

CENTRAL ADMINISTRATIVE TRIBUNAL
ALIAHABAD BENCH
ALIAHABAD.

Allahabad this the 14th day of March 1997.

Original application No. 1 of 1992.

Hon'ble Mr. T.L. Verma, JM

Hon'ble Mr. D.S. Baweja, AM

Om Pal Singh, S/o Murari Singh,
R/o Chack Gobardhan, P.O. Nehtor,
Dist. Bijnore.

..... Applicant.

C/A Sri H.C. Saxena

Versus

1. Union of India, Department of Post,
M/o Post and Tele-communication, Government
of India, New Delhi.
2. Post Master General, U.P., Lucknow.
3. Superintendent of Post Offices, Bijnore.
4. Assistant Superintendent of Post Offices,
Dhampur, Sub Division, Dist. Bijnore.
5. Arvind Kumar, S/o Navbahar Singh,
Moh. Nodha, Nehtaur, Dist. Bijnore.

..... Respondents.

C/R Sri S.C. Tripathi

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed seeking the quashing of the order dated 29.4.91 whereby the appointment of the applicant made vide letter dated 31.1.91 has been cancelled and respondent No. 5 appointed in his place.

2. The judgement in this application was delivered on 18.5.93. Thereafter the respondent No. 5, Sh. Arvind Kumar filed a Misc. application 1234/1993

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with a prayer to set aside the order dated 18.5.93 on the ground that the same has been passed as *ex parte* as neither he had been served with a notice nor was aware of the various dates fixed. This application was allowed, vide order dated 13.9.94 setting aside the order dated 18.5.93. The application was restored to the original registration number. The matter was therefore reheard after giving opportunity to the respondent No. 5.

3. The facts of the case advanced by the applicant are as follows. The applicant was appointed as Extra Departmental Mail Peon (EDAPM) at Branch Post Office Sikri Bajurg vide order dated 3.1.91 by the respondent No. 4, (Assistant Superintendent of Post Offices, Dhampur, Sub Division, District Bijnore. He took over the charge on 10.1.91. However vide order dated 29.4.91 issued at the instance of the respondent No. 3, Superintendent Post Offices Bijnore, his appointment has been cancelled and in his place respondent No. 5, Sri Arvind Kumar has been appointed. The applicant made a representation dated 1.5.91 against the same but did not get any reply. Being aggrieved, this application has been filed on 1.9.92. The applicant has assailed the cancellation of the appointment as being arbitrary and not in accordance with the rules.

4. The respondents have contested the application through counter reply. The facts with regard to appointment, cancellation of the same and the appointment of the respondent No. 5 in place of the applicant have been admitted. For cancellation of the appointment of the applicant, it is submitted that on a complaint made by Sh. Arvind Kumar (Respondent No. 5) the appointment of the

applicant was reviewed by Superintendent Post Offices Bijnore. It was found that Sh. Arvind Kumar had higher merit ^{with} 297 marks in the High School Examination as compared with 245 marks of the applicant. As per Rule 2 of Section III of service Rules for ED Agents, with minimum qualification of 8th standards pass the candidate with higher merits in High School was to be given preference. In view of this, respondent No. 5 was wrongly ignored ^{and} the appointment of the applicant was irregular and the same was required to be cancelled. The impugned order is therefore perfectly legal. It is admitted that the then Assistant Superintendent of Post Offices Bijnore was due to retire on 30.4.91 but the allegations of ^{and} illegal gratification ~~caste~~ bias are baseless. In view of these facts, the application is misconceived and deserves to be quashed.

5. The respondent No. 5, ~~Sh.~~ Arvind Kumar has also filed the counter reply. In addition to the ground of higher merit of the respondent No. 5, he has submitted that the applicant was also ineligible for appointment as he did not meet with the residential requirement. The applicant was neither resident of village Sikari Bajurg or Quasba Nahtaurn or any of the villages which come within the Post Office Sikari Bajurg. He has also further submitted that ~~prejudice~~ ^{preference} to schedule caste candidates can only be given in order to achieve the required percentage for ~~the~~ reservation. In Dhampur Sub Division more than 30 per cent post of ED Mail Peons are already filled by the scheduled caste category against 17 percent laid down and as such no preference was required to be given to the applicant being a scheduled caste candidate.

6. The applicant has filed the rejoinder reply only for the counter reply of the official respondents. While reiterating the grounds taken in the original application, it is contended that the applicant being scheduled caste candidate was entitled preference as per the extant rules and as such there was nothing irregular about his appointment.

7. We have heard Sh. H.C. Saxena learned counsel for the applicant, ~~and~~ Kumari Sadhna Srivastava proxy to Sh. N.B. Singh the learned counsel of the official respondents and Sh. Veer Singh ~~counsel~~ for respondent No. 5. We have also given careful thought to the material brought on the record.

