

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this the 6th day of December 1996.

Coram : Hon'ble Mr. T. L. Verma Member- J.
Hon'ble Mr. S. Dayal Member- A.

Original Application No. 1564 of 1994.

Om Prakash Yadava a/a 31 years, s/o. Sri Deo Chand
Yadav, R/o. village Nathupur, P.O. Ahmadpur, Distt.
Jaunpur, working as EDMM, RMS, Jaunpur.

... Applicant
(C/A Sri R.B.Srivastava)

Versus

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

2. Senior Superintendent,
RMS, 'O' Division,
Lucknow.

3. The Sub-Record Officer,
RMS, 'O' Division,
Janpur. Respondents.

(C/R Sri S. C. Tripathi)

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(By Hon. Mr. T. L. Verma, Member-J)

This application under Section 19 of the
Administrative Tribunals Act, 1985 has been filed for
quashing order dated 29.9.1994 whereby the appointment
of the applicant has been cancelled with all consequential
benefits.

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2. The case of the applicant as made out in the OA is that two posts of E.D.M.M. Jaunpur fell regular vacant consequent upon absorption of the incumbents. The Employment Exchange, Jaunpur was, therefore, moved for sponsoring names of suitable persons for filling up the aforesaid posts. It is stated that the Employment Exchange sponsored names of 40 candidates by its letter dated 30.7.1994. The concerned Appointing Authority, thereafter issued letters to the candidates sponsored by the Employment Exchange, for appearing at interview held on 8.8.1994 for appointment on the said post. The further case of the applicant is that the Appointing Authority selected the applicant and one Sri Fauzdar Rail for appointment after considering the respective merit of the candidates, who appeared at the interview. Appointment letters were accordingly issued appointing and the applicant/Sri Fauzdar Rai (annexure 3) on the posts of EDDM, RMS, Jaunpur. It is alleged that respondent no.1 issued order dated 29.9.1994 directing the respondent no. 2 to terminated the services of the applicant and Sri Phauzdar Rail without making any reference to his letter. The order, whereby the services of the applicant has been terminated, has been assailed as being illegal, arbitrary and without jurisdiction. Hence this application for the relief mentioned above.

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3. The respondents have contested the claim of the applicant. In the counter affidavit, filed on behalf of the respondents, it has been stated that the concerned Appointing authority committed illegality in making appointment of the applicant inasmuch as call

letters were not sent under registered cover as required under the rules. Not only that, it is alleged that the letter calling the applicant for appearing at the interview did not enclose the format of the application which according to the rules, the candidates are required to fill in. It is also stated that letter sent to the candidates did not specify the minimum qualification prescribed for the post and also did not ask the candidates to bring with them the certificates of minimum qualification, required for the post. The entire selection proceedings, therefore, it is stated, is vitiated. Hence the impugned order cancelling the appointment of the applicant is just and proper. The applicant has filed rejoinder to the C.A. and Supp. R.A. to the Supplementary counter affidavit filed by the respondents.

4. We have heard the learned counsel for the parties and perused the record carefully. No rule for recruitment of Extra departmental agents, have, so far, been framed. The department, however, has issued instructions from time to time regarding the method of appointment on the post of Extra Departmental Branch Post Master and Extra Departmental Agents. The instructions issued in that behalf, ^a has been upheld by a full bench of the Tribunal in S. Ranganayakulu Versus Sub-Divisional Inspector 1995 (30) A. T. C. 473, in absence of statutory rules, ^{will} _A have full play and contravention thereof would vitiate the entire selection process.

5. According to the instruction issued by the competent authority, appointment on the post of Extra departmental agent, are to be made through the Employment Exchange. The concerned appointing authority is to send requisition to the Employment Exchange of the area, requesting him to sponsor the names of suitable candidates for appointment on the post of Extra departmental agent. After the names are received from the Employment Exchange within the specified period of 30 days, candidates sponsored by the Employment Exchange should be addressed by registered post with acknowledgement due annexing specimen application form, calling for the requisite information. After the applications are received, appointment is made after assessing the respective merit of the candidates. Respondents contention that the appointing authority has violated the instruction issued by the competent authority in that behalf, therefore, the entire selection process is vitiated and the appointment of the applicant is void ab initio.

