

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 1st day of September 2006.

Original Application No. 1557 of 1999.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member-A

Sahab Ram, S/o Sri R.S. Ram,
R/o Vill. Ayodhyapur,
Post Kotwa Koraut VIA Harahuha,
VARANASI.

. Applicant

By Adv: Sri R. Verma
Sri A. Kumar
Sri C.P. Gupta.

V E R S U S

1. Union of India through the Post Master General,
Allahabad Region,
ALLAHABAD.
2. Superintendent of Post Offices,
West Division,
VARANASI.
3. Sub Divisional Inspector of Post Offices
(North),
VARANASI.
4. Sri S.N. Mishra, Sub Divisional Inspector of
Post Offices (North),
VARANASI (In person).
5. Sri Shailendra Kumar Srivastava, S/o Gopal
Srivastava working as Extra Departmental
Delivery Agent, Branch Post Office, Kotwa
Koraut,
VARANASI.

. Respondents

By Adv: Sri S. Singh.

Neeru

2
Alongwith

Review Application No. 78 of 2004
In
Original Application No. 447 of 1999

Sahab Ram

.....Applicant

By Adv: Sri Anand Kumar

V E R S U S

Union of India & Ors.

.....Respondents

By Adv: Nil

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member-A

The applicant, in this OA No. 1557 of 1999, had applied for the post of Extra Departmental Delivery Agent against the advertisement No. A/Kotwa Koraut/EDDA/Niyukti dated 30.10.1999 by the respondent No. 3. The post of Extra Departmental Delivery Agent (EDDA) at Kotwa Koraut Branch Post Office became vacant and respondent No. 3 sent a requisition vide letter dated 03.08.1996 to the Employment Exchange Varanasi which sponsored few names including that of the applicant. The applicant belongs to SC community and according to the submission made by him he was fulfilling all requisite conditions including education qualifications. The respondents short listed a few names for the post. One Sri Vijay Prakash Srivastava who, stated to be a permanent resident of village Newada, obtained a false certificate of

meeth

residence from Gram Pradhan of village Kotwa Koraut showing himself as temporary resident of village Kotwa Koraut. He also submitted a forged marks sheet of Class VIII. On the basis of these forged certificates, it has been alleged by the applicant, the respondents offered him appointment vide their letter dated 18.03.1997.

2. The applicant made a representation to the Supdt. of Post Offices (SPO) and also filed OA No. 447 of 1999 against which notices were served to the respondents. As soon as notices were served to the respondents on OA No. 477 of 1999, the respondents made an enquiry about the educational qualification/certificates of Sri V.P. Srivastava and when it was found that the marks sheet was forged, his appointment was terminated vide letter dated 08.07.1999. Thereafter, the respondent Nos. 2 and 3 issued a fresh advertisement to all concerned for filling up the post of EDDA. In the same advertisement the post was shown as un-reserved whereas in the previous advertisement dated 03.08.1996 it was not mentioned whether the post was reserved or un-reserved.

3. Thereafter, on the basis of fresh applications received against the notification dated 30.10.1999, the respondents selected one Sri Sailendra Kumar

Subrahmanyam

Srivastava to the post of EDDA Kotwa Koraut. The applicant has sought following relief in this OA:

- a. The Tribunal may be pleased to quash the impugned advertisement dated 30.10.1999 and memo A/Kotwa Koraut/EDDA dated 12.01.2000 issued by respondent No. 3.
- b. The Tribunal may further be pleased to issue other suitable writ, order or direction which is deemed fit and proper view of the facts and circumstances of the case.
- c. Costs of this original application may be awarded in favour of the applicant.

4. The grounds on which the relief has been sought are mainly as follows:

- a. The applicant and Sri V.P. Srivastava was placed in the same short list and once Sri Srivastava was found disqualified the offer should have gone to the applicant who was next in the list. But instead of doing so the respondents issued fresh advertisement.
- b. While in the first advertisement the post was neither shown as reserved nor unreserved, and in the second advertisement it was shown as unreserved. This was wrong. As an SC candidates he should have been given preference for the post, in a situation when the post is shown as neither reserved nor unreserved.

5. In the counter affidavit the respondents have submitted that the present incumbent Sri S.K. Srivastava has already been working from November

Meeah

2000 in the post of EDDA and, therefore, it is not possible to cancel the appointment at this stage. Secondly, after finding that the first incumbent Sri V.P. Srivastava was appointed on the basis of forged certificate there was no other alternative before the respondents but to cancel the entire selection process and issue a fresh notification and, therefore, there was no impropriety in this.

6. During hearing the learned counsel for the applicant brought to our notice the decision of the Full Bench at Hyderabad of this Tribunal in **OA No. 1551 of 1997 reported in 1999 (2) ATJ 606, M. Satyaseela Reddy Vs. Union of India & Others**, in this judgment the Full Bench have dealt with the case in which the advertisement had clearly indicated that preference should be given to SC candidate. In this judgment the Full Bench at Hyderabad has observed as follows:

"The condition that preference will be given to ST/SC/OBC would mean that the candidates belonging to ST/SC/OBC even if placed below the names of OCs (i.e. other candidates, or candidates belonging to general category) in the merit list, would be entitled to appointment in preference to OCs, though all the candidates belonging to general category or ST/SC/OBC categories would be entitled to equal consideration for the purpose of selection. If the name of no candidate belonging to ST/SC/OBC finds place in the merit list, or no eligible ST/SC/OBC candidate is available for the post, then only OC candidate may be selected for appointment according to rules."