8. Vide order dated 29.4.91(A-III) the appointment of the applicant has been cancelled and in his place Sh. Arvind Kumar respondent No. 5 has been appointed. This action is stated to be taken on direction from Superintendent of Post Offices Bijnore vide his letter dated 25.4.91. No reasons for cancellation of the appointment have been detailed in letter dated 29.4.91. The official as well as private respondents have however brought on record the letter dated 25.4.91. In this letter, the higher authority on a complaint made by respondent No. 5 has found the appointment of the applicant as irregular on two grounds, first being that he did not fulfil the requirement of residence and the second being that the complainant (Respondent No. 5) was higher in merit with 297 marks in High School as compared with 245 of the applicant. The official respondents

in the counter reply for the appointment being irregular have only advanced the reason of ignoring merit for the appointment. The respondent No. 5 ~~who~~ has ^{only} raised the issue of residence. ^{and} Perhaps he has based this plea ~~based~~ on contents of the letter dated 25.4.91. The applicant has averred that he was resident of the village within the jurisdiction of the Post Office. There is no contro-
^{of his submission} verting, We therefore take that this was not the valid ground. The respondents have not come out with any details as to the basis on which the appointing authority i.e. Assistant Superintendent Post Offices Dhampur Sub Division decided in favour of the applicant. However the applicant has averred that his selection was based on the preference to be given to the scheduled caste candidate if meeting with all the requirement in terms of the extant instructions laid down for recruitment. The respondent No. 5 has also stated so but countered that no preference was called for as the percentage of scheduled caste candidates in the Dhampur Division was already more than 30 per cent as against 17 per cent laid down. In the absence of any averments by the respondents in the counter reply and ^{nor} controverting the averments in the rejoinder, we take it that the applicant was selected on preference being as scheduled caste candidate and met with all the requirements of eligibility otherwise.

9. Keeping in view what is held above, we will examine whether there was any irregularity in giving preference to the applicant as per the extant rules. In this connection, we refer to instructions in Section III "Method of Recruitment" of Service Rules for Extra Departmental Staff. In para 7 it is laid down that

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Scheduled Caste/Scheduled Tribe candidates with the minimum educational qualifications should be given preference over the candidates belonging to the other communities even if the latter are educationally better qualified provided the candidates belonging to the scheduled caste/scheduled tribes are otherwise eligible for the post. We have stated earlier that the applicant met with eligibility requirements otherwise. Thus in terms of the instructions laid down in para 7, the applicant was entitled to get preference over the respondent No. 5 and the high merit of respondent No. 5 was not to be overriding consideration.

10. The other contention raised by the respondent No. 5 is with regard to existing percentage of the scheduled caste candidates being 30 per cent as against 17 per cent laid down and as such the preference to the applicant was not called for. Para 8 of the Section III details with the instructions for enforcement of the percentages fixed for scheduled castes (SC)/ Scheduled Tribes (ST) candidates. These instructions lay down that the representation of SC and ST candidates in the employment of ED staff should be at least kept to the prescribed minimum limits as in the Group C & D posts in the Department. It is also further clarified that if SC or ST candidates are coming up for selection by virtue of their length of service/merit, they should not be reverted from their service under the cover of the prescribed percentages. Further it is also stated that by very nature of appointment of ED Agents who are supposed to be local residents employed for part time work, it is impracticable to fill up the posts of ED Agents on point system. These instructions clearly

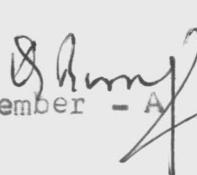
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imply that percentage of the SC & ST candidates may, in compliance with the instructions of giving of preference as laid down in para 7. Further the respondent No. 5 has not spelled out ~~that~~ ^{as to} how ~~many~~ SC candidates in the cadre were appointed on their own merit. Therefore the argument that percentage of SC candidates was already more than 17 per cent and therefore no preference could have been given to the Scheduled Caste candidates is not supported by the extant rules and thus not tenable.

11. In the light of the deliberations in paras 9 and 10 above, there was nothing irregular in the selection of the applicant by the appointing authority. The review carried out by the higher authority on a complaint made by the respondents No. 5 is not sustainable as the appointment has been determined as irregular on the grounds which are in violation of the rules laid down by the Department.

12. In the result of above, we allow the application and the impugned order dated 29.4.91 terminating the services of the applicant and appointing respondent No. 5 is quashed. The applicant shall be appointed back on the post within a week of the judgement. It is also stated that by very nature of the appointment of ED Agents, we do not pass any order with regard to the payment of wages for the intervening period. *No order on 6 costs*


Member - A


Member - J

Arvind.