

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 5th day of July, 2002

Original Application no. 368 of 1995.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Mukesh Kumar Shukla,
S/o Sri U.S. Shukla,
R/o Vill & Post Kudda,
Tahsil & Distt. Jaunpur.

... Applicant

By Adv : Sri K.C. Sinha

Versus

1. Union of India through Director General Posts,
New Delhi.
2. Chief Post Master General, U.P. Circle,
Lucknow.
3. Superintendent of Post Offices,
Jaunpur.
4. Sub Divisional Inspector Posts,
Kerakat, Distt. Jaunpur.
5. Sri Manoj Kumar Rai,
R/o Vill & Post Muftiganj,
Tahsil & Distt. Jaunpur.

... Respondents

By Adv : Sri B.B. Pandey, Sri A Sthalekar & Sri D.C. Saxena

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA filed under section 19 of the A.T. Act, 1985, the applicant has challenged order dated 27.1.1995 of respondent no. 3 and has prayed that the order dated 27.1.1995 be quashed alongwith its review note passed by respondent

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no. 3 and respondent no. 1 be directed to review the matter and issue suitable instructions regarding the mode and criteria for selection on the post of Extra Departmental Runner (in short EDR) Kudda Branch Post Office in compliance of the judgment of this Tribunal dated 13.5.1994 and respondent no. 3 to select most meritorious candidate.

2. The facts, in short, are that for the post of EDR Kudda Distt. Jaunpur which fell vacant on 5.5.1988, requisition was sent to Employment Exchange on 04.05.1988 to sponsor the names by 3.6.1988. Names of 8 candidates were sponsored including that of the applicant, one Shri Shiv Shanker Rai and Sri Manoj Kumar Rai. Respondent no. 4 appointed Sri Shiv Shankar Rai as EDR though the applicant was most suitable. Against aforesaid appointment Manoj Kumar Rai filed complaint. Enquiry was held and appointment of Shiv Shankar Rai was cancelled and Sri Manoj Kumar Rai was appointed. The ground taken for cancelling the appointment of Sri Shiv Shankar Rai was that Sri Manoj Kumar Rai resides at a less distance from Kudda Branch Post Office in comparision to Shiv Shankar Rai. Respondent no. 3 also observed that Sri Manoj Kumar Rai is a resident of Muftiganj from where the mail originates/terminates. Respondent no. 4 cancelled the earlier appointment of Sri Shiv Shankar Rai and in his place Sri Manoj Kumar Rai was appointed on 20.9.1988. Sri Shiv Shankar Rai filed OA no. 1186 of 1988 which was decided by this Tribunal vide order dated 14.5.1991 by allowing the application and directing respondent no. 3 to put back Sri Shiv Shankar Rai within one month and also to review the matter if so required after giving opportunity of hearing to Sri Shiv Shankar Rai. Respondent no. 3 reviewed and passed order dated 17.7.1991.

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in favour of Sri Shiv Shankar Rai. Against the aforesaid order of respondent no. 3, sri Manoj Kumar Rai and applicant filed separate representations. The applicant in his representation stated that he is resident of village Kudda where the Post Office was to be opened and he fulfills the eligibility condition as he has passed Poorva Madhyama equivalent to High School and Uttar Madhyama equivalent to Intermediate. Sri Manoj Kumar Rai filed SLP bearing Civil appeal no. 4767 of 1992 before Hon'ble Supreme Court challenging the Tribunal's judgment dated 14.5.1991 passed in OA 1186 of 1988 and the apex Court set aside the Tribunal's order dated 14.5.1991 and dismissed the OA 1106 of 1988 filed by Sri Shiv Shankar Rai challenging the order dated 13.9.1988. Hon'ble Supreme Court directed the Postal authorities to review the matter and take decision within 6 months from the date of order dated 6.11.1992. The applicant after decision of Hon'ble Supreme Court again filed his representation on 1.3.1993. The applicant has also filed OA 150 of 1991 challenging the order of respondent no. 3 dated 17.7.1991 which was disposed of by order of this Tribunal dated 13.5.1994 with direction to review the criteria and make the final selection within 7 months. The Tribunal also directed that the eligibility condition for recruitment would remain unchanged but the criteria for selecting the best candidate only requires to be fixed objectively. Applicant filed another application on 20.10.1994 reiterating his claim for appointment as EDR Kudda but the respondent no. 3 by order dated 27.1.1995 (Ann 1) alongwith its review note has upheld the earlier appointment of sri Manoj Kumar Rai. Hence this OA which has been contested by the respondents by filing counter reply.