6. It is not in dispute that, according to the instructions issued in that behalf, notices be issued to the candidates sponsored by the Employment Exchange by registered post with acknowledgement due, annexing therewith the specimen application form, calling for the required information from the candidates. This instruction has not been complied with as is evident from annexure CA-3. Notices were sent to the candidates sponsored by the Employment Exchange through ordinary post. The same also did not enclose the prescribed Format of application that was to be filled in by the candidates.



7. As a result of the above omission on the part of the appointing authority, it was submitted, only 13 of the 40 candidates ~~were~~ called for interview, reported for the test. Not only that, 7 out of 13 persons did not bring the marks sheet of ~~the~~ VIIIth examination, minimum qualification prescribed for appointment to the post of Extra departmental ~~Mail~~ Man. The minimum qualification prescribed for appointment on the post of Extra departmental agent is VIIIth standard, though preference may be given to the candidates having matriculate qualification. Photocopy of the notices issued to the candidates (annexure CA-3) does not specify that the minimum qualification prescribed for the post is VIIIth standard. It also does not direct the candidates as to what certificate in proof of their educational qualification they are required to produce. It would thus appear that out of 13 candidates, who reported for interview, only 7 had with them the certificates/marksheets of minimum qualification prescribed for the post.

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8. In view of ~~the~~ discussion of the facts and the circumstances mentioned above, we have no doubt in our mind that the concerned Appointing Authority has committed breach of the instructions issued by the competent authority in regard with the method of recruitment of E.D.D. As inasmuch as notices were not sent to the candidates sponsored by the Employment Exchange under registered post with acknowledgement due, annexing the specimen form with all details. This has resulted ⁱⁿ _{in} 7 out of 13 candidates, who reported for interview, ~~in~~ not bringing their certificates in regard

to the minimum qualification prescribed for the post. Though the Appointing Authority has made appointment of the candidates who have secured highest marks in VIIIth standard, but inview of the fact that 7 of the 13 persons who reported for interview did not bring their marksheets/ certificates of VIIIth examination, the selection cannot be said to be on the basis of the assessment of respective merit of the candidates, who appear for interview. The omission on the part of those candidates had obviously resulted because the notices sent to them did not either enclose the prescribed format of the application or specify that the candidates were required to produce such certificates at the time of interview. The omissions and commissions on the part of the Appointing Authority have, therefore, materially affected the interest of such candidates, who appear for interview without certificates marksheets of the minimum qualification required for the post. As has been held by a full bench of the Tribunal in S. Rangamayalus case, in absence of statutory rules, executive instructions issued by the competent authority will have full play and contravention thereof would vitiate the entire selection process. Inview of this appointment of the applicant, made without complying with the procedure prescribed under the instruction issued by the competent authority, *can not be upheld*



9. Inview of the above, we dispose of this application with a direction to the concerned Appointing Authority to issue fresh notices by registered post with acknowledgement due to all the candidates including the applicant, whose names were recommended by the Employment Exchange, to submit their applications in the prescribed format within a reasonable time. It shall be ensured that

that letters are issued in such a way that the candidates have sufficient time to apply for the same. In case requisite numbers of applications are received, selection shall be made on the basis of comparative merit.

10. The applicant is holding the post of E.D. Mail Man on the strength of interim order of status-quo passed in ~~other~~ ^{the} case. He may be allowed to continue to hold the same until fresh appointment on the basis of the notices issued in pursuance of the direction issued in this case are made. Incase, the applicant is again selected, he shall continue to hold the said post. In case, however, appointment of some other candidate having superior merit is made, appointment of the applicant will automatically stand terminated.



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