

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1511 OF 2003.

Allahabad this the 20th day of April 2004.

**Hon'ble Mrs. Meera Chhibber, Member-J
Hon'ble Mr. S. C. Chaube, Member-A**

Indra Pal son of Ram Shajan (EDBPM) at BO Daheli, Kanpur resident of village and P.O. Deheli Moosa Nagar, District Kanpur Nagar.

.....Applicant.

(By Advocate : Sri K.K. Tripathi)

V E R S U S

1. Union of India through Secretary Ministry of Communication Department of Post, New Delhi
2. The Director General of Post and Postal Services, New Delhi.
3. The Chief Post Master General, U.P. at Lucknow.
4. The Post Master General, Kanpur Region, Kanpur.

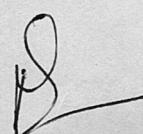
.....Respondents.

(By Advocate : Sri R.C. Joshi)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M.

By this O.A. applicant has sought the following relief(s):



- "(a) Issue a writ or certiorari quashing the order dated 09.10.2003 (Annexure A-1 of compilation-1) passed by the respondent NO.4.
- (b) A direction may be given to the respondents to issue appointment letter in favour of the applicant for the post of regular Post Man at Head Office Kanpur in pursuance of the Examination held for the same post on 22.12.1998 and applicant declared qualified and the respondents published list of surplus qualified candidates on 30.8.1999.
- (c) A direction may be given to the respondents for not holding the examination of regular post man on 20.06.2003 till the vacancies are filled up by the qualified candidates as the ban has already been lifted."

2. In nut-shell the brief facts as alleged by the applicant are that he was working as E.D.B.P.M. at B O Deheli, Kanpur Dehat Region Kanpur but he was made to work as E.D.D.A and E.D.M.C as well. He applied for promotion to the post of Post Man and appeared in the examination on 22.12.1998 whereupon a combined list of qualified candidates was issued, which contained the names of the applicant as well, in the order of merit. Even though, his name was shown in the qualified candidates list on 30.08.1999 at Sl.No.19 but no appointment letter was issued. On 01.06.1999 a list of successful candidates was declared wherein ^{and 12} 9 candidates were there ~~but~~ ^{and 12} ~~the~~ appointment was issued to only ¹² 9. No appointment was issued in favour of applicant therefore, applicant filed O.A. No.1052 of 2000 connected with O.A No.1049, 1051, 1053, 1054, 1055, 1056 of 2000. The said O. As were disposed off on 01.05.2001 with the direction that question of appointment of the applicants may be considered as per rules for appointment when such ban is lifted. It is submitted by the applicant that ban on appointment was lifted vide letter dated 23.10.2000 but yet no appointment letter was issued to the applicant and respondents have now given an advertisement on 25.03.2003 for holding fresh examination for promotion/appointment on the post of Post Man, which according to applicant is absolutely wrong as he is already in surplus qualified candidates list. It is submitted by applicant that he filed C.C.P. No.94/03 but that ~~was~~ ^{has been} dismissed on the ground of laches on 09.10.2003. He has thus filed the present O.A. to challenge the action of respondents in not appointing him, even though he was already



declared as qualified and could not be given appointment due to the ban which was imposed by the respondents. It is submitted by applicant that respondents cannot be allowed to resort to fresh advertisement for holding examination when the selected candidates are already available with the respondents. It is the case of applicant that respondents ought to have exhausted the first list of qualified candidates and then resorted to fresh examination if still required.

3. He has also filed M.A. No.1767/04 with a prayer to direct the respondents for not holding the examination on 11.04.2004 during the pendency of the case before the Tribunal.

4. We have heard counsel for the applicant and have perused the pleadings as well. Counsel for the applicant submitted that this case is fully covered by the judgment given in O.A. No.1506/03, therefore, this O.A. may also be decided in terms of that judgment.

5. Perusal of the results declared by respondents on 01.06.1999 (Pg.25) shows that as a result of examination for recruitment to the post of Post Man held on 20.12.1998, 9 candidates were declared successful in the examination and their names were arranged in the order of merit. Those 9 persons were required to undergo the prescribed training before appointment on the cadre. Applicant admittedly did not find place in this list. As far as letter dated 30.08.1999 (Pg.22) is concerned wherein applicant's name finds place, the subject itself reads as under:-

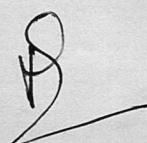
Sub:- Allotment of surplus qualified candidates of the examination for promotion to the cadre of Postman/VPM held on 22.12.1998"

In accordance with the instructions contained in the D.G. Posts communication No.44-44/82-SPB.I dated 07.04.1989. The Post Master General, Kanpur Region Kanpur has ordered allotment of following surplus qualified candidates to Kanpur H.O. to over come the short-fall of successful candidates in Kanpur H.O. Unit in the aforesaid examination. The names of the candidates have been arranged in the order of merit as per combined merit list of surplus qualified candidates of Kanpur City Division and Kanpur (M) division."