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3. Heard Sri A Srivastava learned counsel for the applicant and Sri Amit Sthalekar learned counsel for official respondents and Sri D.C. Saxena learned counsel for private respondent no. 5. and perused records.

4. Learned counsel for the applicant submitted that respondent no. 3 has no powers to lay down the criteria for selection in pursuance of this Tribunal direction dated 13.5.1994. It is only Secretary Posts who is also D G Posts is competent to lay down the criteria. The order dated 27.1.1995 passed by respondent no. 3 is against the spirit and direction of the Tribunal. Therefore, the order dated 27.1.1995 passed by respondent no. 3 is bad in the eyes of law. The action of respondent no. 3 laying down the criteria for selection, amounts to contempt of this Tribunal.

5. The applicant's counsel argued that in OA 150 of 1992 the DG Posts Communication dated 20.4.1993 was placed before this Tribunal which lays down the eligibility condition and the Tribunal did consider the same and then passed the order dated 13.5.1994 directing the respondents to review the criteria for Selection objectively and since the respondents did not file any review, the judgment of this Tribunal dated 13.5.1994 has been accepted in toto by respondents. Respondent no. 3 has no authority to pass orders dated 27.1.1995

6. The learned counsel further submitted that respondent no. 3 while reviewing has thrown the applicant out of consideration on the ground that the candidate of points of originating and terminating of delivery was available the applicant was not appointed. Another stand taken is that

educational qualification is not the only consideration for selection. However, it does not appear true on perusal of review note. The respondents are continuing changing their stand one way or the other from time to time without fixing any criteria as observed in the judgment and this time also the field of eligibility has been changed by respondent no. 3. The appointment has to be borne on the strength of Branch Post Office Kudda and not in Sub Post Office Muftiganj. Therefore, preference has to be given to the resident of village Kudda in view of Rule 4 (ii) of ED Agents (C&S) Rules 1964, and the question of consideration of those candidates who are residing within the delivery jurisdiction comes later in case no candidate of the residence of main office is available. Not considering the candidature of applicant inspite of being resident of Kudda village, the action of respondents is bad in the eyes of law.

7. Opposing the claim of the applicant, Sri Amit Shalekar learned counsel for official respondents submitted that the applicant has misinterpreted rule 4 (ii) of EDA (C&S) Rules 1964. As per rule a candidate seeking appointment on the post of EDR should reside in the station of the main Post Office or the stage where mails originate/terminate. Since the mails of Kudda originated and terminated at Muftiganj Sub Post Office, a person for appointment on said post had to be the resident of Muftiganj and not that of Kudda. The applicant being a resident of Kudda was not eligible for the vacant post. The respondents have reviewed the matter of appointment and have decided as per the extant rule on the subject.

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8. The learned counsel for the ~~applicant~~ further submitted that out of 8 candidates sponsored by Employment Exchange only four candidates fulfilled eligibility conditions and 4 including the applicant did not. Out of 4 eligible candidates one ~~Satyadeo~~ ^{the respondent} Yadav was the best merited candidate but on enquiry it was found that ~~Satyadeo~~ ^{the} Yadav was not a permanent resident of delivery jurisdiction of Muftiganj Post Office as such he was out of consideration. Out of remaining 3 candidates respondent no. 5 is the most merited candidate and therefore, he has been appointed.

9. Sri D.C. Saxena, learned counsel for private respondent no. 5, justifying the appointment of respondent no. 5 on the grounds advanced by official respondents submitted that in view of the judgment of Hon'ble Supreme Court in Tariq Islam Vs. Aligarh Muslim University and others 2002 SCC (L&S)1, the appointment of applicant who is working since January 1995 should not be disturbed.

