

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE rd 3 DAY OF June 2010)

PRESENT :

HON'BLE MR. GEORGE PARACKEN, MEMBER-J

HON'BLE MR. S. N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. ¹³⁹³ 396 OF 2006

(U/s, 19 Administrative Tribunal Act. 1985)

Kamlesh Kumar aged about 30 years, Son of Late Raj Kumar Ram,
Resident of Village-Nathpur, P.O. Garkhara, District-Varanasi.

..... Applicant

By Advocate : Shri S. Lal

Versus

1. Union of India, through its Secretary,
Department of Posts Ministry of Communications,
Govt. of India, Dak Bhawan, New Delhi-110011.
2. Superintendent of Post Offices, West Division, Varanasi.
3. Smt. Sheela Devi W/O Rajman Ram, R/O Village and Post
Office Garkhara, District-Varanasi.

..... Respondents

By Advocate: Shri Himanshu Singh

ORDER

DELIVERED BY MR. S. N. SHUKLA, MEMBER-A

1. This OA has been filed seeking the following reliefs:-

"A.) To issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 14.3.2006 (As mentioned in caveat Annexure A-1) passed by Respondent No.2.

B.) To, issue a writ, order or direction in the nature of mandamus commanding the respondents to select and appoint him as Gramin Dak Sewak in pursuance of notification dated 7/3/2005 (Annexure A-2) after calling for the records of the entire selection.

C.) To, issue any further order or direction which this Court may deem fit and proper in the facts and circumstances of the case.

D.) To award the cost of the application in favour of the applicant."



2. The facts of the case are that a notification dated 7.3.2005 was issued inviting applications of schedule caste candidates for appointment of Gramin Dak Sevak on a temporary basis (Annexure A-2/Compilation-II). The required qualification was High School passed or equivalent examination, more than 18 years of age and income from other sources along with other conditions such as a temporary/permanent residence address in the village etc. The applicant submitted an application which included in addition to the necessary certificates, a consent letter to open a post office in the said village and proof in support of having landed property in the nearby village [Annexure A-3 (Annexure A to G)].
3. On 30.12.2005 the applicant received a letter from the respondent no.2 intimating him that the consent letter submitted from Shri Shaukat Ali Rahim Ullah of village and P.O. Garkhara has been retracted and submitted that further three days time is granted to submit another consent letter (Annexure A-4). The applicant submitted yet another consent letter dated 1.1.2006 from Shri Jitendra Kumar (Annexure A-5). One more additional consent letter from one Shri Sarad Kumar was also submitted only as a back up arrangement (Annexure A-6). Thereafter it seems the applicant got a wind of someone else having been appointed who made complaints to authorities (Annexure A-7 and A-8). It is submitted that the applicant had obtained 72.33% marks in High School Examination, yet a person Smt. Sheela Devi who obtained only 65% marks was appointed for the said job. The applicant did not get a copy and accordingly has not been able to file a copy of the appointment letter issued in favour of Smt. Sheela Devi stated to have been issued vide order dated 14.3.2006. However, the details

of the same are available in a copy of a caveat filed by one Shri Shailendra Kumar Singh Advocate before CAT, Allahabad on 20.03.2006. A copy of the caveat at Annexure A-1. The paper at Annexure A-1 bears the name of Shri Shailendra Kumar Singh Advocate, counsel for the Caveator Smt. Sheela Devi.

4. Smt. Sheela Devi has been impleaded as respondents at serial no.3 in the array of respondents in the instant OA. The record shows that the notice for respondent no.3 was received by Shri S.K. Singh on behalf of private respondents as is evident from a copy of the order dated 09.05.2006 in the instant OA. In the said order it was stipulated that the interim relief of the appointment of private respondents was subject to the outcome of this OA. Note of the Registry dated 1.2.2010 reports that no counter affidavit has been filed by or on behalf of respondent no.3. Today when the case was called out for hearing, whereas the counsel for the applicant and counsel for the official respondents were present, there was no representation on behalf of the private respondent. There is enough evidence on record to satisfy us that adequate notice has been served on the private respondent no.3.

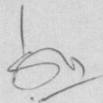
5. On notice a counter affidavit was filed with the following pleadings:-

In response to the notification dated 7.3.2005 applications were received out of which the applications of three meritorious candidates as per High School Marks were got verified along with verification of educational certificates, character and antecedents of the candidates including the availability of accommodation to keep the post office and the residence in the village. There is no



dispute that the applicant had secured highest marks in High School though. His village is located approximately 5 Kms away from the post office at Garakhara. There is also no dispute that the applicant had submitted a consent letter from one shri Shaukat Ali Rahim ullah for providing of space for the post office. However, on verification Shri Shaukar Ali Rahim Ullah retracted in writing the earlier consent for providing the space (Annexure CA-1 and 2). The applicant was provided yet another opportunity and it is submitted that he submitted a consent letter dated 1.1.2006 from one Shri Jitendra Kumar. However, once again on verification Shri Jitendra Kumar stated that earlier consent was given under pressure and too expressed his inability to provide (Annexure CA-3 and 4). A 3rd opportunity was given and he submitted yet another consent letter from one Shri Sharad Upadhaya dated 7.1.2006 (Annexure CA-5). Verification was got done through the Sub Divisional Inspector deputed for this purpose. One Smt. Reeta Devi, Ex. Gram Pradhan, Village Garkhara offered some information regarding the ownership of the said house and also made a statement that Shri Tribhuvan Upadhayay has not given any consent for providing space to the applicant (Annexure CA-6).

