

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : ALLAHABAD BENCH
ALLAHABAD

Dated: ALLD. on this 30th Day of September, 1997.

CORAM : Hon'ble Mr Justice B C Saksena, V.C.
Hon'ble Mr S Das Gupta, A.M.

ORIGINAL APPLICATION NO. 1160 OF 1994.

Shri Prakash Singh Son of Shri
Yamuna Singh working as E.D.D.A-cum-
E.D.M.C., Ranipur under Basti
Division, Basti U.P.

... Applicant

C/A Shri R P Singh

Vs.

- (1) Assistant Superintendent of Post
Offices, Basti (East), Basti.
- (2) The Superintendent of post Offices,
Basti division, Basti.
- (3) The Director Postal Services
Gorakhpur Region, Gorakhpur.
- (4) The Post Master General
Gorakhpur Region, Gorakhpur.
- (5) Union of India through the Secretary
Ministry of Communication, Deptt
of Post, New Delhi.

... Respondents

C/R Km. Sadhana Srivastava

ORDER

By Hon'ble Mr S Das Gupta, A.M.

Through this O.A. filed under section 19 of
the Administrative Tribunals Act 1985, the applicant seeks
a direction to the respondents to give him a regular
appointment on the post of Extra Departmental Delivery agent(EDDA)

-cum-Extra Departmental Mail Carrier (EDMC), Ranipur.

2. The applicant's case is that he was appointed on the post of ~~EDDA-cum-EDMC~~ at Ranipur by an order dated 04.01.1994, a copy of it has been placed as Annexure A-I. He took over charge of the post on 05.01.1994 and since then has been working continuously on that post. He has claimed that he passed both Matriculation and Intermediate examination in IInd division and ^{he} otherwise fulfills conditions prescribed for the appointment to the post. However, a local political leader is allegedly exerting pressure on respondent No.1 to appoint another person of his choice on this post and that accordingly the applicant has been verbally instructed to stop working. Hence this application.

3. The respondents have contested the case by filing counter affidavit in which it has been stated that the post of EDDA - cum - EDMC was created in the branch post office at Ranipur in September 1993. In order to fill this post, the employment exchange was requested to sponsor names of suitable candidates. Although, employment exchange sponsored names of five candidates, only one of these candidates viz. Komal Prasad applied for the post. The vacancy was, thereafter, advertised and the applications were invited. In response, 5 applications were received including that of Komal Prasad. The applicant was also one of the candidates. However, Komal Prasad was selected for the post as he had fulfilled all the necessary qualification and also was a member of Schedule cast community. It is

further stated that the applicant's earlier appointment was only on provisional basis pending regular selection. The applicant, it is stated, is the son of Shri Yamuna Singh, Asst. Supdt of Post Office (Court) on whose risk and responsibility the applicant was given provisional appointment. This provisional appointment was tenable upto 31.03.1994 ~~or~~ until a regular appointment on the post was made, whichever was earlier. Since the process of regular appointment got delayed, the provisional appointment of the applicant was extended upto 30.06.1994 and then again upto 31.07.1994 by the orders dated 31.03.1994 (Annexure CA-5) and dated 29.06.1994 (Annexure CA-6). Meanwhile the selection of Komal Prasad was finalised and he was appointed by the order dated 4.8.1994 pursuant to which he joined on 6.8.1994. The provisional appointment of the applicant, having come to an end on 31.07.1994, was not further extended in view of the selection of Komal Prasad. The respondents have further stated that the applicant could not be appointed in view of the fact that he had no independent source of income and therefore, he was not eligible to be appointed as EDDA - cum - ELMC.

4. The applicant filed ~~the~~ a rejoinder affidavit in which it has been stated that there is no statutory rule indicating that ~~minor~~ preference may be given to SC/ST candidates in selection for appointment to ED posts. He has claimed to have obtained highest marks among all the candidates who had applied for the post and asserted in view of this, he should have been appointed on the post on regular basis. In this regard, he has referred to the

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instructions contained in the DG (Posts) order dated 10.05.1991.

5. We heard the arguments advanced by the learned Counsel for ~~the~~ both the parties. We have also perused the pleadings on record carefully.

6. It is clear from the letter of appointment issued to the applicant that the said appointment was of a provisional nature and it was specified therein that said appointment was tenable upto 31.03.1994 or until a regular appointment was made, whichever was earlier. In view of this, if the services of the applicant were brought to an end on another person having been selected on regular basis and appointed, such termination of service will be wholly in accordance with terms and conditions of the provisional appointment. Even the applicant has stated in the O.A. that his services could ~~not~~ have been brought to an end ^{only on} ~~in exchange~~ ^{of} a regular appointment of another person. The respondents have specifically averred that one Komal Prasad was regularly selected and appointed. They have also stated that the applicant was considered but could not be selected as he was not having independent source of income. They have also given the reason, why Komal Prasad was selected for the post. The reason, given, is that he had fulfilled all the qualifications required for appointment on the post and he is a member of SC Community.

7. The applicant in his rejoinder affidavit has drawn our attention to the DG (Post) letter dated 10.05.1991.

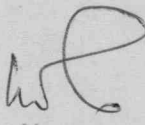
An extract of this letter finds place in section III of the EDA (Conduct & Service) rules. This section contains the various instructions governing the manner of selection for the ED posts. The letter dated 10.05.1991 clearly stipulates for all ED appointments, the determining factor for assessing the interse merit of the candidate shall be the marks obtained in the examination which make them eligible for appointment provided the candidate selected has the prescribed minimum level of property and income.

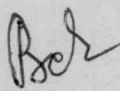
8. The applicant has claimed in his rejoinder affidavit that he had obtained the highest marks among all the candidates. He, however, has neither indicated in which examination he has obtained the highest marks nor has he annexed any marksheet in support of his contention. The minimum qualification prescribed for the post of EDDA is VIII standard. This being the qualifying examination, the candidate who obtained the highest mark in the said examination should normally be considered best on merit subject to ^{his} ~~their~~ fulfilling other criteria prescribed for the post. In the absence of any specific mention as to the examination in which the applicant secured the highest marks and also in the absence of any supporting documents, we are unable to hold that the applicant was the best among the candidates. In ^{that} ~~view~~ of the matter, whether or not Komal Prasad could have been given any preference by virtue of the fact that he belongs to SC community, loses relevance.

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9. In any case, the applicant has not challenged the appointment of Komal Prasad. Even after respondents specifically stated in their counter affidavit that Komal Prasad had already been appointed and he joined the post, the applicant did not file any amendment application in order to challenge the said letter of appointment nor did he seek impleadment of said Komal Prasad. In view of this no relief could have been granted to the applicant as the same would have been adverse to the interest of Komal Prasad who was not a party before us.

10. In view of the foregoing, this application fails and the same is dismissed. Parties shall, however bear their own costs.


A.M.


V.C.

/snt/