

RESERVED
CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: This the 24/8/5 day of May 2011

Original Application No. 235 of 2007

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Adil Faridi, S/o Sri Jaimul Abdin, R/o Allahabad and Post – Audhah
(Tilhapur) District Kaushimbi.

.... Applicant

By Adv: Sri A. Tripathi

V E R S U S

1. Union of India through its Secretary, Department of Post, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Senior Superintendent of Post Offices, Allahabad Division, Allahabad.
3. Ajay Singh, S/o Sri Parshu Ram Singh, R/o Village – Faridpur, Audhan Ka Mazra, Audhan, District Kaushambi.

.... Respondents

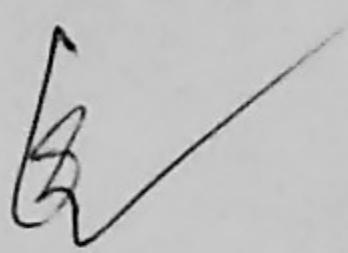
By Adv: Sri R.C. Shukla

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Member (J)

The written arguments submitted by Shri R.C. Shukla, the Addl. Standing Counsel gives succinctly the entire facts of the case and we zealously borrow the same. The facts as contained therein are as under:-

"2. *That the post of Gramin Dak Sevak Branch Post Master Audhan (Tilhapur), Kaushambi fell vacant due to retirement of Shri Zainul Abain, GDS BPM, Audhan under account jurisdiction of Tilhapur Sub Office Kaushambi. The vacancy was notified vide advertisement dated 14.10.1999 fixing last date 12.11.1999. The aforesaid post was general category. In response to advertisement, seven applications were received out of seven applications, two candidates who secured highest marks in High School examination namely S/Shri Ajai Singh 72% and Adil Faridi (applicant) 67% were found eligible for consideration and their particulars were got verified. During the verification Shri Ajai Singh could not provide accommodation in Village Audhan for keeping the Post Office and Shri Adil Faridi who fulfilled all the conditions was appointed as GDC BPM, Audhan vide order dated 07.04.2001. Aggrieved by the same Sri Ajai Singh filed an Original Application No. 50 of 2002 before the Hon'ble Tribunal.*



3. *That in the aforesaid original application the Hon'ble Tribunal passed an order dated 19.1.2005 with the observation that "the appointment made in respect of 4th respondent is set aside and the respondents are directed to give the offer of appointment to the applicant subject to condition that he would provide suitable accommodation and place for running the Post Office within a reasonable period failing which it should be open to the competent authority to give the offer of appointment to the next candidate in order of merit. This exercise shall be completed within a period of 04 weeks from the receipt of copy of the order.*

4. *That in compliance of the order dated 18.1.2005, the applicant, the applicant was ordered to be relieved from the post of GDS BPM, Audhan vide letter dated 20.12.2005 and offer of appointment was given to Shri Ajai Singh vide order dated 20.12.2005 with a condition to provide suitable accommodation in the Village Audhan, where the Post Office is located.*

5. *That in the meantime the respondent No. 3 filed a Contempt Application No. 43/2005 in Original Application No. 50/02 (Ajai Singh Vs. R.S. Jaiswal, Senior Superintendent of Post Offices, Allahabad). Since the respondent No. 3 failed to provide the accommodation in Village Audhan where Post Office is located, as such the offer of appointment dated 20.12.2005 was cancelled vide order dated 20.04.2006. Accordingly the said contempt case was dismissed by this Hon'ble Tribunal on 20.11.2006 on the ground of compliance made. But the respondent No. 3 has now filed another original application No. 91 of 2007 relating to appointment on the said post. It is further submitted that the justification of both GDS Post of Audhan Branch Office was reviewed in the light of Directorate letter No. 17-115/2001 dated 21.10.2002 and letter No. 40-45/2003 dated 17.02.2004 and it was found that the Income of the said Branch Post Office arrived as Rs. 448.40 Paisa, whereas the cost of Rs. 6174.00, percentage of income to cost is 7.26%. In this situation the department is not in position to make appointment on the vacant post of GDS BPM Audhan Branch Office, but to manage the work of the post of combining the duty of the post with existing GDS in the office as per Postal Directorate letter dated 21.02.2002 referred to above. Accordingly the existing GDS of the said Post Office Shri Ram Sunder GDS DA/MC has been directed to perform the duty of the vacant post in addition to his own vide order dated 29.12.2007."*

2. The above are the admitted facts. Thus, while no claim subsists in respect of respondent No. 3, who could not, though the meritorious in academic qualifications, arrange for accommodation as per the directive of the Tribunal, the question herein is about the vested rights if any, of the applicant. As per the direction of this Tribunal in the earlier OA No. 50 of 2002, the offer must go to the applicant herein, once the applicant therein failed to procure accommodation in the village Audhan. The non appointment of the applicant is the cause of action in this O.A.

[Handwritten signature/initials over the last sentence]

3. The justification given by the official respondents is that the post office is not cost effective, the ratio of income to cost being 7.26% and the work of the post office is being carried out by combining the duty with certain other post office, for which provision exists.

4. The question then, is whether the respondents could be compelled to appoint the applicant.

5. The Postal Department has, with a view to ensuring cost effectiveness and at the same time rendering postal services to the villages, decided to combine certain posts so that the multi handed post office could function as a single-handed post office. This is a policy decision. In their letter dated 21-10-2002, the respondents have inter alia stated, "*Even in long term arrangements, the combination of duties as in (a) above will be resorted to; substitutes will be allowed only if work load of the BO as well as its financial position justifies such engagement or filling of the post on regular basis.*" Compelling the respondents to continue to have the second post and have it filled up through regular appointment would amount only to compelling it to create a post.

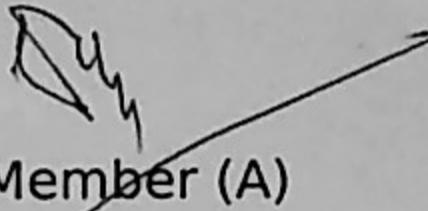
6. The law is settled in this regard. The Apex Court has held in the case of *Commr., Corpn. of Madras v. Madras Corpn. Teachers' Mandram*, (1997) 1 SCC 253, as hereunder:

It is a well-settled legal position that it is the legal or executive policy of the Government to create a post or to prescribe the qualifications for the post. The court or tribunal is devoid of power to give such direction.

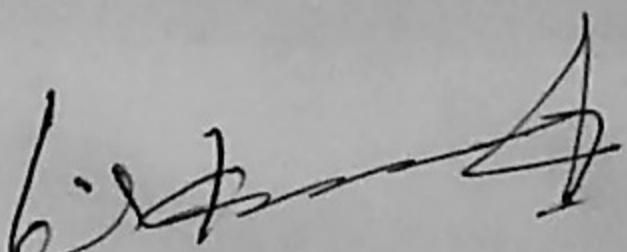
7. In view of the above, there is no scope for the tribunal to direct the respondents to appoint the applicant as EDSBPM, Audhan, as the said post office. In addition, the Constitution Bench of the Apex court in the case of Shankarsan Dash vs Union of India (1991) 3 SCC 47 has held "Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies."

8. In view of the above, the OA has to fail. Accordingly, the same is dismissed.

No cost.


Member (A)

/pc/


Member (J)