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(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD

ALLAHABAD this the 1st day of Apr, 2011.

Original Application Number. 43 Of 1999.

HON'BLE DR. K.B.S. RAJAN, MEMBER (J)
HON'BLE MR. S.N. SHUKLA, MEMBER (A).

Akhand Pratap Singh, aged about 22 ½ years, S/o Shri Chandra Bhushan Singh, R/o Village & P.O Siswa Baboo (Belghat), Tehsil - Khajani, Gorakhpur; employed as EDMC/EDDA/Siswa Babu in the District Gorakhpur.
.....Applicant.

VE R S U S

1. Union of India through the Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi - 110 001.
2. The SSPOs, Gorakhpur Postal Division, Gorakhpur
3. The Sub Divisional Inspector (Postal), Urwa Bazar Sub Division, Urwa Bazar, District- Gorakhpur.
4. Chandra Bhushan Singh, S/o Surya Deo Singh, Village & Post- Siswa Babu via Belaghat, District- Gorakhpur.
5. Sri Ram Niwas, S/o Sri Dhaneshwar, R/o Village and P.O Babhanauli, District - Gorakhpur and presently employed as EDDA/MC, Siswa Babu via Belaghat, District- Gorakhpur

.....Respondents

Advocate for the applicant: Sri Avanish Tripathi

Advocate for the Respondents : Sri S. Chaturvedi
Sri A. Srivastava

ORDER

Delivered by Hon'ble Mr. S.N. Shukla, AM

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The facts as pleaded are that the applicant was engaged as a substitute Extra Departmental Delivery Agent (MP) at Sisubabau Post Office as the then existing incumbent Sri R.D. Chaudhary was promoted. The applicant was engaged on instruction from the respondent No. 3 to B.P.M., Sisubabau to engage as substitute resulting in appointment of the applicant w.e.f. 19.02.1998 and continued since then (Annexure A-2 and A-3 of O.A).

2. The applicant is aggrieved against the initiation of the appointment Notice dated 19.05.1998 (Annexure A-1) for the same post as he was holding as a substitute for the reasons that the vacancy at Sisubabau fell under the recruiting unit of Urua Bazar Sub Division and not under Senior Superintendent of Post Offices, Gorakhpur. The impugned order /Annexure A-1 stipulates that the post of reserved for S.C category. The applicant contends that the reservation cannot be ordered on the basis of vacancies. As per the guide-lines of DOPT O.M No. 86012/2/96-Estt (Res) dated 02.07.1997, for initial operation, the recruiting unit was to recast and update the gradation list of staff under it as on 02.07.1997. Thereafter, the post has to be put on the roster in the order they appeared in the gradation (in the seniority list of the employees). Thereafter the post has to be filled up by the category of staff to which it belongs or by the community which vacated the post. (Apple for apple). Accordingly the reservation could not have been made on the

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basis of post (Annexure A-4 of O.A). It was explained that 3 posts under respondent No. 3 fell vacant simultaneously viz EDMC/EDDA, Siswababu, EDDA, Dhakwa Bazar and EDMP, Juria vacated by Sri Ram Dularey Chaudhary (OC), Sri Raj Kumar (SC) and Sri Tiwari (OC). According to the Sub Divisional Seniority List, the post of EDDA, Dhakwa Bazar should have been gone to SC category and 2 other posts at Siswa Babu and Jhuria should have gone to the category of O.C. It is also alleged that in response to the said notification all applicants submitted fake address of temporary residence within delivery jurisdiction of Siswa Babu Post Office. The applicant, who was already working as AD Agent in the same P.O, submitted his application directly on 04.07.1998 (Annexure A-5 of O.A) well before the cut off date i.e. 10.07.1998.

3. The case of the applicant was however, rejected on the following grounds : -

- a. The vacancy was ordered to be reserved for SC candidate as per the order of the respondent No. 2;
- b. The name of the applicant was not sponsored by the Employment Exchange and he submitted his application directly;
- c. The father of the applicant was also employee in the same office and another near relative cannot be appointed;

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- d. The applicant was not permanent ED Agent but was only adhoc employee.