6. It is submitted that in view of the above circumstances Shri Arun Kumar Gautam who had obtained 69.49% marks in High School was also provided three chances but failed to secure a space to keep the post office at the village. The private respondent Smt. Sheela Devi who is the residence of the village but placed at serial no.3 of the merit list not only is a resident of the village but also provided a space for the post office in the village (Annexure



CA-7), consequently respondent no.3 was appointed on the post of GDS BPM, Garakhara vide order dated 14.03.2006 and she joined the said post on 21.3.2006 and has been working since then (Annexure CA-8).

7. Rejoinder affidavit has been filed reiterating the statement made in the OA.

8. During the course of the arguments/counter arguments learned counsel for the applicant submitted that authorities in denying appointment to the applicant and offering it to a candidate who admittedly has secured lesser marks has acted in a malafide manner. He argued that as per letter issued by the office of Chief Post Master General, U.P. (Annexure A-8). The underlying principle for consideration of candidates is as under:-

"Meritorious candidate shall be considered first:

While making selection of candidate for recruitment to the post of EDA, the merit in prescribed qualification should be given preference and offer of appointment be given to highest meritorious candidates, if he/she fulfills the requirement for accommodation for housing the post office in post village/residence in delivery jurisdiction of the post office, as the case may be. If the candidate first in merit fails to satisfy the condition of accommodation/residence then offer be given to candidate second in merit and so on. In order to check recurrence of such cases in future, I am writing to you so that strict adherence of the instructions of the Directorate on the subject is ensured at all stage. These instructions may be brought to the notice of all concerned."

9. It is also submitted that rules do not require that securing or satisfying the authorities for a accommodation for the post office in the village is a pre-condition for offering of appointment to the most meritorious candidate. Similarly there is no provision in the rules that any enquiry/verification will be conducted by the authorities as a pre-condition to offering of appointment to the

most meritorious candidate. To buttress his contention the learned counsel for the applicant relied on the following decisions:-

1. **128 Administrative Tribunal Judgments 2003(3) in the case of Ram Kumar Gupta Vs. Union of India And Others** wherein it was held:-

“(B)Appointment-Extra Departmental Agents-A candidate who has secured higher marks in matriculation is entitled to be selected as EDBPM/EDSPM-Other conditions relating to accommodation and residence has to be satisfied later on-Applicant in O.A. No.362 secured less marks as compared to applicant in O.A. No.398, hence his appointment rightly cancelled-Direction given to proceed with the process of appointment in respect of Applicant in O.A. No.398.

2. **124 Administrative Tribunal Judgments 2002(3) in the case of Suman Singh Vs. The Chief Post Master General, Lucknow and Ors.** wherein it was held:-

“Appointment-Extra Departmental Agents-The offer of appointment has to be given in the first place to a candidate who is first in merit and has secured the highest percentage of marks in the matriculation examination-Thereafter the candidate has to satisfy to other conditions relating to accommodation and residence-Authorities directed to give offer of appointment to applicant who secured the highest marks in matriculation examination and stood first in merit.”

10. Learned counsel for the official respondents places reliance on counter affidavit and supplementary counter affidavit.
11. Heard counsel for the parties (no representation on behalf of private respondent) and perused the pleadings on record (no CA filed on behalf of respondent no.3).
12. On a specific and pointed query to the learned counsel for the official respondents to produce rules/provisions under which official respondents conducted pre appointment

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verification/investigation from the individuals who had given consent letters in favour of the applicant and also lead evidence to show that such an enquiry was conducted only after an offer of appointment was given to the applicant. Learned counsel for the respondent has nothing to explain.

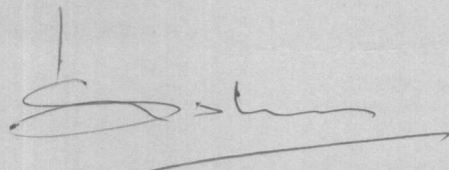
13. We have also perused Annexure A-1 to the CA which is originally a consent letter given in favour of the applicant. There is an endorsement in the hand of Nirikshak Dak, Uttar Up-Mandal, Varanasi; “(मकान देने में असमर्थ बताया)”. Annexure A-3 is consent letter given by Shri Jitendra kumar. It bears a endorsement “मैं आज दि० 7/1/2006 को पूरे होश हवाश एवं बिना किसी दबाव के यह लिख रहा हूं की मैं अब मकान देने में असमर्थ हूँ । जितेन्द्र कुमार ग्राम व पोस्ट गडसना जिला वाराणसी 7/1/2006”.

14. Annexure A-5 the consent letter of Shri Sharad Upadhyay. It is seen that in this case a complete outsider has offered information on acceptance and denials on behalf of Shri Sharad Upadhyay. Curiously, authorities acted on information given by a unrelated party. There are all the indications that the authorizations have only over reached the mandate available to them under the rules, there action of making unsolicited inquiry from the consentees betrays lack of bonafide.

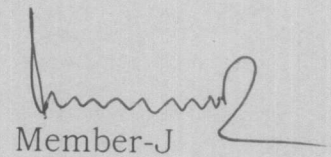
15. We have perused the rules and a few decisions of the coordinate Benches placed before us. There is no doubt about the sequence of actions as provided in the rules. We have no hesitation in holding that the offer for appointment should have been made to the applicant first and foremost. Any question of failing to secure

proper accommodation will come later. That having been done, the order dated 31.3.2005 (Annexure CA-1) being against the rule and lacking in bonafide is accordingly set aside and quashed. We also direct the respondent no.2 or any other authority competent in this behalf to make the offer of appointment to applicant no.1 followed by reasonable opportunity affording to him within four weeks time from the date of receipt of copy of this order. The case of the private respondent may be dealt with as per rules.

16. With those observations the OA stands allowed. No Costs.



Member-A



Member-J

/ns/