OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 8th day of December 2000.

Hon'ble Mr. V.K. Majotra, Administrative Member
Hon'ble Mr. Rafiq Uddin, Judicial Member

Original Application no. 164 of 1993.

Rajesh Kumar Tripathi, S/o Shri U.N. Tripathi,
R/o House no. 106, Gopal Nagar, Naubasta,
Kanpur.

... Applicant

C/A Shri V. Bahadur

Versus

1. Union of India, through the Secretary
Government of India, Department of Posts,
Ministry of Communication, New Delhi.

2. Post Master General, U.P. Kanpur,
G.P.O. Blgs, Kanpur.

3. Senior Superintendent of Post Offices,
Kanpur City, Kanpur.

4. Sub Divisional Inspector (Postal)
East, Sub-Division, Kanpur.

5. Sri Subodh Kumar Tewari, S/o Sri P.N. Tewari,
R/o Goverdhanpurwa, P.O. Naubasta, Hamirpur
Road, Kanpur. Presently posted as E.D. Packer,
Naubasta, Hamirpur Road, P.O. Kanpur

...Respondents

C/Rs Km. S. Srivastava, Sri R. Tiwari &
Sri N.P. Singh

Alongwith

Original Application no. 205 of 1993.

Smt. Usha Kashyap, W/o Prem Swaroop Kashyap,
R/o 231/7, Babanagar, Post Office, Naubasta,
Distt. Kanpur Nagar.

... Applicant

C/A Shri B.P. Tewari

Versus

1. The Union of India through its Secretary,
Ministry of Post & Telegraph (Communication),
New Delhi.

2. The Senior Superintendent of Post Offices
(City Division), district Kanpur Nagar.

3. Sri Dev Saran Dwivedi,
Sub-Divisional Inspector,
(Eastern Division), Post Kanpur City Division.

4. Subodh Kumar Tiwari, R/o House no. 30E/23
Prem Ata Chakki, Daubauli,
Kanpur 22.

5. Rajesh Kumar ~~Tiwari~~ Tripathi, S/o Sri U.N. Tripathi,
R/o House no. 106 Gopal Nagar,
Naubasta, Kanpur.

...Respondents

C/Rs Km. S. Srivastava, Sri R. Tewari &
Sri N.P. Singh

O R D E R(Oral)

Hon'ble Mr. V.K. Majotra, Member-A.

The facts and issued involved in OA 164 of 1993 and OA 205 of 1993 being common, they are being disposed of by a common order. For the sake of convenience the main facts have been culled out from OA 164 of 1993.

2. The applicant has challenged order dated 29.10.92/04.11.92 and sought quashing of appointment of the respondent no. 5, Shri S.K. Tiwari, as Extra Departmental Packer (in short EDP) and a direction to the respondents to appoint the applicant in his place. This O.A. was disposed of by order dated 22.5.96, holding that the appointment of the respondent no. 5 was wholly irregular. This appointment was, therefore, quashed and respondents were directed to hold a fresh selection for the post of EDP in Naubasta, Hamirpur Road, Post office, for amongst the candidates who were sponsorred by Employment Exchange in the first list received prior to the expiry of the last date of receiving the names from the Employment Exchange. It was clarified that the selection shall be made strictly in accordance with the instructions contained in Section III of E.D. Rules.

3. The matter was carried to the Hon'ble Supreme Court in Civil Appeal no. 64-65 of 1998 which was decided vide order dated9.1.98 as follows :-

"THAT the Judgments and Orders dated 22nd May, 1996 and 6th September, 1996 of the Central Administrative Tribunal Allahabad Additional Bench at Allahabad in Original Application No. 164 of 1993 and Civil Misc. Review Application No. 87 of 1996 in Original Application no. 164 of 1993 be and are hereby set aside and the matter be and is hereby remitted to the aforesaid Tribunal with the direction that the said Tribunal Do restore to its file O.A. no. 164 of 1993 and after service of notice of the application upon the fifth respondents therein (the appellant herein) Do hear and sispose of the same on merits as expeditiously as possible.

2. THAT it shall be open to any of the parties to move for a fixed date of hearing of the Original Application No. 164 of 1993."

Thus the matter is being heard again on merits after serving a notice upon the fifth respondent, Sri S.K. Tewari.

