

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.417 of 2002

Thursday, this the 27th day of November, 2003.

Hon'ble Maj. Gen. K.K.Srivastava, A.M.
Hon'ble Mr. A.K. Bhatnagar, J.M.

1. Benche Lal, aged about 44 years,
S/o Shri Arjun, R/o Village & Post-
Bhaupur, Auraiya.
2. Surendra Nath, aged about 42 years,
S/o Shri Hubb Lal, R/o Village & Post-
Bhaupur, Auraiya.

.....Applicants.

(By Advocate : Shri R.Verma)

Versus

1. Union of India,
through the Secretary,
Ministry of Communication,
New Delhi.
2. The Superintendent of Post Offices,
Etawah Division, Etawah.
3. Smt. Rita Devi,
aged about 28 years,
W/o Shri Ravindra Kumar Tiwari,
R/o Village & Post- Bhaupur,
Auraiya.

.....Respondents.

(By Advocate : Shri G.R.Gupta)

O R D E R

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

In this O.A., filed under Section 19 of A.T. Act,1985, the applicants have challenged the appointment of respondent No.3 on the post of Extra Departmental Branch Post Master, Bhaupur, Auraiya, in pursuance of the notification dated 22.1.2001 (Annexure-A-2). The applicant No.1 filed MA No.3981/03 with prayer to dismiss the OA as not pressed, which was allowed by order dated 22.10.2003. The OA was dismissed as not pressed so far applicant No.1 is concerned.

....2.

2. We have perused the notification and as per the notification, the post was reserved for Schedule Tribe candidate. The respondent No.2 has appointed respondent No.3 who belongs to General Category. In para-9 of the Counter reply, respondents have taken the plea that since there was no application from the reserved communities and 05 applications were received from other candidates belonging to General Category, respondent No.3 has been appointed by respondent No.2. Besides, the learned counsel for the respondents submitted that the applicant has no locus standi as he never applied for the post. We outrightly reject this plea because the respondent No.2 could not accept even a single application from the General Category candidate when the post was reserved for Schedule Tribe.

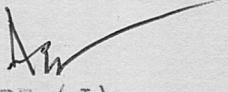
3. We do not agree with the plea taken by the respondents. The very fact that by notification dated 22.1.2001, the post was reserved for S.C. and S.T. candidates, respondent No.3 belonging to general category could not have been appointed. The proper course open to respondent No.2 was either to cancell the notification or to issue notification afresh calling for fresh application from reserved candidates or de-reserve the post and then to make the appointment as per rules. The action of the respondent No.2 suffers from manifest error of law and cannot sustain in the eyes of law. Needless to observe that an appointment has to be made in pursuance of a particular notification, ^{h h} We would also like to observe that ^h the respondent No.2 could not quietly appoint the respondent No.3 on the post meant for reserved candidates. Not only this by appointing respondent No.3, who belongs to general category, respondent No.2 has denied ^h opportunity to many other candidates of general category ^h who might have been higher in merit than the respondent No.3. ^{to apply for the post}

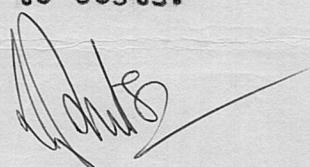
4. In the facts and circumstances, the O.A. is allowed. The impugned appointment order dated 24.7.2001 (Annexure-A-1) is quashed. The respondents shall take action to fill the post afresh in accordance with rules. We also consider it necessary to report the matter to Chief Post Master General, U.P. to take suitable notice of such illegal/irregular action taken by the respondent No.2 and to take suitable action against the respondent No.2 in case he is still in service so that brakes are applied on such illegal/irregular activities.

5. We also provide that till the fresh regular selection is made as per rules/law, the respondent No.3 shall not be removed except in accordance with law.

6. Registrar of this Tribunal is directed to forward a copy of this order by name to Smt. Neelam Srivastava, Chief Post Master General, U.P. Lucknow.

7. There shall be no order as to costs.


MEMBER (J)


MEMBER (A)

RKM/