Citing this judgment the learned counsel for the applicant said in the first instance itself the job should have been offered to the applicant who belonged to the reserved category. But it was not

meeth

done. Not only that, even when the first person in the short list who found disqualified, the job was not offered to him.

7. The learned counsel for the applicant drew our attention also to judgment in **OA No. 606 of 2000 of CAT Hyderabad bench reported in 2001 (3) ATJ 275 in case of S. Ravanaiah Vs. The Superintendent Of Post Offices and others.** This also dealt with a similar case and had made a reference to the Full Bench decision of the Tribunal in OA 1315 of 2000 in the case of M. Sarojani Vs. Sr. Superintendent of Post Offices, Visakhapatnam & Others. The judgment was passed vide its order dated 12.04.2001. The relevant portion of the judgment as cited by the learned counsel for the applicant is as follows:

"2. In the present case, the notification dated 12.03.1999 has been issued for filling up the vacancies for the post of EDBPM, Nandyalampeta Branch Office. More than the required number of applications have been received and all of them were considered by the competent authority and one Mr. Venkatarami Reddy has been provisionally selected for the said post. Since he could not comply with the requirements prescribed under the rules, he withdrew his candidature and accordingly his selection was cancelled by proceedings dated 31.03.2000. Thereupon a fresh notification has been issued by the 1st respondent dated 30.03.2000 for filling up the said post. This notification is under challenge in this OA brought by one of the applicants in response to the notification dated 12.03.1999.

3. The learned counsel for the applicant Shri Ramakrishna Rao submits that when a selection has been made against a notification, but for one reason or the other, the selection has been cancelled, the notification need not be cancelled. Selection should, however, go on in accordance with the merit list prepared of the eligible applicants.

4. The learned counsel for the respondents, however, submits that in view of the Judgments of this Tribunal when the selection was cancelled

Murthy

there was no other alternative except to issue fresh notification.

5. Heard the Counsel for the Applicant and the Respondents.

6. The facts are not disputed in this case. The selection of one Mr. Venkatarami Reddy, who was found meritorious, made against the notification dated 12.03.1999 has been cancelled on his own withdrawal of his application, vide proceedings dated 31.03.2000. Thereupon the impugned notification issued calling for fresh applications for the same post. The question that is involved in this case is no longer 'res integra'. A Full Bench of this Tribunal in OA No. 1315 of 2000 in the case of M. Sarojini Vs. Sr. Superintendent of Post Offices, Visakhapatnam & Others, vide its Order dated 12.04.2001, has opined that in the event of the cancellation of the provision selection of the meritorious candidate, the merit list still have to be worked out by appointing the next person in the merit list and that it was not permissible under law to cancel the notification itself and issue a fresh notification."

8. On the basis of the pleadings and hearing we are of the view that mere cancellation of the appointment of Sri V.P. Srivastava for furnishing forged certificate did not mean that the entire short list had to be discarded. There were other names in the short list who could have been considered. As stated by the applicant, he was in the second place in the list and for this reason his candidature should have been considered. We are inclined to agree with this and hereby order that the respondents will consider the candidature of the applicant and subject to fulfillment of the requisite qualification, he should be offered the job of the EDDA. We are, however, concerned that dislodging the present incumbent Sri S.K. Srivastava from the post will also cause hardship and resentment. We have noticed that Sri S.K. Srivastava was impleaded in this OA and notice was

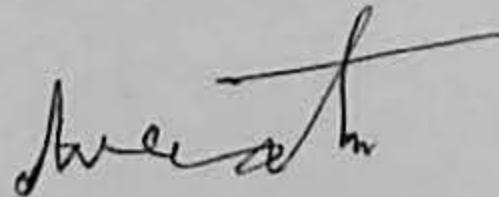
meeth

served on him. However, there was no response or representation of Sri S.K. Srivastava and on 11.08.2004 the Division Bench of this Tribunal had decided that this case could be decided *ex parte* as far as Sri S.K. Srivastava is concerned.

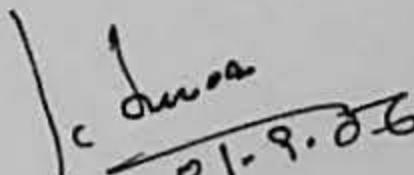
9. Considering that six years is a long period and it will not be just and proper to terminate the services of Sri S.K. Srivastava, we hereby order that the present applicant, subject to his fulfilling the requisite qualification for the post of EDDA, be approved for appointment and should be offered appointment on the occurrence of the next vacancy in the post of EDDA or equivalent at any other Post Office within the sub-division.

10. With the above direction the OA is disposed of with no order as to costs.

11. In view of this decision Review Application No. 78 of 2004 in Original Application No. 447 of 1999 is dismissed.



Member (A)


C. J. Datta
01-9-06

Vice-Chairman