

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ADL. BENCH  
ALLAHABAD

DATED : THE 2nd DAY OF JUNE 1997

CORAM : HON'BLE DR.R.K.SAXENA, J.M.  
HON'BLE MR.D.S.BAWEJA, A.M.

ORIGINAL APPLICATION NO.1132 OF 1995

Krishna Kumar Shukla son of Shri Wasji  
resident of village Balipur Tata  
Post office Balipur Tata district  
Allahabad.

..... Applicant

C/A Shri R.P.Singh, Adv.

Versus

1. Union of India thro gh the Director of Post Offices, New Delhi.
2. Senior Superintendent of post offices, Allahabad.
3. Assistant Superintendent of Post Offices Allahabad.
4. Jagannath son of late Shri Babu Lal resident of village Chakharvanshpur post office Balipur Tata District Allahabad.

..... Respondents

C/R Shri S.C.Tripathi, Adv.

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ORDER

BY HON'BLE DR. R.K.SAXENA, J.M.-

The applicant Krishna Kumar has approached the Tribunal to seek the relief that the order dated 20.1.1995 Annexure-A1 whereby the respondent no.4 Jagannath was given appointment on the post of Extra Departmental Delivery Agent, be quashed.

2. The brief facts of the case are that one Kailash Nath Shukla who was working as Extra Departmental Delivery Agent, was promoted <sup>to</sup> ~~as~~ postman group <sup>of</sup> ~~to~~ 'D' and thus the post held by him, fell vacant. It appears that the present applicant was appointed as substitute in place of Kailash Nath Shukla and the charge was handed over to him at his risk. It further appears that in order to fill in the vacancy caused by the promotion of Shri Kailash Nath Shukla by regular selection, a letter was written to the local Employment Exchange for sponsoring the names of five persons for the post. It was also mentioned that if any scheduled caste or scheduled tribe candidate <sup>is</sup> ~~was~~ also registered in the Employment Exchange, his name should definitely be sent. Accordingly the names were sponsored. The chart which is placed in the departmental file of selection and has been put up for our perusal, indicates that there <sup>were</sup> ~~are~~ 10 candidates. Their names are given below:-

1. Shri Bhairon Prasad Prajapati, O.B.C, 50.2%
2. Shri Jagannath (Respd. no.4) S.C. 53.83%
3. Shri Santosh Kumar S.C. 47.83%
4. Shri Beni Prasad, O.B.C. 50.6%
5. Shri Makhan Lal, O.B.C. 45.8%
6. Shri Deshraj S.C. 46.66%
7. Shri Krishna Kumar Shukla (Applicant) O.C. 56%
8. Shri Pramod Kumar Bharti S.C. 48.83%
9. Raj pal O.B.C. 49.83%
10. Shri Ashok Kumar S.C. 50.5%

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There is a note below the chart that the candidate at serial no.2 was selected because he was suitable S.C. candidate. The minimum fixed percentage for S.C. candidates was not completed, therefore preference was given to S.C. candidates.

3. After this comparative chart was prepared and candidate at serial no.2, namely, Jagannath was selected, he was issued appointment letter. He took over charge and he had taken over charge of the post of Extra Departmental Delivery Agent. Feeling aggrieved by the said appointment of Jagannath respondent no.4, this O.A. has been preferred by the applicant for seeking the relief as mentioned earlier. The respondents have opposed the O.A. and it was contended that minimum fixed percentage for S.C. candidates was not complete in the sub-division and, therefore, the respondent no.4 who belonged to S.C. category, was preferred and appointment was made. It is further contended that the applicant has got no right to challenge the appointment of the applicant and to seek his own appointment. The applicant filed rejoinder reiterating the facts which were mentioned in the O.A.