10. We have heard rival contentions, have considered the submissions carefully and closely perused records.

11. The main controversy in this case is as to what should be the criteria for selection as EDR and whether the action of the respondents is in accordance with rules or not. As regards criteria it has already been fixed by DG Posts circular dated 20.4.1993 modifying the Recruitment rules and it provides that the person for appointment on the

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post of ED Runner should reside in the station of the Main Post Office or the station from where the mails originate/ terminate i.e. he should be a permanent resident of delivery jurisdiction of that post office. The principle behind laying down this criteria is that an EDR is able to discharge his duties efficiently as regards exchange of Mails between Branch Post Office and the Main Post Office. In the notification dated 4.5.1988 (Ann 2) respondent no. 4 called for the names from Employment Exchange mentioning that the candidate should be resident of Muftiganj or villages served by Kudda. The selection made under the notification has been challenged and counter challenged right upto Apex Court and in view of the decision of Hon'ble Supreme Court dated 6.11.1992 in civil appeal no. 4767 of 1992 (SLP (c) 13852 of 1991) (Ann A-6). We are not going into the merits of notification dated 4.5.1988. The relevant para of the judgment of Hon'ble Supreme Court reads as under:-

" We, therefore, allow this appeal, set aside the judgment of the CAT in appeal, however directing the respondents - postal authorities, to review the matter as to whether the appellant or respondent 4 calls to be appointed in the post of the Runner and render its final decision thereon within six months from today."

As per the above judgment of Hon'ble Supreme Court the contest for appointment as EDR is limited between Sri Manoj Kumar Rai i.e. respondent no. 5 and Sri Shiv Shankar Rai. However, this Tribunal vide its order dated 13.5.1994 in OA 150 of 1992 directed the respondents to review the entire matter afresh and fix the criteria for recruitment objectively without any change in the eligibility conditions for recruitment.

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12. The entire issue was reviewed by respondent no. 3 who is senior to the appointing authority i.e respondent no. 5 and has issued a comprehensive review note. We do not agree with the submission of applicant's counsel that respondent no. 3 is not competent to review and review should have been done by DG Posts. Since DG Posts has already laid down the criteria vide circular dated 20.4.1993 there is no requirement for DG Posts to re- review it. It is only the implementing authorities who have to review the cases of appointment as per the norms laid down and in the present case respondent no. 3 who is superior to respondent no. 4, the appointing authority has reviewed and we do not find any illegality in the action of respondent no. 3.

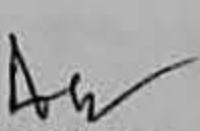
13. D.G. Posts has laid down that ED Mail Carriers, Runners and mail persons should reside in the station of the Main Post Office or the station from where the mails originate/ terminate. Therefore we are of the view that a candidate for appointment to the post of EDR Kudda could be a resident of Main Post Office that is Muftiganj or any other village falling under its delivery jurisdiction. Village Kudda does fall under the delivery jurisdiction of Muftiganj and therefore the applicant who is a resident of village Kudda is eligible to be considered for the appointment as EDR Kudda. While there is no illegality in the action of respondent no. 3 in reviewing the appointment, he has certainly erred in ignoring the candidature of the applicant. It appears that respondent no. 3 has limited his review in regard to respondent no. 5 and sri Shiv Shankar Rai which is not correct. Thus the decision of respondent no. 3 as per the review note is liable to be

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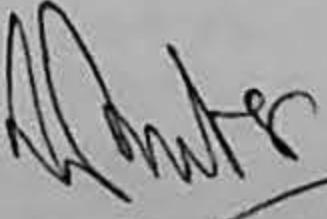
set aside. However, we find substance in the submission of learned counsel for respondent no. 5 that the appointment of respondent no. 5 be not disturbed at this belated stage in view of judgment of Hon'ble Supreme Court in Tariq Aslam's case (supra). In Tariq Aslam's case (supra) lower ranking selectee was appointed as temporary lecturer. As a result of litigation matter was re-examined by the employer University and the rival highranking selectee was found to be eligible. The matter came up before Hon'ble Supreme Court after about two long years of the lower ranking candidates appointment. In such circumstances while allowing the higher ranking candidate's appeal, Hon'ble Supreme Court directed the University to accommodate the said lower ranking candidate^h also in an appropriate post. Therefore, in the light of judgment of Hon'ble Supreme Court in case of Tariq Aslam (supra) we ^{not} would like to disturb the appointment of respondent no. 5 at this stage after a lapse of more than 7 years. The interest of justice shall be better served if the case of the applicant is reviewed and in case it is found that the applicant is higher in merit than respondent no. 5, the respondent no. 3 shall consider the applicant for an alternate appropriate post.

14. On overall consideration, we dispose of the OA with direction to respondent no. 3 to consider the applicant for an alternate appropriate post within 6 months in case he is found higher in merit than respondent no. 5.

15. There shall be no order as to costs.


Member (J)

Dated 05/07/2002


Member (A)