

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated: Allahabad, the 17th day of January 2001

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, VC

Hon'ble Mr. S. Dayal, AM.

Original Application No.425 of 1995

Smt. Rekha Singh,

s/o Sher Singh,

aged about 33 years,

r/o Village & P.O. Manpur,

District Allahabad.

(By Advocate Sri O.P.Gupta) Applicant

Versus

1. Senior Superintendent of Post Offices,
Allahabad, Division Allahabad.

2. Director Postal Services,
Allahabad Division, Allahabad.

3. Union of India, through Secretary,
Ministry of Communication,
Government of India, New Delhi.

4. Manoj Singh (Working as E.D.B.P.M. Manpur)
son of Sher Bahadur Singh,
r/o village Bhabhaur,
Post Office Manpur,
District Allahabad.

. Respondents.

(By Advocate Sri S.C.Tripathi and
Sudhir Agrawal)

ORDER

(RESERVED)

(By Hon'ble Mr. S. Dayal, AM)

The applicant in this O.A. under Section 19
of the Administrative Tribunals Act, 1985 has prayed
for setting aside appointment of Respondent no.4 on

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the post of Extra Departmental Branch Post Master, Manpur (hereinafter referred to as E.D.B.P.M.), District Allahabad and direction to the respondents to hold selection of E.D.B.P.M. from amongst candidates sponsored by Employment Exchange against Notification dated 27.4.1993 in accordance with directions of the Tribunal in O.A. 1206 of 1993.

2. The facts narrated by the applicants are that on account of retirement of previous incumbent, a vacancy arose on the post of E.D.B.P.M., Manpur. A Notification dated 27th April, 1993 was sent to the Employment Exchange, which sponsored three names including that of the applicant and of Respondent No.4. One Shri Prithvi Singh, who was working as E.D.D.A. also submitted his application. Shri Prithvi Singh was selected and appointed. His appointment was challenged by the applicant in O.A. No.1206 of 1993. The Tribunal by an order dated 11.8.1994 cancelled the appointment of Sri Prithvi Singh, as he was not a sponsored candidate and directed the respondents to hold selection from amongst sponsored candidates on the basis of comparative merit. The appointment of Sri Prithvi Singh was cancelled on 9th January, 1995 and Respondent no.4 Sri Manoj Singh, one of the sponsored candidates was appointed. The applicant has challenged the appointment of Sri Manoj Singh on the ground that she was superior in merit.

3. We have heard the arguments of Sri O.P. Gupta for the applicant, Shri S.C. Tripathi and Shri Sudhir Agrawal for the Respondents.

3.

4. The applicant has claimed that she was better candidate because she belonged to village Manpur, while the other two candidates belonged to village Bhabhan, which came under Gram Sabha of Manpur, because her income was higher than that of Respondent no.4, because she could locate the post office in a big pucca house in village Manpur, because she had previous experience of work and because she passed VIII standard in first division, while the other two passed it in second division.

5. The Respondent no.4 in his counter reply has controverted the claim of the applicant by saying that comparative chart was prepared by the respondents, and Respondent no.4 was found the most 'suitable' candidate. He took over charge of the post on 16.1.95.

6. The official respondents in their counter reply have stated that comparative chart was prepared and the respondent no.4 was considered to be the most suitable candidate. They have annexed a copy of the comparative chart. A perusal of comparative chart shows that the merit at High School stage only was considered and the applicant was shown as having passed VIII th standard only.

7. The instructions of DG, P & T for selection of candidates in the letter No.17-497/90 ED & Trg. dated 10.5.1991, as given on Page 70 of 1995 Edition of Swamy's Compilation reads as follows:-

" 2. The deciding factor for the selection of ED BRMs/ED SFMs should be the income and property and not the marks, has been examined threadbare but cannot be agreed to as this will introduce an element of competitiveness in the

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matter of possession of property and earning of income for determining the merit of candidates for appointment as ED Agents. Proof of financial status is not only subject to manipulation but is also detrimental to merit. When the Constitution of India guarantees equal opportunity to all for their advancement, the reasonable course would be to offer ED appointments to the person who secured maximum marks in the examination which made him eligible for the appointment provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED Allowance."

8. Condition No.3 of the letter dated 27.4.1993 sent by the respondents to the Employment Exchange contained the following:-

"(3) आवेदक को न्यूनतम शैक्षणिक योग्यता कक्षा आठ उत्तीर्ण होना चाहिए किन्तु परीक्षा हुई स्कूल अथवा उसके समकक्ष मान्य परीक्षा को दे जायेंगी।"

The candidates shall have passed Class VIII th but preference will be given to candidates who have passed High School or equivalent.

9. The applicant has given her High School mark-sheet as Annexure No. A-7 to the O.A. which shows that she had passed High School in 1993 and had secured 5.2% marks in mark-sheet dated 7.7.93.

10. It is clear from the facts that the applicant was not shown as a High School passed candidate at the time her name was sponsored by Employment Exchange in response to requisition dated 27.4.93.

