

RESERVED

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

DATED : ALLD. ON THIS 1st DAY OF MAY, 1998

CORAM : HON'BLE MR. S.L. JAIN, MEMBER (J)

ORIGINAL APPLICATION NO. 1036 OF 1993

Mohd. Tasir aged about 40 years S/o
Late Shri Mohd. Kamil, R/o Village - P.O.
Para Dist. Ghazipur.

.... Applicant.

C / A : Shri R.K. Pandey, Advocate

Versus

1. Union of India through its Secretary
Ministry of Post & Telegraph, New Delhi.
2. Sub Divisional Inspector, Mohamadabad
Ghazipur.
3. Supdt. of Post Offices, Ghazipur
4. Kamlesh Kumar Bharti, working as Extra
Departmental Delivery Agent R/o Village P.O.
Para Distt. Ghazipur.

..... Respondents

C / R :- Shri Amit Sthalekar, Advocate

O R D E R (RESERVED)

(By Hon'ble Mr. S.L. Jain, Member(J))

This is an application under section 19
of the Administrative Tribunals' Act, 1985 for issue of
order/direction commanding the respondents to accord
benefits of dying-in-harness rules and issue appointment
letter in favour of the applicant with all the benefits
accrued to the applicant.

2/5/98

2. There is no dispute between the parties that the applicant's father Shri Mohd.Kamil was working as Extra Departmental Delivery Agent (E D D A) P.O.Para Distt.Ghazipur. While serving on the said post,when he was ill, he made an application to the respondent no.2 requesting him that his son - applicant be allowed to work on the post in his place during his illness and accordingly respondent no.2 has granted the aforesaid request and the petitioner was allowed to work in place of his father,Shri Mohd.Kamil died on 10.08.92, Smt.Sarium - the widow of the deceased and the mother of the applicant filed an application dated 18.9.92 to the respondent for being appointed the applicant on the said post as he possess the requisite qualification, on being asked by respondent no.3, respondent no.2 submitted the report dated 26.12.92. Shri N.N.Singh - the then Sub Divisional Inspector was transferred and in his place Shri Ram joined as Sub Divisional Inspector, who took charge from the applicant on 1.1.93 by oral orders, the applicant represented the matter by application / representation dated 8.1.93 , 19.1.93 (by the mother of the applicant) 26.3.93, 27.4.93 but in vain.

3. The applicant's case in brief is that he is possessed with the requisite qualification i.e. Class VIIIth from Rama Shanker Vidhyalaya,Pithapur, Distt.Ghazipur for E D D A, illegally under assurance of appointment by Shri Ram, Charge was taken from him and respondent no.4, who is relation of Shri Ram was accommodated in place of the applicant. Hence, this petition.

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4. The respondents denied the said allegations and averred that the applicant submitted the marksheet of the Junior High School Examination of the year 1981 issued by Rama Shanker Vidhyalay, Pithapur Mishrawalia Distt. Ghazipur which was sent to Basic Shiksha Adhikari, Ghazipur vide letter dated 8.1.93 who intimated that there was no such Vidhyalaya vide his letter dated 18.03.93, therefore it cannot be said that the applicant is a class VIIIth passed. When the applicant's father vide letter dated 7.8.87 stated that the applicant has studied at home and as such there is no valid educational certificate. The applicant is suitable for appointment to the post of Extra Departmental Runner on the basis of his educational qualification certificate. Hence, prayed for dismissal of the application.

5. There is no letter on record of Late Mohd. Kamil, the father of the applicant dated 7.8.87 by which he informed the respondent that the applicant studied at home. In addition to it, neither the original nor the copy of the letter issued by Basic Shiksha Adhikari, Ghazipur No. 7066/TC/92-93 dated 18.3.93 is on record. These are the basic documents on the basis of which the counter affidavit has been filed. Failure to produce them, ^{leads} ~~sends~~ me to conclude that, if they were produced, they must have not supported the defence version. In such circumstances, I draw an adverse inference against the respondents and held that either no proper enquiry in respect of qualification of the applicant was held or the facts do not speak the same. Hence, the rejection of the candidature on the said ground was unwarranted.

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6. On the other hand, with the rejoinder the applicant has filed R.A.-1 - the certificate of the Principal, Rama Shanker Vidhyalay , Pithapur which discloses that the applicant was a regular student of his Institution upto VIIIth Standard and passed the same in the year 1980 - 81. Marksheet R.A.2 has also been annexed with it.

7. In rejoinder para no.7 , the applicant has stated that the aforesaid institution was recognised on 01.07.80 which was withdrawn on 30.06.84 by the Basic Shiksha Adhikari, Ghazipur. The period of the study of the applicant was prior to it. Hence, it cannot be said that he is possessed ^{of} the educational qualification in an Institution not recognised by the Government. R.A.1 has been countersigned by the Additional District Inspector of School. The fact is suggestive of a fact that the enquiry conducted by the respondent in respect of educational qualification of the applicant was not only without notice to the applicant but not proper enquiry, thus the applicant is possessed of the educational qualification required for the post of E D D A.

8. The applicant's father was E D D A - died when he was in service. The applicant being his son is entitled for the post for which he possess the educational qualification and other required qualification on the basis of compassionate appointment. The fact that Sri Tazmul Hasan is a teacher in a Basic Primary Pathshala, Chak Farid in Distt. Ghazipur and Shri Iftikhar Hussain also a teacher in Madarsa in Bihar State who are the sons of the Late Mohd. Kamil is a relevant fact but this fact cannot also be over looked that the applicant is a Member supporting the family and the others who were in employment in the Government, are not residing with the widow of Late Shri Mohd. Kamil. In the circumstances, the applicant is entitled to be considered for the same post.

J.S.M.

9. As the applicant is not working, hence on the basis of no work no wages, the applicant is not entitled to any pecuniary benefits.

10. In the result , application deserves to be allowed and is allowed accordingly and the respondents are directed to consider the candidature of the applicant in respect of E D D A on the basis of dying-in-harness rules within a period of three months. The respondents are ordered to pay the costs of this application Rs. 675/- (Rs.500/- as Advocate's fee plus Rs.175/- for the cost of the application).

[Handwritten Signature]

MEMBER (J)

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