

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 396 of 2006

Allahabad this the 5th day of December, 2012

Hon'ble Mr. Sanjeev Kaushik, Member-J
Hon'ble Mr. Shashi Prakash, Member-A

Mohit Kumar Jaisal s/o Late Sri Aliyar Ram, R/o Village & P.O. - Bhuwarpur,
Tehsil - Saidpur, District - Ghazipur.

By Advocate: Mr. K.S. Rathore

Applicant

Vs.

1. The Union of India, through Post Master General, Head Post Office, Lucknow.
2. The Director, Postal Services, Head Post Office, Allahabad.
3. The Post Master General, Head Post Office, Allahabad.
4. The Superintendent, Post Office, Ghazipur Region, Ghazipur.
5. Shyam Sunder Ram S/o Katawaru Ram, Village & P.O. Daulatpur, Ghazipur.
6. The Dy Post Master, Branch, Post Office- Saidpur, District Ghazipur.

By Advocate: Mr. R.P. Singh

Respondents

ORDER

Delivered by Hon'ble Mr. Shashi Prakash, A.M.

Through the present O.A., the applicant has prayed to quash the order/letter dated 17.08.2005 passed by respondent No. 4. He further prayed to direct the respondent No. 4 and 5 (now respondent No. 3 & 4) for appointment to the applicant in place of respondent No. 6 (now respondent No. 5).

2. The facts, in brief, as brought out in the O.A. are that the applicant was enrolled in Employment Exchange, Ghazipur being resident of Village Bhuwarpur, Tehsil Saidpur, District Ghazipur. The respondent No. 3 had advertised the post of EDBPM for village and Post

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Office Bhuwarpur, Saidpur, District Ghazipur in the first week of June 2000. On 31.08.2000, the applicant received a letter by which his name was invited for the aforesaid post, in which he was directed to submit a letter within one month. The applicant, after completing all formalities, had submitted application in the office of respondent No. 4. It is submitted that in pursuance to advertisement, only two candidates applied for the aforesaid post; one was applicant and another was respondent No. 5. As there was delay in declaring the result, the applicant moved a representation before the respondents and when there was no response, he filed an O.A. No. 949 of 2001 before this Tribunal with the prayer to direct the respondents to declare the result. Vide Order dated 09.08.2001, the respondents were directed to decide the pending representation of applicant dated 09.04.2001. It has been alleged by the applicant that on 29.08.2001, the respondent No. 3 assured him that he will be provided job but was not given any appointment. It is also submitted by the applicant that his representation was not decided by the respondents but was informed by the Head Post Office, Ghazipur that vide order dated 07/13-02-2002 the appointment of respondent No. 5 had been cancelled and inquiry .. being initiated against him. However, despite inquiry against the respondent No. 5, he has been allowed to work. The respondents vide order dated 17.08.2005 rejected the representation of the applicant stating that since he had secured lower percentage of marks than respondent No. 5 in the High School examination, his case could not be considered.

3. The main grounds raised by the applicant against the appointment of respondent No. 5 are that the respondent No. 5 is not the resident of village against which the post of E.D.B.P.M. was notified and he is the resident of a village which is located 18 kms away from the concerned village and that the respondent No. 5 is the son-in-law of

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Superintendent, Post Offices, Varanasi namely Meva Lal, which is indicative of bias in his favour.

4. On notice, the respondents have filed the Counter Affidavit denying the allegations taken by the applicant in his O.A. They have submitted that in response to the advertisement, two applications were received for the post of E.D.B.P.M. within the time limit, one is of applicant and another is of Shri Ram Shabad Ram. The respondents further submitted that as per the Rules and instructions, at least three applications were required for finalizing the aforesaid appointment. Accordingly, the District Employment Officer, Ghazipur was again requested to sponsor the names of three to five candidates. Thereafter, seven applications were received directly. Five names were sponsored by the Employment Exchange in which aforesaid two candidates who had applied directly were included. After consideration of all the applications, respondent No. 5 was found most suitable. As such, he was provisionally appointed on the said post vide order dated 01.02.2000. With regard to appointment of respondent No. 5, the respondents have also annexed the comparative chart. The respondents have also alleged that they have not received any representation, filed by the applicant. However, by the impugned order the applicant was informed regarding the reasons for rejection of his application. The respondents submitted that the impugned order is just and proper and the O.A. lacks merit.

