

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH,

ALLAHABAD.

...
Dated This The 14th ^{March} February, 1997.

CORAM: Hon'ble Mr. T.L.Verma, JM,
Hon'ble Mr. D.S.Baweja, AM.

Original application No: 3 of 1992.

Mahayir singh sonof Sri Mangat Singh,
resident of Salempur, Post office: Nehtor,

District: Bijnor. .. Applicant.

(C/A. Sri Harish Chandra Saxena.)

Versus:

1. Union of India, Department of Post,
Ministry of Posts & Tele-communication,
Govt. of India, New Delhi.

2. Post Master General, U.P.
Lucknow.

3. Superintendant of Post office,,
District: Bijnor.

4. Assistant Superintendant of Post offices,
Dhampur Sub Division, Distt: Bijnor.

5. Virendra Singh son of Sri Jaubahar Singh,
resident of Mohalla: Nodha Nehtor,
District: Bijnor.

Respondents

(C/R Sri V. Singh, Adv.)
Sri N.B. Singh, Adv.
Sri S.C. Tripathi.

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ORDER:

(By Hon'ble Mr. D.S.Baweja. AM.)

Through this application, the applicant has sought relief of quashing the order dated 16.4.1991 cancelling the appointment of the applicant as Extra Departmental Mail Peon and in his place appointing respondent No.5.

2. The judgment in this application ~~is~~ has been delivered on 18.5.1993. Thereafter, the respondent No.5, filed a Misc. Application No: 1235/93 with a prayer to set aside the order dated 18.5.1993 on the ground that the same had been passed exparte as neither he had been served with a notice, nor was aware of the various dates fixed. This application was allowed vide order dated 13.9.1994 setting aside the Order dated 18.5.1993 and the O.A was restored to its original registration number. The matter was therefore, re-heard after giving opportunity to the Respondent No.5.

3. The applicant was appointed as an Extra Departmental Mail Peon (E.D.P.M) at Bairmabad Garhi (Nehtor) Branch Post office. The applicant had taken over charge on 23.1.1991. However, vide order dated 16.4.1991, the appointment of the applicant has been cancelled on the direction from the respondent No.3, the Superintendent of Post Office, Bijnor and in his place, Sri Virendra Singh, Respondent No: 5, has been appointed. The applicant alleges that on enquiry, to find out the reasons which led to the appointment of the Respondent No.5, and cancellation of his appointment, he has understood that the then Superintendent of Post Office, Bijnor namely; Sri J. C. Joshi, before retirement, on the basis of caste and consideration of illegal gratification appointed Respondent No.5, and cancelled his appointment. The applicant made a representation dated 24.1.1991, but did not receive any reply. Being aggrieved, the present application has been filed on 1.1.1992.



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4. Respondents have filed Counter reply. The facts with regard to the appointment, cancellation of the same and appointment of the Respondent No:5, in his place have been admitted. The respondents have explained that the applicant is IXth Standard pass, while respondent No.5, Sri Virendra Singh, is H High School pass. However, the then Assistant Superintendant of Post offices, Dhampur Sub Division, district Bijnor ignoring the higher merit of the respondent No.5, selected the applicant without giving preference to a Scheduled Caste Candidate meeting with minimum qualification laid down for the post. This action was incorrect as there were already 32 Scheduled Caste Candidates out of 105 posts and the reservation quota of the Scheduled Caste Candidate was already ^{in excess} ~~maximum~~ of 17%. In view of this, the appointment was considered irregular by the Superintendent of Post Offices, Bijnor and the appointing authority was directed by him vide letter dated 16.4.1991 to cancel the appointment of the applicant. As regards the allegations of the illegation gratification ^{and} caste bias against the Superintendent Post offices, Bijnor, ^{it is contended that} the same are baseless. In view of these facts, the application is misconceived and deserves to be quashed.

5. Respondent No.5, Sri Virendra Singh, has filed a Counter reply asserting that the applicant himself has admitted that he was neither the resident of any village, nor of village Nehtor, which comes within the jurisdiction of the Post office Bairamabad Garhi and as such, he did not fulfill the requirements of residence as per the extant rules. Further the respondent ^{also} No.5, has higher educational qualification and fulfilled also the residential requirements and was thus most eligible and deserved to be selected. The appointment of the applicant was therefore, irregular ^{and} action taken by the respondents on a complaint made by him is legal and as per extant rules.

