

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 1124 of 2003

Tuesday, this the 14th day of November, 2006.

Hon'ble Mr. K. Elango, Member (J)
Hon'ble Mr. M. Jayaraman, Member (A)

1. Hari Shanker Dayal, Son of Late Sri Baldeo Prasad, R/o Village-Shohorawa, Post Rithupur, P.S. Shahjanawa, District Gorakhpur.
2. Rameshwar Prasad (II), Son of Late Sri Ram Nawal Prasad, R/o Village-Tharuapur, P.O. Ghasara Bazar, P.S. Sahjanawa, District Gorakhpur.

Applicants

By Advocate Shri C.S. Srivastava

Versus

1. Union of India through the Secretary, Ministry of Post and Telegraph, New Delhi.
2. Post Master General, Gorakhpur Region, Gorakhpur.
3. Deputy Director of Post Services, Gorakhpur Region, Gorakhpur.
4. Senior Superintendent, R.M.S. 'G' Division, Gorakhpur. (S.S.R.M. 'G' Division).
5. Ram Kewal
6. Anil Kumar Singh.
7. Akhilesh Pandey.
8. Baleshwar Yadav.
9. Vashistha Muni.
10. Ramashraya Prajapati.
11. Lalji Yadav.
12. Surendra Singh Yadav.
13. Subhash Chandra Yadav.
14. Birendra Bahadur Tiwari.

All Casual Labourer in R.M.S. Gorakhpur Mandal, Gorakhpur.

Respondents

By Advocates Shri Saumitra Singh (for official respondents)
Shri Anil Yadav (for private respondents).



ORDERM. Jayaraman, Member (A)

Heard, Shri C.S. Srivastava, Counsel for the applicants, Shri Saumitra Singh, Counsel for the official respondents and Shri Anil Yadav, Counsel for the private respondents.

2. The short plea taken by the applicants before us is that they were holding the post of Casual Labour on temporary basis and against the notices issued by the department for appointment of Mail Man (T.S.). The applicants also applied and they were allowed to participate in the examination but by first impugned order dated 15.12.1998 result of the applicants were not declared on the plea that there was no vacancy in the reserved category so the result of the persons belonging to that category was not declared. Against this order, the applicants preferred an Appeal before the department, which was finally disposed of by letter-dated 14.07.2003 (annexure A-4) by which it was intimated to them that they were not appointed because they were not found to be of merit. Accordingly, the applicants have come before the Tribunal seeking the relief that they should be appointed to the post applied for since they were found to be meritorious as per paragraph no.8 of the counter affidavit filed by the respondents themselves and cited the Supreme Court Judgment in the case of Indra Sawhney and Ors. Vs. Union of India and Ors. Etc. J.T. 1992 (6) S.C. 273; 1992 Supp (3) SCC 273. Accordingly, it was pleaded that since the applicants had obtained sufficient marks and had come within the quota of general category, they ought to be appointed and not their juniors.

3. Shri Saumitra Singh, Counsel for the respondents opposed the above plea on the ground that the posts were to be filled internally from amongst the casual labours, who were working on temporary basis subject to suitability by passing literacy test. He mentioned that 5 posts were kept for unreserved category and 5 posts were reserved for OBC category, but there was no post reserved for SC category. Since the applicants were belonging to SC category, he submitted that initially their results were withheld and for the same reason they were not appointed.



4. We have given our careful consideration to all the pleas made by the rival sides. Admittedly, the posts were filled in this case on the basis of 5 posts for unreserved category and 5 posts for OBC category. Vide paragraph no.6 of the Counter Affidavit, in all 35 casual labours with their length of service were allowed to participate in the literacy test in which applicants figured at serial no.11 and 12. However, on the basis of result declared, they were placed at serial no.6 and 7 of the 17 candidates who were found to be successful in the said literacy test. Candidates at serial no.1 to 3 belonging to the general category were appointed from out of that quota. Candidates at serial no.4 and 5 belonging to OBC category were accommodated from out of OBC quota. Though applicants figured at serial no.6 and 7 and thus effectively within the first five of the merit list they ought to have been chosen for the post whereas the respondents had appointed the General Category candidates at serial no.8 and 9. The above view is fully supported by the Supreme Court Judgment in the case of Indra Sawhney and Ors. Vs. Union of India and Ors. Etc., cited above, wherein the Hon'ble Court held as follows: -

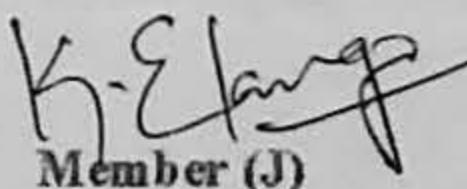
"In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Castes, they will be treated as open competition candidates."

Accordingly, we find force in the plea made by the counsel for the applicant and the O.A. needs to be allowed.

5. In the light of above discussion, we allow this O.A. and give a direction to the respondents to consider the case of the applicants as per the result declared by the respondents, which is reflected in paragraph no.8 of the counter affidavit and appoint them to the post for which literacy test was conducted. Since this is an old matter and the applicants have suffered sufficiently in the meantime, we deem it necessary to give a direction to comply with the above order of the Tribunal within a period of 3 months from the date of passing of this Order. No order as to costs.



Member (A)



Member (J)

/M.M./