

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 979 OF 1995
ALLAHABAD THIS THE 30th DAY OF January, 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Mahabir Kashyap,
S/o Gaya Deen Yadav,
R/o Village Makrandpur,
Post Office Kotra Makrandpur,
District Kanpur DehatApplicant
(By Advocate Sri B.P. Singh, Sri Anand Kumar
& Sri C.P. Singh)

Versus

1. Union of India,
through the Secretary,
Ministry of Communication,
New Delhi.
2. The Senior Superintendent,
Post Office, Kanpur Dehat,
3. Up-Mandaliya Nirikshak,
Dak, Up Mandal Pukhrayan,
Kanpur Dehat.
4. Sri Ambika Prasad Trivedi,
S/o Sri Hira Lal Trivedi,
R/o Village & P.O. Kotra,
Makrandpur, Distt. Kanpur Dehat

.....Respondents

(By Advocate Km. S. Srivastava & Sri O.P. Gupta)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the impugned letter of appointment dated 12. 06. 1995 of respondent no.4 and appoint the applicant on the post of Extra Departmental Mail Peon, Kotra Makrandpur, District-Kanpur Dehat with all consequential benefits.

2. The facts of the case are that the post of Extra Departmental Mail Peon (in short EDM) Kotra Makrandpur, fell vacant due to promotion of the then E.D.M.P. Respondent no.3 vide notification dated 11.08.1994 called for the names from employment exchange Kanpur, Dehat. The Employment Exchange sponsored the names of four candidates. All sponsored candidates were addressed on 19.09.1994. The application of three candidates were received by cut off date and respondent no.4 was appointed vide letter dated 12.6.1995 (Annexure CA-6). Aggrieved by the same the applicant has filed this O.A. which has been contested by the respondents by filing CA.

3. Heard Shri A. Kumar, learned counsel for the applicant and Km. Sadhna Srivastava and Shri O.P. Gupta, learned counsel for official and Private respondents and perused records.

4. The learned counsel for the applicant submitted that the respondent no.4 and the applicant fell in the preferential category as both are matriculates. However, for the selection the merit has to be decided on the basis of marks obtained in the basic qualification i.e. class VIII. The learned counsel also submitted that since the

applicant belongs to backward community (OBC), he should have been given preference vis-a-vis respondent no.4.

5. The learned counsel for the applicant has placed reliance on the judgment of this Tribunal dated 18.09.1996 in O.A. No.1049/89 and also the judgment dated 29.05.2002 passed in O.A. No.1270/99.

6. Resisting the claim of the applicant Km. S. Srivastava learned counsel for official respondents submitted that a comparative chart was prepared and since respondent no.4 was higher in merit on the basis of High School examination, he was selected. No illegality has been committed by the respondents. The learned counsel for respondent no.4 Shri O.P. Gupta counsel for the private respondents also placed before us the same argument and placed reliance on the judgment of this Tribunal dated 17.01.2001 passed in O.A. No.425/95.

7. Admittedly the applicant secured more marks in class VIIth whereas respondent no.4 secured more marks in the High School examination and both were in the preferential category. Therefore, the short controversy before us is whether for deciding the merit the marks obtained in VIIth which is the basic eligibility qualification is to be taken into account or the marks of matriculation are to be taken into account. This point has been dealt with by this Tribunal at length in order dated 18.09.1996 in O.A. No.1049/89.

"At the time the selection of the applicant was made, the respondents admittedly had all the relevant data regarding all the five candidates including percentage of marks secured in the Junior High School as well as High School Examination. What the appointing authority appears to have done at that time is to give more importance on the marks obtained at in the Junior High School Examination, which, according to the rules obtaining at that time, was the minimum

qualification for the post of EDDA. We have carefully gone through the provisions contained in Section III of the EDA (Conduct and Service) Rules. We find no provision as to which should be the determining factor when an essential qualification is prescribed and also a preferential qualification is indicated. In other words, there is no indication whether the marks obtained in the VIIIth class examination would be the determining factor or whether the marks obtained in the Matriculation or equivalent examination shall determine the inter ~~seq~~ merit of the candidates. We have, however, seen from the latest edition of the Swamy's Compilation of EDA (Conduct and Service) Rules that under Section III thereof, there is a specific instruction in this regard. These instructions have been issued through DS Post letter No.17-497/90 ED & Trg, dated 10.05.1991. The relevant portion of this letter is quoted below:-

"2. The deciding factor for the selection of ED BPMs/ED SPMS 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 matter of possession of property and earning of income for determining the merit of candidate 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". (Emphasis supplied).

9. It will be seen from these instructions that the marks obtained in the examination which makes a candidate eligible for EDA appointment eligible for such appointment, would be the determining factor for adjudging the inter ~~seq~~ merits of the candidates. Had these instructions been extant at the time the applicant's appointment was made it could have been definitely stated that the applicant's selection was quite regular, but as the applicant's selection was in 1989, the aforesaid instructions were not applicable at that time. However, in the absence of any instruction that the marks obtained in the preferential Qualifying examination i.e. in Matriculation or equivalent examination, shall be the determining criterion for selection, it cannot be asserted that there was any patent irregularity in the selection of the applicant. Therefore, the selection of the applicant was not ab initio void and the termination of his services could not have been made without giving him an opportunity."

8. The similar controversy has also been dealt with in the judgment of this Tribunal dated 29.05.2002 passed in O.A. No.1270/99. In this case also ratio laid down is

that the merit has to be decided on the basis of marks obtained in VIIth class which is the basic qualification requirement.

9. The learned counsel for the respondent no.4 has placed reliance on the judgment of this Tribunal dated 17.01.2001 in O.A. No.425/85. The same is easily distinguishable. In the O.A. No.425/85 the applicant had challenged the appointment of respondent no.4 on the ground that though she had passed the matriculation examination yet she was not shown as High School passed candidate at the time her name was sponsored by employment exchange in response to the requisition.

10. Keeping in view the ratio laid down by this Tribunal in O.A. No.1049/89 and O.A. No.1270/99, we have no doubt in our mind that the marks of class VIIth have to be taken into account while deciding the merit of the candidate for appointment on the post of E.D.M.P. in question. A bare perusal of Annexure CA-3 establishes that the applicant secured 62.15% marks in Junior High School (VIth) whereas the respondent no.4 obtained 46.8% marks and since the applicant also falls in the preferential category, having passed High School examination, he should have been given the appointment of E.D.M.P.

11. In view of the foregoing the appointment of the respondent no.4 is liable to be quashed. However, we are conscious of the fact that respondent no.4 has been working on the post since 1995, and he has already put in more than eight years service and, therefore, as per the provisions contained in section III of the E.D.A. (C & S) Rules the name of the respondent no.4 should be included in the

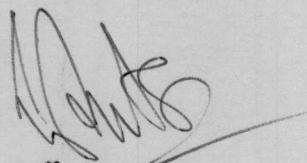
waiting list of E.D.A.s discharged from service. In case no alternative appointment is available, that being so, the respondents no.4 shall be considered for fresh appointment as and when suitable vacancy arises.

12. In the facts and circumstances and our aforesaid discussions, the D.A. is allowed. The appointment of respondents no.4 vide order dated 12.06.1995 is quashed with direction to respondents to appoint the applicant as E.D.M.P. Kotra, Makarandpur within a period of four weeks from the date of communication of this order.

13. There shall be no order as to costs.



Member-J



Member-A

/ Neelam/