4. It is submitted by the applicant that his application submitted directly should not have been the ground for rejecting his case, as held by Hon'ble Supreme Court in **1996 (6) SCC 216 - Excise Supdt., Malkaapattanam Vs. K.V.N. Rao and others.** A reference was made to letter No. 19-4/97-ED & Trg. Dated 19.08.1998 whereby the respondent No. 1 directed that the application could be sent directly and also be received as per DOPT guidelines (Annexure A-17 of O.A).

5. The applicant is already working on adhoc basis at the same post and , therefore, has preferential claim in view of DG (Posts) Letter No. 43-27/85-Pen (EDC &Trg.) dated 12.09.1988 and clarification in letter No. 17-60/95-ED & Trg. Dated 28.08.1996 (Annexure A-18 and A-19). Further working of the applicant's father in the same post office does not disqualify the applicant and should not be a valid reason for denial of consideration of his candidature , as held by Hon'ble Supreme Court in **AIR 1997 (SC) 637 - Baliram Prasad Vs. U.O.I & Ors.** Lastly all other candidates were not otherwise qualified for the reasons of not belonging to the delivery area and having submitted false addresses.

6. Counter has been filed. Stand taken by the respondents are summarized below: -

- a. The vacancy was for SC candidate and the names were sought from the Employment Exchange;
- b. The applicant was only a substitute engaged on private basis by the original incumbent at his own risk;
- c. The applicant has no legal vested right to file this O.A;
- d. The vacancy was reserved for SC as their quota was not upto the mark and there was no illegality in this regard. To ensure full representation of SC candidates in all Divisions, the question of implementation of post based roster does not arise.;
- e. The vacancy was notified in May 1998 and hence the order dated 19.08.1998 cannot be applicable before its issuance.

7. In the Rejoinder Affidavit it is submitted that the DOPT instruction dated 02.07.1997 for the post to be reserved in accordance with the post based roster was introduced in compliance of the order of Apex Court in the case of R.K. Sabharwal Vs. State of Punjab and J.C. Malik Vs. Ministry of Railways. The instant vacancy should not have been reserved for SC candidate.

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8. Heard learned counsel for the parties and perused the materials on record. The specific issues for consideration in this case are being dealt with as under:-

(a) The applicant was not a permanent ED agent but was only an adhoc employee and hence *he cannot claim pre-emptive right for appointment without any need to consider others who are otherwise eligible to apply for the post.* (does not deserve any preference over other candidates for selection.) At best, a candidate already working in the same office on a substitute basis may have preference over a freshly considered candidate and hence deserves priority over a fresh candidate other things being equal.

(b) Applicant's case was rejected on additional grounds that his father was also employed in the same post office. This contention of the respondents has to be rejected in view of the judgment of the Hon'ble Supreme Court reported in AIR 1997 SC 637, in the case of Baliram Prasad Vs. Union of India and others, relevant portion of which reads as under:-

"(B) Constitution of India, Arts. 311, 14-appointment-Refusal to appoint meritorious candidate only on ground that his cousin brother was working in same office as peon and there was decision of authorities to avoid employment of near relative in same office-is arbitrary exercise of power, hit by Act.14."

(C) Another reason held out against the applicant is that his name was not sponsored by the

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Employment Exchange and he submitted his application directly. Once this contention is to be rejected in view of the decision by the Apex court in the case of **Excise Superintended Malkapatnam, Krishna District, A.P. Versus K.B.N. Visweshwar Rao and Others** reported in **(1996) 6 SCC 216**.

In a recent case of *Union of India v. Pritilata Nanda*, (2010) 11 SCC 674 the Apex Court has held as under:-

19. In *K.B.N. Visweshwara Rao* case a three-Judge Bench of this Court considered a similar question, referred to an earlier judgment in *Union of India v. N. Hargopal* and observed: (*K.B.N. Visweshwara Rao* case², SCC pp. 217-18, para 6)

"6. ... It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/ establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

By applying the ratio of the abovenoted judgments to the case in hand, we hold that the

authorities concerned of the South-Eastern Railway committed grave illegality by denying appointment to the respondent only on the ground that she did not get her name sponsored by an employment exchange.

