

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 13 of 1999

Allahabad, this the 3/21 day of June, 2011

**Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)**

Ram Sajwan Misra son of Shri Bhagwat Prasad Misra resident of Village and Post Office Semardadi, Khajani, District Gorakhpur.

Applicant

By Advocate: Mr. Prashant Mathur

Vs.

1. Union of India through its Secretary, Department of Posts, Ministry of Communication, New Delhi.
2. Senior Post Master, Gorakhpur.
3. Sub-Divisional Inspector (Up Mandliya Nirikshak) Uswa Bazar, Sub Division, Gorakhpur.
4. Manoj Kumar Misra, S/o Late Shri Purshottam Misra, Ex. EDHP, Farsad, Barhalganj, R/o Post Baripur, District Jaunpur. Presently serving as EDDA, Dhakwa Bazar, Gorakhpur under Sub Divisional Inspector, Post Office Urwa Bazar, Sub Division, Gorakhpur.

Respondents

By Advocate: Mr. Saurabh Srivastava

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Under challenge in this O.A. is the order dated 29.12.1998 passed by the respondent No. 3 (annexure-5). Further prayer has also been made in order to give direction to the respondents not to interfere in applicant's functioning as Extra Departmental Delivery Agent (for short EDDA) in District Gorakhpur in pursuance of exparte and un-communicated order dated 29.12.1998 passed by respondent No. 3. Further prayer has also

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been made for giving direction to the respondents in order to regularize the services of the applicant, and that not to discontinue the applicant's functioning and maintain status quo, and that a direction be given to the respondents to reconsider and appoint the applicant on the post of EDDA, Dhakwa Bazar, District Gorakhpur.

2. The facts of the case, in brief, are as follows: -

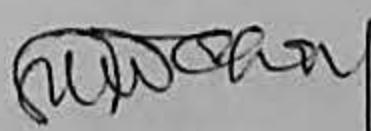
The applicant was appointed on the post of EDDA in district Gorakhpur and worked for six months on temporary basis. No appointment letter was issued at that time. Again applicant was appointed on temporary basis on 18.08.1992 on the same post and continued up to 10.03.1993 without any break. The applicant's name was recommended by the Employment Exchange in pursuance of a requisition issued by respondent No. ^{five P}

3. It was required that the names of maximum ~~three~~ persons be sent and the names of ^{five Q} ~~three~~ persons were sent by the Employment Exchange. An order was also passed in order to hand over the charge by Sri Raj Kumar Misra on 18.02.1998 to the applicant, and the charge was handed over to the applicant on 18.02.1998. Annexure-3 is handing over charge certificate, and till filing of the O.A. the applicant had been working on that post. But surprisingly on 29.12.1998, an order was passed by respondent No. 3 in favour of respondent No. 4 behind the back of the applicant without affording any opportunity of being heard and hence this order is illegal. It is stated that the applicant was and is still willing for being appointed as EDDA. A person must have an adequate means of income from his individual source of

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livelihood and applicant was fulfilling the conditions, and a person cannot be selected mainly on the ground that he obtained more marks in the High School than the applicant. Amongst the five persons, there were some other persons who were graduate and intermediate. But even then the respondent No. 4 was selected. Hence, the appointment of respondent No. 4 is illegal as his name was not sponsored by the Employment Exchange.

3. The respondents contested the case, and filed the Counter Affidavit. It has been alleged that the post of EDDA, Dhakwa Bazar, District Gorakhpur fell vacant on 19.02.1998 due to promotion of Raj Kumar in Postman cadre. For arrangement of the work, the applicant was engaged as substitute on the risk and responsibility of Shri Raj Kumar w.e.f. 19.02.1998 (afternoon). The respondents issued a notification calling applications through the Employment Exchange, Gorakhpur. The Employment Exchange sponsored the names of eligible persons three to five, and the vacancy was advertised. Five candidates were sponsored by the Employment Exchange including the applicant. It is stated that the respondent No. 4 was working as Extra Departmental Mail Peon, Ferrsor, Barhalganj, Gorakhpur, and he applied directly for the post of EDDA, Dhakwa Bazar, and all three applicants were considered for appointment to the post of EDDA. According to the rules, it was not necessary to get the name sponsored by the Employment Exchange. On the basis of marks secured in High School examination in comparison to others, the respondents appointed the respondent No. 4 on the post on 29.12.1998. It is stated that the respondent No. 4 has taken over the charge of

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EDDA, Dhakwa Bazar, Gorakhpur on 02.01.1999 (afternoon), and relieved the substitute Mr. R.S. Mishra – applicant. It is stated that the applicant was not found fit in comparison to respondent No. 4 who was working as Extra Departmental Mail Peon from earlier. It is stated that the applicant was only engaged as substitute for managing the work of EDDA till regular appointment is made, and as the applicant was lower in merit hence he was not appointed. An engagement report was submitted of the applicant on 19.02.1998 to the respondent No. 3. It is stated that the post in question was vacant and hence regular appointment was made of respondent No. 4. It is stated that the O.A. lacks merit and is liable to be dismissed.