6. The applicant has filed rejoinder reply only for the counter reply of the official respondents. He has submitted that the applicant is resident

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of village Salempur which is attached to the Sub-Post Office, Bairamabad Garhi and therefore, met with the residence requirement.

7. We have heard Sri S.C. Saxena, learned counsel for the applicant, Km. Sadhna Srivastava, proxy Counsel to Sri N.B. Singh, Counsel for the official respondents and Sri Veer Singh, Counsel for Respondent No.5. We have also given a careful thought to the material brought on the record.

8. Vide Order dated 16.4.1991, annexure(A3) the appointment of the applicant has been cancelled and in his place, respondent No.5, has been appointed. This action is stated to have been taken on the direction from the respondent No.3, Superintendent of Post office, Bijnor as per his letter dated 10.4.1991. No reasons for cancellation of the appointment of the applicant has been detailed in the letter dated 16.4.1991. However, the respondents have brought a copy of the letter dated 10.4.1991 on record as annexure (CA-1). On going through this letter, we find that higher authority on a complaint made by respondent No.5, has reviewed the appointment of the applicant and found it to be irregular on three grounds. First ground being that he did not fulfill the requirements of residence, and second ground being that he is only VIIIth Class Pass while respondent No.5, is High School and the third ground being that the preference given to the applicant being scheduled caste candidate was incorrect as there was already ^{full} quota of scheduled caste candidates in the cadre. The official respondent -s in Counter reply have not taken any plea with regard to the non-fulfilling of the requirement of residence though, the respondent No.5, has taken this ground. The applicant has averred that he was the resident of village within the post office jurisdiction and met with the residence requirement. Since no plea has been taken with regard to the residence requirement by the official respondent, we presume that this was not a valid reason/ground for declaring the appointment irregular.

9. The main issue to be examined is whether there was any irregularity in giving preference to the applicant being a Scheduled Caste candidate as per the extant rules. In this connection we refer to the instructions in Section-III 'Method of Recruitment' of service rules for Extra Departmental Staff. In paragraph No.7, it is laid down that the Scheduled Caste/Scheduled Tribe candidate with minimum educational qualification should be given preference over the candidate belonging to other community even if the latter is educationally better qualified provided the candidate belonging to Scheduled Caste/Scheduled Tribes ^{is} otherwise, eligible for the post. The applicant possessed the minimum educational qualification of VIIIth passed and was ~~not~~ otherwise, eligible as recorded above. Therefore, ~~as~~ in terms of the instructions in paragraph ⁷, the applicant was entitled for getting preference over the general candidate. The applicant was ^{him} rightly selected ignoring the respondent No.5.

10. The ~~two~~ respondents have also raised another ground that the ^{existing} percentage of Scheduled Caste Candidates ^{was about} ~~is~~ also 30% in the cadre which is much than the 17% laid down. In view of this it was irregular on the part of the appointing authority to give preference to the applicant being scheduled Caste candidate.

→ Para 8 of the Section-III details the instructions for enforcement of the percentages fixed for ~~the~~ reservation fixed for Scheduled Caste (SC) & Scheduled Tribe (ST) candidate. These instructions lay down that the representation of the SC and S.T candidates in the employment of E D Staff should be at least to the prescribed minimum limits as in 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 the service under the cover of the prescribed percentages. Further it is also stated that by very

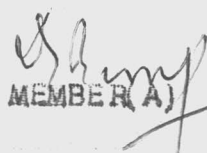
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nature of the appointment of ED Agents who are supposed to be local residents employed for part time work, it is impracticable to fill up the posts of ED Agents 'on point system.' These instructions clearly imply that the percentage of SC & ST candidates may exceed the limits in compliance with the instructions laid down in para 7. Further the respondents have not spelled out ^{as to} ~~that~~ how many SC candidates in the cadre were appointed on their own merit. Therefore the argument that since the percentage of SC candidates in the Cadre being already in excess, the preference could not been given to Scheduled Caste Candidate is not supported by the extant rules and thus not tenable.

11. In the light of the deliberations in the paragraphs 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 respondent No.5, is not sustainable as the appointment has been determined 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 16.4.1991 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 judgment. Any stay order operating is also vacated. It is also stated that by the very nature of the appointment of ED Agents we do not pass any order with regard to the payment of the wages for interim period. No order as costs.


MEMBER (A)


MEMBER (J).

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