- (D) Lastly and finally as regards the conflicting position regarding as to whether the vacancy may be reserved for the scheduled caste candidates the documents placed at Annexure A-17 are reproduced below:-

"The undersigned is directed to say that under the existing instructions, vacancy based roster have been prescribed in order to implement the Government's policy relating to reservation of jobs for the Scheduled Castes, the Scheduled Tribes and the other Backward classes. The application of reservation on the basis of these rosters was called into question before Courts. The Constitution of the Supreme Court, in the case of R.K. Sabharwal's V. State of Punjab as well as J.C. Mallick V. Ministry of Railways has held that the reservation of jobs for the backward classes SC/ST/OBC should apply to posts and not to vacancies. The Court further held that the vacancy-based roster can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentage of reservation. Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion, etc., of the persons belonging to the general and the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained.

1. At the point of initial operation of the roster, it will be necessary to determine the actual representation of the incumbents belonging to different categories in a cadre, vis-à-vis the points earmarked for each category viz., SC/ST/OBC and general in the roster. This may be done by plotting the appointments made against each point of roster starting with the earliest appointee. This, if the earlier appointee in the cadre happens to be a candidate belonging to the Scheduled Castes, against point No. 1 of the roster, the remark "utilized by SC" shall be entered. If the next appointee is a general category candidate, the remark "utilized by general category" shall be made against point No. 2 and so on and so forth till all appointments are adjusted in the respective rosters. In making these adjustments, SC/ST/OBC candidates on merit, in direct recruitment shall be treated as general category candidates."

[Handwritten signature]

(5)

10. Specific averments has been made in para 4.5 of the OA that the post in question could not have been reserved for Scheduled caste candidate for the reasons stated herein. No specific denial or working has been demonstrated in the counter affidavit to substantiate the stand of the respondents that there was a back log in the employment of candidates of scheduled caste category and, therefore, the post was reserved for scheduled caste. One of the grounds taken was that the vacancy was notified in May 1998 and hence the order dated 19.08.1998 could not have been considered prior to the notification. In this connection it is to be noted that the letter dated 19.8.1998, Annexure A-17 to the OA has been issued. The situation calls for another judicious exercise to be undertaken by the respondents in respect of working out the posts reserved under the reserved category. Respondents shall have to act accordingly.

11. Taking into consideration all the facts of the case, in the considered view of this Tribunal the authorities have failed to substitute the reasons justifying the reserved vacancy notified vide notification dated 19.05.1998 (Annexure A-1) by referring it for scheduled caste candidates.

12. In view of the above, the option available to this Tribunal is to quash and set aside the impugned order dated 19-05-1998 and to issue the following directive:-

- (a) The respondents shall carefully ascertain whether the vacancy falls under reserved category, and if so, the applicant shall be duly informed giving the particulars of the relevant provisions on the basis of which the vacancy goes to the reserved candidate and a fresh notification be issued for filling up of the post by a reserved candidate and follow up action be taken in accordance with law.
- (b) Instead, if the vacancy is for general category, fresh notification calling for general candidates be issued and follow up action taken. If the applicant is one of the aspirants, due weightage shall be given to the experience he has as a GDS.

It is ordered accordingly and the OA is disposed of. Time calendared for this purpose is four months from the date of receipt of this order. Respondent No. 2 shall monitor compliance.

No cost.


MEMBER- A.


MEMBER- J.

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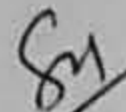
01.02.2013


Hon'ble Mr. Justice S.S. Tiwari, J.M.

Hon'ble Mr. Shashi Prakash, A.M.

List has been revised. Shri A. Srivastava, Advocate for private respondent No.5 is present. None is present for the applicant.

The record shows that several adjournments have been granted on account of absence of the applicant. The case relates to the year 1999. It appears that the applicant has lost interest in pursuing the case. Accordingly, the OA is dismissed in default and for non prosecution.


A.M.


J.M.

RKM/