6. Perusal of the above paragraphs makes it absolutely clear that the list of these candidates was sent as they were in the wait list with the sole idea to over-come the short fall of successful candidates in the aforesaid examination. Meaning thereby that if due to some reason the successful candidates do not join whose names were given in the letter dated 01.06.1999 then that short fall could be made good from amongst the candidates from the surplus qualified candidates list (Pg. 22) or at Kanpur Head Office. At this Juncture, it would be relevant to quote the view of Hon'ble Supreme Court on the question of rights of those persons who are in the wait list. In 2001 (2) SCSLJ 378 at 393 it was held by Hon'ble Supreme Court that a candidates in the wait list has no vested right to be appointed. Similarly in 1997 (2) SCC 283 it was held by Hon'ble Supreme Court that merely because petitioner has been put in waiting list, he does not get any vested right to appointment unless a person below him in the ranking in the wait list has been appointment person can not have grievance. It was further held that for subsequent vacancies every one in the open market is entitled to apply for consideration of his/her claim on merit in accordance with law and that would be consistent with Article 14 (1) and 16(1) of the Constitution. It is, thus, clear now that persons in the wait list have no vested right to be appointed but could have claimed appointment only if selected candidates did not join and wait list was still in operation. In the instant case applicants have not been able to demonstrate that 9 persons who were selected as clear successful candidates had not joined the post of Post Man. Therefore, in the absence of such an averment, it has to be concluded that all the 9 clear vacancies were filled from amongst successful candidates. Therefore, the applicant who was in the surplus selected candidates list, cannot claim as a matter of right to be appointment for subsequent vacancies.

7. Counsel for the applicant submitted that when he had earlier come to the Court, this Tribunal had directed the respondents to consider the representations given by the applicants and pass a reasoned and speaking

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order and till such time the representations are decided, no further examination should be held by the respondents.

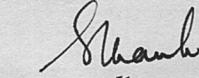
8. Perusal of the judgment shows that the case was decided at the admission stage itself without calling for any reply from the respondents and the only direction was to consider their representations by passing a reasoned and speaking order. Therefore, it cannot be said that any finding was recorded in the judgment dated 13.05.2003 nor any direction was given to the respondents to give appointment to the applicant. Pursuant to the order dated 13.05.2003 passed in O.A. No.428 of 2003 respondents have already passed a detailed order dated 09.12.2003 wherein they have explained that consequent upon declaration of the results of examination dated 22.12.1998 action was initiated to fill up the un-filled vacancies of Kanpur Division from the surplus qualified EDBPMs of local divisions accordingly, 32 candidates were allotted to Kanpur to fill up the unfilled vacancies of Postman cadre. However, before these candidates could be appointed, ban was imposed by the department, pursuant to the instructions issued by Ministry of Finance OM dated 05.08.1999, therefore, the order issued on 30.08.1999 was kept in abeyance till further orders vide letter dated 08.10.1999 but thereafter department issued a policy decision vide letter dated 11.06.2002 in respect of optimization of direct recruitment to civil post where under department in its decision has mentioned clearances of vacancies by screening committee for the year 2001 and those which are less than one year old as on 16.05.2001 for recruitment. The remaining vacancies meant for direct recruitment and those vacancies which are not cleared by the Screening committee will be filled up by promotion or otherwise and these posts stand abolished. He have thus explained that applicant had appeared in the examination against the vacancies of 1998 but those vacancies not having been cleared by the Screening Committee, he stood abolished as decided by the department. In these circumstances, the requests of applicant for absorption against the vacancies of 1998 is not acceptable as such his claims had to be rejected. It was further clarified that applicant can appear in the fresh examination against the vacancies cleared by the Screening Committee. The stand of respondents is thus clear that the vacancies

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against which applicant was to be considered stood abolished. Therefore, naturally he could not have been appointed against the posts, which are no longer in existence.

9. In view of the above judgment, it is clear in our mind that the relief as sought by the applicant cannot be given to him. It would also be relevant to note here that none of the persons below applicant in the ranking of select list has been given appointment as Post Man by respondents. Therefore, he cannot have any grievance in the instant case. If in the subsequent vacancies respondents have advertised for holding the examination, applicant can always appear in the said examination and compete with others in accordance with law.

10. In view of the above discussion, O.A. is found to be devoid of merit. The same is accordingly dismissed with no order as to costs.



Member(A)



Member(J)

shukla/-