5. The applicant filed the Rejoinder Affidavit, and in reply the respondents filed Supplementary Counter-Reply, Supplementary Counter Affidavit and Counter Affidavit. No Counter Affidavit has been filed by the Respondent No. 5 despite service of notice.

6. The action of the respondents in appointing the respondent No. 5 has been assailed by the applicant mainly on the ground that the

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respondent No. 5 is not the resident of the village for which post of EDBPM was advertised and he is the resident of village Daulatpur which is 18 kms away from the concerned village. Counsel for the applicant submitted that this action of the respondents is against the recruitment rules which stipulate residence in the village where the Post Office is located as an essential requirement (Annexure-1 [Para-C]). He also made a submission that it is a case of favoritism. The appointment of respondent No. 5 has been influenced by the fact that the father-in-law of respondent No. 5 is the Superintendent of Post Offices, Varanasi. In reply to this allegation of the applicant, the respondents have not made any comments. Regarding the fact of the respondent No. 5 of being not permanent resident of that village, they have not admitted the averments of the applicant in this regard but having not furnished any reason for such denial.

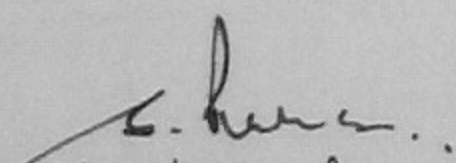
7. Heard the rival submissions of learned Counsel for the parties and perused the pleadings.

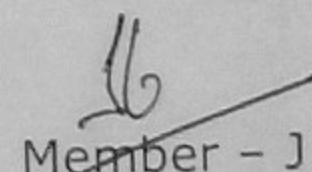
8. It is seen from the order disposing of the representation of applicant that the case of respondent No. 5 has been considered solely on the ground that he had secured higher percentage of marks in High School examination than the applicant. They have not mentioned the fulfillment of requirements with regard to other sets of criteria laid down in Section IV of Service Rules which relate to the method of recruitment of E.D.B.P.M. A glance of the comparative statement of the qualification of the candidates, who had applied for the post, which is appended as annexure CA-1 shows that the respondent No. 5 is a resident of Daulatpur and not of Bhunwarpur though in the comparative statement his address has been mentioned as Village Daulatpur falling within the Post Office Bhunwarpur. However, it emerges from the pleadings made in the O.A. that the Daulatpur is 18 kms away from Bhunwarpur and

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comes under the Daulatpur Post Office-a fact which has not been denied by the respondents who have chosen to remain ambivalent on the matter. In the above circumstances, it is plain that the respondent No. 5 did not meet the important criterion of having a residence in the concerned village. This is an important criterion as it facilitates attendance in the Post Office as required from time to time. Non-fulfillment of this requirement makes him non-eligible for the job. In the case of *Smt. Kiran Singh Vs. Union of India & Others*, the Hon'ble Apex Court had gone into an identical matter and had set aside the appointment of an E.D.B.P.M. on the ground that the selection was made solely on the basis of the marks secured in High School examination and losing sight of other eligibility conditions contained in the Service Rules and circulars governing the selection of candidate to the post in question. It is evident that in the present case, the respondents while disposing of the representation of applicant for given preference for appointment to respondent No. 5 solely relied on the consideration that he had secured higher percentage of marks than the applicant in the High School Examination. This action on their part is clearly erroneous and against the rules. It is, therefore, liable to be set aside.

9. In view of the above discussions, the O.A. is allowed. The impugned order as well as the appointment order of respondent No. 5 is quashed. The respondents are directed to re-look in the matter afresh in the light of the provisions of the relevant sections of the Service Rules applicable in this regard. No order as to costs.


Member - A


Member - J

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