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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL : ALLAHABAD
(CIRCUIT SITTING AT NAINITAL)

Dated: This the 26 day of April 2007

Original Application No. 25 of 2002 (U)

Hon'ble Mr. P.K. Chatterji, Member (A)

Hon'ble Mr. S.K. Dhal, Member (J)

Smt. Kaushlaya Devi, W/o Sri Govind Singh,
R/o Village and P.O. Kalika Tahsil - Dharchula
Distt: Pithroagarh.

.....Applicant

By Adv: Sri J.C. Pandey

V E R S U S

1. Union of India through the Secretary, Ministry of Telecommunication Secretariat, New Delhi.
2. Post Master General, Uttranchal, Dehradun.
3. Superintendent of Post Offices, Pithoragarh.
4. Sri Murlidhar Joshi, S/o Sri T.D. Joshi (EDBPM) Brach Kalika (Baluwakot) Tahsil Dharchula Distt: Pithoragarh.

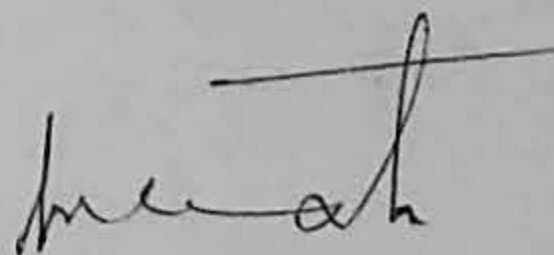
.....Respondents

By Adv: Sri V.V. Mishra

O R D E R

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

The dispute involved in this OA is whether the respondents have any authority to decide whether the possession of landed property of the applicant for the post of GDS Employee is adequate in terms of the relevant rules of GDS Employment. The Superintendent of Post Offices, Pithroagarh notified vacancy for the post of GDSBPM Kalika (Baluwakot) on 30.03.2001. In the notification



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applications were invited from the qualified candidates for filling up the posts.

2. The applicant who was fully qualified for the post of Branch Post Master, also applied for the post. She also furnished the requisite testimonials. It is stated by her that she secured 49.33% marks in the High School examination. It is also stated by her that she also furnished proof of landed property and also income certificate of Rs. 500/- per month. However in spite of her being fully qualified for the job she was not given appointment, but one Sri Murlidhar Joshi, who had secured much less marks i.e. 43% in the High School examination was offered appointment. Being aggrieved by the action of the respondents, the applicant sent a representation to the Post Master General as well as to the Ministry. When no action was taken on the representation made by the applicant a legal notice was served on the Superintendent of Post offices (SPO) by the applicant. However, she received a reply on 16.10.2001 in which the claim of the applicant was denied without assigning any reason. Being thus aggrieved by the action of the respondents this OA has been filed by the applicant seeking direction to the Tribunal to appoint the applicant in the post of GDS BPM

M. S. Joshi

Kalika replacing Sri Murlidhar Joshi who, it is alleged by the applicant, was illegally appointed. (74)

3. In reply to the OA, the respondents have narrated the back ground of the case. It has not been disputed by the respondents that the applicant secured more marks than respondent No. 4 in the qualifying examination. However, it has also been stated by the respondents that when the applicants are equal in all respects in terms of the requisite qualification their relative merits is finally judged on the basis of marks secured in the qualifying High School examination. However, after listing the candidates who are otherwise qualified for consideration in the instant case the respondents had found that the applicant was in possession of only two nulli of land worth Rs. 16,000/- only. The income certificate of the applicant showed that her monthly income was only Rs. 500/-.

4. As against this the respondent No. 4 had property worth of Rs. 9 lacs. His monthly income was also clarified to be much higher compared to that of the applicant. The respondents in this context has referred to the relevant rules of the ED Recruitment Rules including the circular issued by the Ministry of Communication, Department of Post No. 22-1/2000-ED & Trg. dated 24.04.2001. It has been stated by the respondents that in the

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matter of judging the suitability of a candidate for the post of BPM the appointing authority has been given the discretion to decide whether the applicant has an adequate means of livelihood while seeking the appointment.

5. The respondents have cited the Judgment of Hon'ble Punjab and Haryana High Court in CMWP No. 15356/97. The dispute involved in this case was regarding discretionary power of the appointing authority in considering what would be the adequate means of livelihood. In that judgment the Hon'ble High Court referred to the Postal Services Board decision regarding adequacy means of livelihood. The relevant portion of the circular is as under:-

"i) It is not necessary to quantify "adequate means of livelihood". However, it may be laid down that in the case of appointment of ED Sub Postmasters/Brach Post Masters, preference may be given to those candidates whose "adequate means of livelihood" is derived from landed property of immovable assets if they are otherwise eligible for the appointment. Heads of Circles may be asked to issue suitable instructions to the appointing authorities on these lines so that they could follow these while making appointments to the posts of EDSPM and EDDPM. In respect of other EDAs, the present "adequate means of livelihood" will hold good."

6. Although the dispute involved in that WP was not precisely the same as the dispute involved in this OA, a perusal of said judgment would make it evident that the Hon'ble High Court did not find

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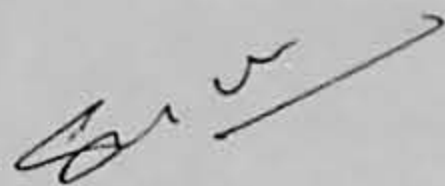
any fault with the policy matter laid down by the Postal Services Board in this matter, particularly the discretion of the appointing authority to consider what would be the adequate means of livelihood.

7. The respondents have relied upon this policy decision as laid down by the Postal Services Board in defending their decision in not giving appointment to the applicant and selecting respondent No. 4. What has been stated by the learned counsel for the respondents at the time of hearing was that the job of GDS is quite unlike a departmental official. It is part time agency function for which the Government compensates the GDS Agent through suitable remuneration. As it may not be adequate for the livelihood of the individual and his family, the department has laid down that the agent should have alternative source of livelihood. At the same time it has also been laid down that it should be an adequate of means of livelihood. As to the question whether the means available with a particular candidate is considered to be adequate or not, the decision is left to the appointing authority as would be evident from the circular of the Postal Services Board quoted above.

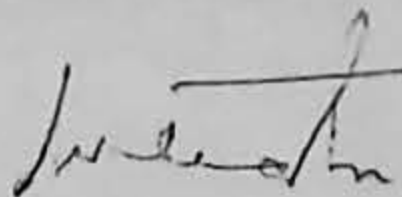
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8. In view of the position clarified by the learned counsel for the parties and on the basis of the pleadings and arguments, we are of the view that respondent No. 3 has not committed any error in decision and has also not overstepped his powers. We, therefore, do not find any merit in this OA, which is dismissed accordingly. No cost.



Member (J)



Member (A)

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