled Castes/Scheduled Tribes with the minimum educational qualifications prescribed in this office Letter No. 5-9-/72 E.D. Cell, dated the 18th August, 1973, viz. VIII Standard for ED BPM's VI

Standard for EDDAs and ED SVs and working knowledge of the regional language and simple Arithmetic for other ED.As (and working knowledge of English for ED Messengers) should be given preference over the candidates belonging to other communities, even if the latter are educationally better qualified, provided that the candidates belonging to Scheduled Castes/Scheduled Tribes are otherwise eligible for the post."

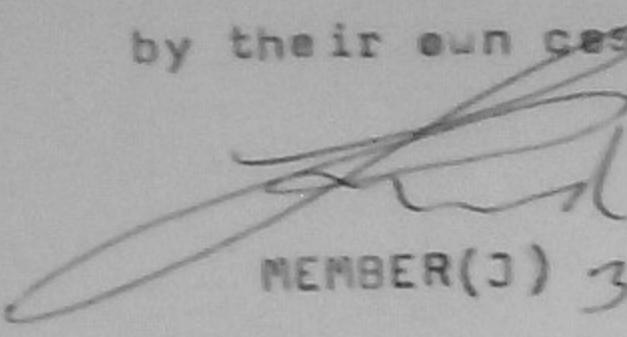
9. This is also significant to point out that annexure no. 1 to the counter affidavit which is copy of the circular letter dated 20.1.1979 from D.G.P. ~~and~~ [✓] New Delhi to all Heads of Postal Circles also interalia makes mention that due consideration should be given ^{and preference} to SC/ST.

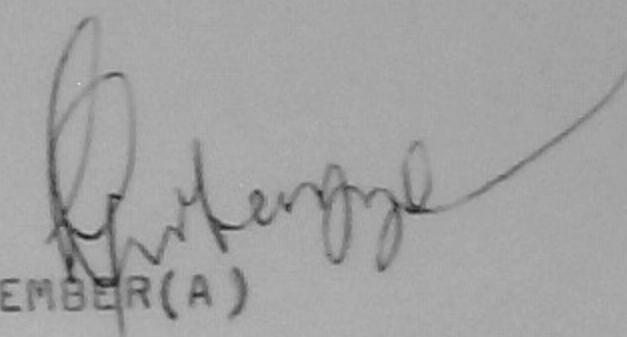
10. Thus this being so, and keeping in view the rules and regulations governing the method of recruitment ^{Quoted} as detailed and ~~satisfied~~ above are found to be in conformity with para 7 of the notification as annexure no. 3 to writ petition.

11. This is also worthwhile making mention of this fact that the petitioner was also considered alongwith other applicant including respondent no. 4, but ~~respondent no. 4~~ ^{Having} no. 4 was selected. If considered ~~all~~ [^] the material ~~of~~ the record and keeping in view in the circumstances of the case we are of the view that no any irregularity or invalidity has been made by the respondent no. 3 in selecting the respondent no. 4 and as such we are not inclined to interfere with the results of the said selection.



12. Having considered of the view points and keeping
in view the circumstances of the case, we are ~~said~~ that the
petition is devoid of merit and we dismissed the petition
of the petitioner and the interim order dt. 20.5.80
is stands vacated. Parties are directed to abide
by their own costs.


MEMBER(J) 30.5.91


MEMBER(A)

DATED:

ALLAHABAD

(ss)

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