4. The main difference between the contentions of applicant's in OA 164 of 1993 and OA 205 of 1993 ~~are~~ is that the applicant Sri R.K. Tripathi in OA 164 of 1993 has stated that he has obtained 71% marks in 8th class vis-a-vis respondent no. 5's 47% marks and Smt. Usha Kashyap, applicant in O.A. 205 of 1993 has stated to have been obtained 65% marks in class 8. Another point made by Smt. Usha Kashyap that she was a female candidate and a female candidate ~~have~~ has to be given preference under departmental instructions.

5. The learned counsel for the applicant in OA 164 of 1993 contended that the cut off date for receiving list of candidates from the Employment Exchange was notified as 06.07.90. The Employment Exchange forworded 2 lists of candidates, first on 6.7.90 and second on 10.07.90. He contended that since the names contained in the second list were also considered in the selection, the selection gets vitiated. If, all the selection is to be considered, the applicant Shri R.K. Tripathi had obtained 75% marks in class 8, thus he was certainly more meritorious than respondent no. 5.

6. As regards the objection relating to cut off date and list of names received after cut off date is concerned We find that this is not the case of the applicant that the name of respondent no. 5 was included in the 2nd list. As a matter of fact, respondent no. 5 has made positive statement that his name was included in the first list itself. We find that when the name of respondent no. 5 was included in the first list, which was received before the cut off date, the objection relating to the second list ~~loosed~~ loses its relevance altogather.

7. As regards the contention that the essential qualification for recruitment to the post EDP is 8th Std. Learned counsel for the respondents referred to the relevant rules on this point. According to them rules relating to educational and other qualifications were changed vide no. 17-366/91/ED and training dated 12.3.93, in which educational qualification for

E.D. Delivery Agents, E.D. Stamp Vendors and all other Categories of EDAs were prescribed as follows :

> (Service Rules for Extra-Departmental Staff in Postal Department, Sixth Edition - 1995)
> "VIII Standard. Preference may be given to the candidates with Matriculation qualifications. No weightage should be given for any qulaification higher than Matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic their so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English."

They further mentioned that the earlier rule prescribed vide D.D. Post letter no. 41-301/87-PE II (ED & training) dated 6.6.88 is as follows :-

> (Service Rules for Extra Departmental Staff In Postal Department, Fifth Edition- 1992)
>
> "VIII Standard (VIII Standard may be preferred) Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Cartegories such as ED Messengers should also have enough working knowledge of English."

Whereas the applicant has based his case on merit and percentage of marks obtained in 8th Std, We find that the qualification of 8th Std was prescribed only from 12.2.93, prior to that, as per instruction dated 6.6.88, 8th Std was not a prescribed qualification

but ~~they are~~ Candidates were required to have sufficient working knowledge of regional language and knowledge of simple arithmatic only. The case of respondent no. 5 is that he had been appointed in ~~primafacie~~ preference to all others on the basis of merit and experience.. Learned counsel for the respondent no. 5 refer to applicant's experience as substitute ED stamp vender from 25.5.88 to 19.12.88 and 24.12.88 to 6.5.89 as substitue ED packer (annexure 2 A to the review application 87 of 1996 in OA 164 of 1993).

8. We find that as per prescribed rules at the time of selection, middle Std. was not prescribed qualifications for ED packers. The merit in the 8th Std., therefore, ~~could~~ was not ~~he only~~ the criterian for selection in question. Under the instruction obtaining at the relevant time, working knowledge of the regional language and simple arithemetic was the prescribed qualification and in addition to respondent no. 5 had relevant working experiance.

9. It is appropriate to mention here that though Smt. Usha Kashyap, applicant in OA 205 of 1993 has claimed preferential treatment being a female candidate, the relevant instructions which have been quoted above above do not prescribed such any preferential treatment.

10. In view of the foregoing, we hold that the appointment of respondent no. 5 Shri S.K. Tewari cannot be held to be irregular on the basis of his infreior merit in the 8th Std. He was selected on the basis of prescribed qualifications and experience at the relevant time. Thus we do not find any merit in these OAs for any intervention by the Court. The OAs are dismissed accordingly.

11. No order as to costs.

Member-J Member-A

/pc/