4. In response of the Counter Affidavit of the respondents, Rejoinder Affidavit has also been filed. Moreover, a Supplementary Affidavit has also been filed by the applicant, which shall be considered at the appropriate place.

5. We have heard Mr. Prashant Mathur, Advocate for the applicant and Mr. A.N. Ambasta, Advocate holding brief of Mr. Saurabh Srivastava, Advocate for the respondents, and perused the entire facts of the case.

6. It has been alleged by the applicant that he had worked as EDDA, Dhakwa Bazar, Gorakhpur on temporary basis but no appointment letter was issued. Again on 18.08.1992, he was appointed on temporary basis and worked up to 10.03.1993 without any break. It has also been alleged that in compliance of

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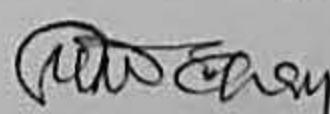
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the order dated 18.02.1998 Sri Raj Kumar handed over the charge to the applicant on 19.02.1998, annexure A-3 is the certificate of handing over the charge to the applicant. The applicant was required to work on the post of EDDA till a regular appointment is being made and thereafter that post was advertised. Applications were invited through the Employment Exchange, and the applicant also submitted the application for appointment on the post of EDDA, Dhakwa Bazar but the respondents surprisingly appointed the respondent No. 4. As per the applicant, name of respondent No. 4 was not sponsored through the Employment Exchange. He was appointed only on the ground that he secured more marks in the High School examination. It is stated that respondent No. 4 was wrongly appointed.

7. The respondents although admitted that the applicant worked on the post of EDDA, Dhakwa Bazar, Gorakhpur w.e.f. 19.02.1998 as Sri Raj Kumar, EDDA was promoted in the Postman cadre. That the applicant was only engaged as a substitute and he was not regularly appointed. We have also perused the relevant document in this connection, and it is wrong allegation of the applicant that he was appointed on the post of EDDA w.e.f. 19.02.1998. Annexure A-2 is the copy of charge certificate and perusal of this document shows that Sri Raj Kumar - predecessor of the applicant handed over charge to the applicant on his risk and responsibility hence it is evident from all these circumstances that the applicant was never appointed regularly or otherwise on the post of EDDA, Dhakwa Bazar,



Gorakhpur. The charge was handed over to him by Sri Raj Kumar- predecessor as he was promoted. As the appointment was made on regular basis hence the post was advertised and the names were called from the Employment Exchange Gorakhpur to sponsor names of three to five persons in order to appoint on the post of EDDA. It is an admitted fact that the Employment Exchange, Gorakhpur sponsored five persons for consideration for appointment on the post of EDDA. Appointment was purely ^{Engagement} ~~on~~ on the capacity of substitute and it was on the risk and responsibility of Raj Kumar-Predecessor of the post. In case applicant had worked as a substitute then he has got no right or title on the post.

8. It is also material to state that the appointment letter was issued in favour of Manoj Kumar-respondent No. 4 on 29.12.1998, and the charge was also handed over to Manoj Kumar on 02.01.1999. The applicant is no more working on the post of EDDA, Dhakwa Bazar, Gorakhpur since 02.01.1999 rather Manoj Kumar Misra-respondent No. 4 is working on the post of EDDA, Dhakwa Bazar. A prayer has also been made in the O.A. for giving direction to the respondents not to interfere in the functioning of the applicant as EDDA, Dhakwa Bazar but this relief has rendered infructuous as the applicant is no more working since 02.01.1999.

9. It has also been argued by learned counsel for the applicant that the name of respondent No. 4 was not sponsored by the Employment Exchange and as the applicant ^{tion} ~~was~~ directly

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entertained by the respondents. It is undisputed fact that only five names were sponsored by the Employment Exchange for considering them for appointment to the post of EDDA, Dhakwa Bazar. The name of respondent No. 4 was not recommended by the Employment Exchange for consideration. No such rule has been produced by learned counsel for the applicant, which provide that only those names will be considered for appointment on the post of EDDA who have been sponsored by the Employment Exchange rather it has not been provided that directly the respondents cannot entertain the applications for making appointment on the post in respect of a notification. Hence it is a fact that in case the respondents have considered the name of respondent No. 4 Manoj Kumar Misra for appointment on the post of EDDA, Dhakwa Bazar, no illegality has been committed by them. It has also been alleged by the respondents that Manoj Kumar Misra-respondent No. 4 had been working from earlier on the post of Extra Departmental Mail Peon, Ferrsor, Gorakhpur and he also submitted an application for appointment on the post of EDDA, Dhakwa Bazar, and his name was also considered. Learned counsel for the respondents argued that as the respondent No. 4 had been working ^{from} earlier hence he was more deserving in comparison to the applicant.