4. We have heard Shri R.P.Singh counsel for the applicant and Shri S.C.Tripathi, counsel for the respondents and perused the record. The main question for consideration is whether the appointment of the respondent no.4 was legal and whether the applicant was denied appointment illegally. The learned counsel for the applicant contends that he fulfilled all the eligibility conditions and had acquired higher percentage of marks in the High School, yet his candidature was cancelled and the respondent no.4 was preferred. We have already given the relevant and necessary information of the chart while quoting the facts.

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There is no doubt that the applicant had obtained 56% marks in High School whereas the respondent no.4 had acquired only 53.83% of marks. It is thus clear that if the percentage of marks is the only criteria, the applicant stands first and respondent no.4 II in the chart. What we have to see is also whether the respondent no.4 could be considered on the basis of his being a scheduled caste candidate. It has been mentioned in the C.A. of the respondents that the adequate percentage of scheduled castes candidates in the Sub-division was not available and, therefore, the respondent no.4 was given preference and was selected. This <sup>fact</sup> finds mention in the note given below the chart. This fact could not be specifically and categorically contradicted by the applicant. It has been argued on behalf of the applicant that the respondents have adopted this method to fill in single post from amongst the scheduled caste candidates <sup>whole</sup> ~~in the~~ names having been sponsored. The said letter is before us and on its perusal we find that it was clearly mentioned in the said letter that if any candidate of scheduled caste, scheduled tribe or backward was registered <sup>employment</sup> in the/exchange, his name should invariably be sponsored. In view of this fact, the contention of the learned counsel for the applicant that there was no mention of the post being filled in from amongst the candidates belonging to reserved category, does not hold good.

5. When we go through the departmental directions in this connection, it is clear from the circular dated 2.3.92 which was further re-inforced vide letter No.17-366/91-ED and Trg. dated 26.9.95 that if the adequate representation of the reserved category is not available, the candidate belonging to the reserved category should be given preference. On consideration of the facts of the case through this angle, we come to the conclusion that the applicant has got no foot to stand.

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6. Shri R.P.Singh learned counsel for the applicant relied on the decision of Full Bench in the case of G.S.Parvathi v. Sub Divisional Inspector(Postal) and others 1991-93 80 Full Bench Judgments 23. In this case, the questions which ~~were~~<sup>l</sup> referred ~~for~~<sup>c</sup> the decision of the Full Bench was whether three years experience gained by a candidate due to his working as provisional E.D.A. agent should be considered by giving due weightage in regular selection. The significant question was whether a person having gained such an experience should be given preference u/s 25(H) of Industrial Dispute Act in regular selection. The ~~necessary~~<sup>answer</sup> given by the Full Bench was that the ~~weight~~<sup>weightage</sup> should be given to the provisional E.D.A. agent at the time of selection. It was further observed by the Full Bench that previous experience should not be the only ~~decisive~~ factor of selection. It was observed that it should be taken into account along with other relevant facts. It is clear that the Full bench never held that if there was any adequate representation of the reserved category candidates, preference should not be given to the reserved category. It may, however, be mentioned that the reservation scheme for scheduled castes, scheduled tribes and other backward caste is formulated under the mandate of Article 16. Thus the appointment of a candidate who belongs to a reserved category which does not ~~for~~<sup>have</sup> adequate representation, carries constitutional mandate behind ~~it~~<sup>him</sup>. In the present case, the only draw back in the case of the respondent no.4 is that ~~he~~<sup>2</sup> has got lesser percentage of marks but he has ~~given~~<sup>3</sup> the greater constitutional guarantee behind him by being the candidate of reserved category. In such a situation, even if the judgment of the Full Bench is taken ~~through~~<sup>into consideration</sup> greater percentage of marks alone will not be the decisive factor in favour of the applicant.

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7. On consideration of all these points about the facts of the case and legal position, we come to the conclusion that there is no merit in the case of the applicant and it is, therefore, dismissed. No order as to cost.

*Abhasej*  
MEMBER (A)

*J. Dubascey*  
MEMBER (J)

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