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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 86 of 1988

Panchdeo Tripathi and another .... Applicants.

Vs.

Union of India and 4 others .... Respondents.

Hon.D.S.Misra, AV  
Hon G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

In this petition under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicants <sup>who</sup> were working as substitute D.E.Mailmen in the office of S.R.O R.M.S Fatehpur -respondent no.3 from 6.1.1987 ~~and~~ 4.3.1987 respectively have challenged the appointment of respondent nos. 4 and 5 as regular Mailmen and have sought their own appointment in their place with the allegations that under the instructions issued on 23.2.1987 by the Post Master General (for short PMG), the applicants were entitled to preference in the matter of their appointment as they were discharging their duties satisfactorily. The appointing authority- respondent no.2 in disregard of the said instructions wrongly appointed the respondent nos. 4 and 5 due to personal considerations and ignored the claim of the applicants arbitrarily and illegally.

2. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the Inspector R.M.S (A) Allahabad- respondent no.2 it has been stated that the appointment of the applicants as EDA substitutes was purely provisional and temporary and this did not confer any right on them for their regular absorption in the Department. To fill up the three posts of Mailmen, the Employment Officer

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Fatehpur was requested to furnish the names of the candidates. He sent a list of 36 candidates including the applicants. The applicants along with other candidates were interviewed but they could not secure good marks and as such, they could not be selected for appointment. The selection of the respondent nos. 4 and 5 was made on merits and it is not correct to say that the respondent no.2 had acted arbitrarily or in disregard to the instructions issued by the PMG in making their appointment. The candidature of the applicants was duly considered but they were not found fit and as such, they have no right to file this petition and challenge the appointment of respondent nos. 4 and 5.

3. In the rejoinder filed by the applicants, it was stated that the appointment of the respondent nos. 4 and 5 is not based on merit and they were appointed by the respondent no.2 in disregard of the instructions and guidelines contained in letter dated 23.2.1987 of the PMG Lucknow. For filling up 3 posts, there was no need to call for 36 persons by respondent no.2 and so many persons were called for simply to accommodate the respondent nos. 4 and 5 whose names were at the bottom of the list. It was also stated that the interviews were held on 2.12.1987 but the result of the interview was not declared till 8.1.1988. On receiving the complaint the PMG Lucknow ordered to postpone the interview vide his letter dated 6.1.1988 and the respondent no.2 then declared the result on 8.1.1988 with a malafide intention and there were various irregularities in making the appointment.

4. It is not in dispute in this case that the applicant no.1 from 6.1.1987 and the applicant no.2 from 4.3.1987 till 8.1.1988 when the respondent nos. 4 and 5 were appointed as Mailmen were working as substitute Mailmen in the R.M.S. Fatehpur. On the basis of their working the RMS as substitutes

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the applicants have placed their reliance on the letter dated 23.2.1987 issued by the RMG U.P., Lucknow, copy annexure 2. The letter is in Hindi and its relevant English translation is that in the meeting of N.F.P. P.T.I held on 23.10.1986, the question was raised that at the time of regular appointments the ED substitutes of the Department should be given preference and in this connection, it was decided that such ED substitute ~~should~~ fulfil all the conditions of appointment and possess the prescribed qualifications and if their names are sponsored by the Employment Exchange, their candidature should be considered sympathetically. This letter nowhere lays down that the ED substitutes are to be given preference over the fresh candidates. The intention further appears to be very clear that no relaxation in the case of ED substitutes has to be made in respect of terms and conditions and eligibility ~~for~~ appointment and their candidature is to be considered only when their names are sponsored by the Employment Exchange. On the fulfilment of these requirements, the cases of ED substitutes are simply to be considered sympathetically. A provision for sympathetic consideration, in our opinion, does not confer any statutory right on a candidate. ~~If~~ the RMG provided for giving such candidates preference the things would have been different. It, however, appears from the reply filed by the respondent no. 2 that even the sympathetic consideration was not given to the applicant and it is nowhere alleged in the reply that the case of the applicant was considered sympathetically. On the other hand, he has stated that in the interview, the applicants did not secure good marks and as such, could not be selected on merit.

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5. The applicant ~~has~~ come to the Tribunal with the allegation that the respondent no.2 was interested in appointing the respondent nos. 4 and 5 out of his way and in the rejoinder, it has been highlighted that for 3 posts, it was not necessary to call the names of 36 persons from the Employment Exchange and this was done simply to make sure that the names of respondent nos. 4 and 5 are sponsored. It has been further pointed out that in the list of 36 persons, copy annexure 1 to the petition, the names of respondent nos. 4 and 5 are at sl.no.34 and 35 and the name of the third selected candidate is at sl.no.36. It has been further alleged that though the interviews were held on 2.12.1987, the result was not declared till 8.1.1988 and only on receiving the <sup>whereas</sup> complaints, the PMG vide his letter dated 6.1.1988, copy annexure 2 to the rejoinder, required the SSRM Allahabad to defer the selection, the result was illegally declared on 8.1.1988 including the names of the respondent nos. 4 and 5 in the list of selected candidates. Such allegation should have been made by the applicant in their main petition so that the respondents could give a proper reply to it. It further appears from the letter of the PMG, annexure 2 to the rejoinder, that it was in respect of some selection test going to be held on 10.1.1988. There is nothing on record to connect this selection with the selection of th Mailmen in which the respondent nos. 4 and 5 were selected. However, if the said letter relates to the selection in which the applicant and respondent nos. 4 and 5 had appeared, it is a serious matter and has to be examined by the PMG U.P. Lucknow at his own level irrespective of the result of this petition so that the irregularities, if any, are not repeated in future and no injustice is done to the deserving candidates.

6. The respondents have filed some documents to show that respondent nos. 4 and 5 were also formerly working as substitutes in the RVS and they are altogether new persons to the Department. These documents go to show that the respondent no. 4 worked as ED (Waterman) substitute from July to Dec. 18, 1986. The respondent no. 5 worked as ED substitute from 11.2.1987 to 28.2.1987, from 1.3.87 to 6.5.87 and from 8.5.87 to 15.5.87. We are, therefore, of the view that in accordance with the spirit of annexure 2 relied upon by the applicant, the respondent nos. 4 and 5 were also entitled to sympathetic consideration.

7. Thus, merely on the ground that it is not alleged on behalf of the respondents in their reply that the case of the applicants was considered sympathetically, it does not appear to be a fit case for our interference. We, however, find it to be a fit case in which the selection of respondent nos. 4 and 5 made by the respondent no. 2 is scrutinized by the PMG U.P. Lucknow himself or through some senior officer higher in rank than the respondent no. 2 to ensure that it was made fairly and in accordance with relevant rules and pass suitable orders in accordance with the result of such scrutiny.

8. The petition is disposed of accordingly without any order as to costs.

*Phma 30.3.88*

MEMBER (A)

*S. Narvekar*

MEMBER (J)

Dated: March 30, 1988  
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