11. The controversy ~~was~~ boils down to the question as to whether the respondents shall have considered the candidates on the basis of their marks in Class VIII only although they were not sponsored as High School passed candidates by Employment Exchange.

The learned counsel for the applicant has supported this contention that qualification of Class VIIIth should have been considered in the light of letter of DG, P & T dated 10.5.91 and the judgment of a Division Bench of Central Administrative Tribunal, Madras in A Sankar Vs. Union of India & others, 1999 (3) Administrative Total Judgments 576 have held that preference to candidates with Matriculation qualification in circular dated 12.3.1993 was ultra vires the provisions of the Constitution and have set it aside. Paragraph Nos.8 & 9 of the judgment lay down the following:-

"8. On a query made with the counsel for the respondents we were informed that the Ministry of Communications, Department of Posts, had issued a circular dated 12.3.1993, where in revise guidelines for recruitment to various categories of EDA posts have been prescribed, particularly with reference to educational qualifications. In the said circular para 2(IV) is of relevance to the instant case which reads as follows:-

"The minimum educational qualification for ED Delivery Agents, ED Stamp Vendors and other categories of EDAs should be 8th standard. Preference may be given to the candidates with Matriculation. No weightage should be given for any qualification higher than Matriculation."

Thus, it can be seen that for ED DA/ED Stamp vendors and others categories of EDAs though the minimum educational qualification prescribed is VIII standard a rider has also been added. With the introduction of this rider, viz. Preference may be given to the candidates with Matriculation qualifications, it is to be noted that candidates with VIII standard qualification are totally kept out of consideration for EDA posts. This in our view is not only arbitrary but the respondents have also embarked upon an exercise whereby incomparables are being compared.

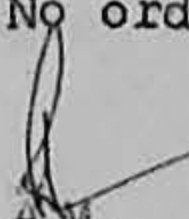

9. Further by introducing the preference clause in favour of the Matriculates, VIII qualified persons are denied the opportunity to seek employment as well as livelihood. Nobody can have any doubt or dispute if the prescribed qualification is as simple as Matriculation.

But having said that the minimum educational qualification is VIII standard the respondents have totally negated their own idea by introducing the clause that preference may be given to Matriculation qualified candidates. By introducing such a clause, the field offices have restored to the tendency of selecting people with Matriculation qualification. Thus, the VIII Standard qualified persons have no opportunity at all because by no stretch of imagination, they can say their cases should be considered along with those who are Matriculates. That is why we feel that one cannot compare the incomparables and hold that the preference clause introduced in the said circular is arbitrary and violative of Articles 14 and 16 of the Constitution."

12. The learned counsel for private respondent on the other hand relied upon *Dr. Arun Kumar Agrawal Vs. State of Bihar and others*, AIR 1991 SC 1514. This is not applicable to the facts of this case before us, because it relates to appointment as Assistant Professor of Neuro Surgery by giving certain relaxations and priorities.

13. The learned counsel for private respondent has also cited the judgment of the Apex Court in *Govt. of Andhra Pradesh Vs. P. Dilip Kumar and another*, 1993 (1) SLR, 731 in which after interview and written test, continuing the selection to Post Graduate candidates only although the minimum qualification was Graduate was not considered discriminating a Post-Graduate qualification was to be treated as additional qualification and preference was to be given to such candidates for selection to the post of Deputy Executive Engineer. This judgment has a direct bearing on this case. It has been held in this judgment that preference to Post Graduate Degree holders meant preference to a class and only when qualified Post-Graduate candidates were not available could the names of Graduates be entered in the select list on the basis of their inter se merit.

14. We find that controversy in this case arises from the fact that the requisition was sent on 27.4.93. DG, P & T, vide his letter No.17-366/91-ED & Trg. in English dated 12.3.93 had issued instructions that for appointment to the post of Extra-Departmental Branch Post Masters, educational qualification should be Matric. This qualification has been shown in Section 3 of Swaney's Compilation of Service Rules for Extra-Departmental Staff, 1995 Edition on the first page under Instructions, regarding selection, showing educational qualification for E.D. Sub-Post Masters in E.D. Branch Post Masters as Matriculation. This order was made applicable with effect from 1.4.1993. It appears that this order was not in the knowledge of the Respondents, when they issued Notification dated 27.4.1993. It was in this context that the requisition dated 27.4.93 contained in Clause (iii) prescribing minimum qualification as Standard VIII and preference for High School passed candidates. The present selection relates to the post of Extra-Departmental Branch Post Master and the selection was admittedly made after 1.4.93. The applicant was not registered as a High School passed candidate at the time names were sponsored for the post of E.D.B.P.M. The applicant's challenge to the appointment of Respondent no.4 is, therefore, not valid and we find no ground to grant the relief claimed by the applicant. The application is, therefore, dismissed as lacking merit. No order as to costs.


A.M.
V.C.

Nath/