10. Learned counsel for the applicant argued that one of the reason has been mentioned by the respondents for giving appointment to respondent No. 4 that he secured more marks in comparison to the applicant in the High School examination, and that the minimum qualification for the post of EDDA was 8th pass

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but preference has been given to the candidates who were High School pass and the respondents' counsel also argued that due to this reason, name of the respondent No. 4 was considered. Learned counsel for the applicant in this connection argued that the respondents cannot give the employment of respondent No. 4 due to the reason that he secured more marks in the High School examination. In support of his argument learned counsel for the applicant cited a Judgment in the case of (2007) 2 UPLBEC 1143 (S.C.) *Kiran Singh (Smt.) vs. Union of India and others.*

Following has been held by the Hon'ble Supreme Court: -

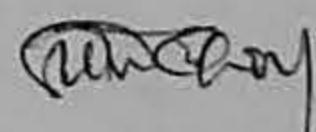
"In the facts and circumstances of the case, in our view the order of the CAT which has been affirmed by the High Court is manifestly erroneous and cannot be sustained. The appellant and respondent No. 5 both have qualified the High School Examination by securing first division. The eligibility and criterion for the selection of the candidate to the post of EDBPM as per the Service Rules was not only the merit between the two candidates in High School Examination but the additional criterion was that the candidate must be one who has "adequate means of livelihood derived from landed property or immovable assets" if the candidate is otherwise eligible for appointment. The instructions governing the eligibility of the candidates also provide that no weightage will be given for any higher qualification. The appellant has fulfilled the essential qualification and required eligibility criterion and as such her selection to hold the post in question was valid whereas respondent No. 5 was not eligible to be appointed on the post for lack of income criterion in terms of the Circular."

The Hon'ble Apex Court held that in case the applicant and the respondent No. 5 both were qualified High School then the eligibility and criterion for selection of the candidate to the post of EDBPM, as per the service rules, was not only the merit between the two candidates in High School examination but the additional criterion was that the candidate must be one who has adequate means of livelihood derived from landed property or immovable

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assets if the candidate is otherwise eligible for appointment. This criteria adopted by the respondents in view of the Judgment of the Hon'ble Apex Court that he secured more marks in High School examination. There must be additional qualification that a candidate must possess sufficient additional means of livelihood and that the applicant was having adequate means of livelihood and that the applicant was having adequate means of livelihood from the landed property etc. although nothing has been filed to show that the applicant was possessing the landed property but the candidature of respondent No. 4 has not been challenged on this ground that he was not possessing any landed property as additional source of livelihood. Besides securing more marks in the High School examination there was one more additional qualification of respondent No. 4 that he had been working from earlier on the post of E.D. Mail Peon, Gorakhpur and that is why he was considered more suitable in comparison to the applicant.

11. Learned counsel for the applicant also cited a Judgment of the Hon'ble Apex Court reported in *J.T. 2006 (12) SC 578 Union of India and others Vs. Bikash Kuanar*. The Hon'ble Apex Court held in this Judgment that securing marks in the Matriculation examination is not only the criteria for giving appointment but the candidature must be considered of a candidate on other merits, and that one who had worked for a period of 1 1/2 years is also to be considered. In view of this Judgment of the Hon'ble Apex Court, the respondent No. 4 was more suitable because he had been working on regular basis on the post of Extra Departmental Mail Peon. We are of the opinion that merely securing more



marks in the High School examination, there were other factors also which were ~~to be~~ considered by the respondents at the time of giving appointment on the post of EDDA. The respondent No. 4 had been working on the post of EDDA, Dhakwa Bazar, Gorakhpur since 02.01.1998 till date for the last 13 years. It will not be justified to cancel the appointment of the applicant mainly on the ground that the respondents had taken into consideration this fact also that he secured more marks in the High School examination and this criteria, in view of the Judgment of Hon'ble Apex Court, was not justified but learned counsel for the respondents argued that other factors were also considered for giving appointment to respondent No. 4 on the post of EDDA, and earlier applicant was only engaged as substitute (as stop gap arrangement) hence he had no lien on that post.

12. For the reasons mentioned above, we are of the opinion that the respondent No. 4 was appointed regularly by the respondents after following all the facts and circumstances of the case, and the applicant was not found fit for giving appointment on the post of EDDA, Dhakwa Bazar, Gorakhpur. In our opinion, O.A. lacks merit, and is liable to be dismissed.

13. O.A. is dismissed. No cost.

Member - A

Member - J

/M.M/