

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 07/10 day of December 2000.

C O R A M :- Hon'ble Mr. V.K. Majotra, Member- A.  
Hon'ble Mr. Rafiq Uddin, Member- J.

Orginal Application No. 1164 of 1993

Smt Asha Singh, Wife of Sri Chandresh Singh  
R/o Vill. and P.O Rithuakhore, Distt. Gorakhpur.

..... Applicant.

Counsel for the applicant:- Sri Avanish Tripathi

V E R S U S

1. Union of India through the Director Postal Services, Gorakhpur Region, Gorakhpur- 273008
2. Sr. Supdt. Of Post Offices, Gorakhpur Division, Gorakhpur- 273001.
3. Sri Atri Muni Singh, B.P.M., Rithuakhore via Sahjanawa, Distt. Gorakhpur.

..... Respondents.

Counsel for the respondents:- Sri Satish Chaturvedi

O R D E R

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

The applicant has challenged the letter dt. 02.2.92 issued by Sr. Superintendent of Post Offices (respondent No. 2) Gorakhpur appointing Atri Muni Singh (respt.3)

as E.D.B.P.M, Rithuakhore and alleging the applicant's <sup>that</sup> appeal dt. 16.03.92 has not been decided by the respondent till date.

2. The brief facts in this case are that after the retirement of one Sri Vrindaban Singh from the post of E.D.B.P.M on 05.08.91, the post fall vacant and Employment Exchange was asked to sponsor the name of candidates. The Employment Exchange sponsored 5 candidates on 06/07.09.91 in which names of the applicant and respondent No. 3 were included. The Sr. S.P.O omitted to invite applications from the candidates, sponsored by the Employment Exchange and in colourable exercise of powers ~~treatting~~ <sup>ignored</sup> the nomination through the Employment Exchange ~~as applications~~ <sup>and</sup> proceeded to decide about appointment. As the respondent No. 3 was already employed as E.D.D.A in the same post office, he applied in advance for changing his post from E.D.D.A to E.D.B.P.M. Thus the applicant had to furnish her documents later on. Respondent No. 2 appointed the respondent No. 3 by-passing the recruitment Rules and ~~violating~~ the provisions of Art. 14 and 16 of Constitution of India. The applicant lodged a complaint with the Post Master General on 16.03.92 who ordered an enquiry. The enquiry Officer obtained statements of one Sri Om Prakash Singh to the effect that the applicant was a fake lady. On learning this, the applicant submitted an ~~affidavit~~ <sup>representatitve</sup> dt. 17.05.92 with affidavit of her husband and father of respondent No. 1 (annexure A-8, A-9 and A-10) establishing that she is a ~~properly~~ <sup>genuine</sup> resident of Vill. Rithuakhore.

3. The applicant has alleged that she has secured the highest marks in the High School examination amongst 5 candidates. Respondent No 3 is lowest in the merit. The applicant has sought quashing of appointment of

respondent No. 3 and direction to the respondents to appoint the applicant as E.D.B.P.M, Rithuakhore.

4. In their counter reply respondent No. 1 and 2 have stated that on verification it was found that Smt. Radhika Devi applied for the post by furnishing High School certificate of Late Smt Asha Singh, w/o Lal Chand Singh. According to the respondents, respondent No 3 fulfilled all the conditions and was working as E.D.D.A in the same Post Office. Smt Radhika Devi, so called, Smt. Asha Singh was not found suitable as she has submitted forged certificate. According to the respondents, Sri Chandresh Singh had married Smt. Asha Singh after death of first wife Smt Radhika Devi. The respondents have relied on Kutumb Register inwhich applicnat's name is not mentioned as Chandresh Singh's wife.

5. Respondent No 3 in his counter reply has endorsed the contents of respondent Nos. 1 and 2. He has not contradicted the averments made by the applicant in para 4.2 to 4.5 of the O.A. The applicant has filed R.A as well.

6. We Have heard learned counsel for the parties and gone through the materials available on record and that produced by the respondents.

7. The learned counsel of the applicant took exception to eligibility condition No. 8 added in hand in annexure A- 1 which reads as under :-

“ आवेदन पत्र सीधे भी भेज दा सकते हैं। सेवार्थीजन कार्यीलय क्षात्र नागरिकित अभ्यार्थीर्गी के अनुपमुक्त पार्ट जारी पत्र सीधे प्राप्त आवेदन पत्र पर नहीं विचार किया जा सकता है। ”

It is alleged that this was added to enable respondent No.3 to make application directly to the respondents. In view of the above we place reliance on Excise Superintendent Malkapathnam A.P Vs. K.V.N. Visweshwarai Rao & Ors. 1996

(6) SCC 216 and hold that selection can-not be restricted to names sponsored by the Employment Exchange only, wide publicity can be made and direct applications can also be obtained from those who already worked in the establishment.

8. As the Employment Exchange and respondents did not provide proper information about the format and necessary documents, furnishing of all documents later on by the applicant to the respondents cannot be objected to.

Annexure R.A- 1, Ration Card of the family of Sri Chandresh Singh showing applicant's name as his wife, R.A- 2, voter's list indicating the applicant as Sri Chandresh Singh's wife and R.A- 3, Kisan Bahi wherein the applicant has been shown as Khatedar of the village alongwith affidavit of Chandresh Singh, affidavit of Sri Vikram Singh established that the applicant is a genuine resident of Vill. Rithuakhore.

Annexure A- 3 and annexure A- 6, dt. 28.09.91 and 20.08.91 respectively, are sale deed of property and income certificate issued by the Tehsildar relating to Smt. Asha Singh w/o Sri Chandresh Singh. The enquiry held by the respondents stating the applicant to be a faked lady does not seem to be proper. The respondents have not produced the relevant records of the enquiry before us. The averments that from amongst 5 candidates sponsored by the Employment Exchange, the applicant has secured highest marks in the High School examination has not been specifically denied any one of the respondents. Even if respondent No.3 has already worked as E.D.D.A and names have been solicited from the Employment Exchange, he can be given preference only if he qualified with higher merit than the rest of

candidates. We have held that the applicant is a genuine person. She has also higher merit vice other candidates including respondent No.3.

9. Having regard to reasons stated above the applicant has established her superior merit than respondent No. 3 and all other candidates for appointment as E.D.B.P.M, Rithuakhore in response to notification dt. 07.03.91. In the interest of justice here is a case warranting intervention by the Tribunal. The appointment Dt. 20.02.92 of Atri Muni Singh, E.D.D.A, Rithuakhore is set-aside and respondent No. 1 and 2 are directed to appoint the applicant as E.D.B.P.M, Rithuakhore forthwith. For the purposes of seniority she will be notionally appointed with effect from the date respondent No. 3 was appointed as E.D.B.P.M, Rithuakhore. However, she will not be entitled for any back wages.

10. There will be no order as to costs.

*Rahiquddin*  
Member- J.

*V. H. Majahir*  
Member- A.

/Anand/