

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

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(THIS THE <sup>7<sup>th</sup></sup> ~~3<sup>rd</sup>~~ DAY OF March, 2011)

**HON'BLE DR.K.B.S. RAJAN, MEMBER (J)**  
**HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)**

**Original Application No. 686 of 2007**  
(U/S 19, Administrative Tribunal Act, 1985)

Subhash Chandra Chaudhary,  
S/o Shri Ram Narain Chaudhary,  
R/o Village – Siswa Bujurg,  
Post Office – Bhanupur Babu,  
District Basti.

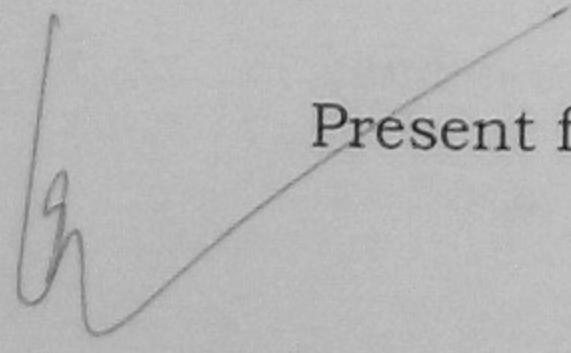
..... Applicant

***Present for Applicant: Shri P. Srivastava, Advocate***

*Vs.*

1. Union of India through the Secretary,  
Ministry of Communication,  
Dak Bhawan,  
New Delhi.
2. The Post Master General,  
Gorakhpur Division, Gorakhpur.
3. The Superintendent of Post Offices,  
Basti.
4. Sub Divisional Inspector (Post),  
Domariaganj, Sub Division,  
District Siddharth Nagar.

..... Respondents

 Present for Respondents : Shri S. Srivastava, Advocate.



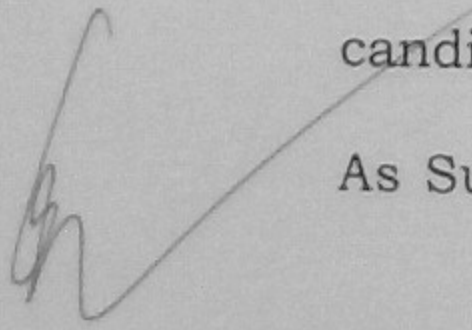
**ORDER****(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)**

Heard Mr. P. Srivastava, learned counsel for the applicant and Mr. Dharmendra Tiwari, holding brief of Mr. S. Srivastava, learned counsel for the respondents.

2. The applicant was an aspirant for the post of GDM/MC, Mailani, District Basti, which fell vacant in 2005, and to fill up which an advertisement was published on 09.2.2005. After completing the formalities, the applicant was appointed vide order of appointment dated 12.6.2006. The applicant was accordingly serving the department and vide Annexure A-I communication dated 23.5.2007, he has been asked to submit his explanation within 15 days as to why his services may not be terminated since the same was found irregular. The applicant has given his explanation vide Annexure A-4 dated 07.6.2007. He has thereafter filed this OA on 09.7.2007 challenging the impugned show cause notice.

3. When the case came for admission hearing, an interim order was passed stating, "The authority concerned who issued the notice, will not pass final orders pursuant to the notice dated 23.5.2007."

4. Respondents have contested the O.A. According to them the irregularity committed by the department was that one more candidate by name Shri Shiv Kumar had secured 360 out of 600. As Such, under the exiting rules it was only merit which counts





for selection and the applicant not being first in the merit cannot be appointed. A Misc. Application No. 1723/2007 was filed by one Sita Ram Yadav for being impleaded as one of the respondents. The same was allowed on 03.6.2008. He had already filed a counter.

5. The applicant had filed the supplementary affidavit enclosing a copy of the statement in respect of marks obtained by various aspiring candid. Rejoinder to the counter also filed by the official respondents. Shri Sita Ram Yadav was impleaded as respondent since, earlier, he filed O.A. No. 251/2005 claiming that he should be given preference for the appointment as GDS/MD, as he was working as a substitute some time.

6. The OA was dismissed and when the applicant took up the matter before High Court, the Hon'ble High Court has passed the following order:-


*"In case any appointment has been made in pursuance of the impugned notification/advertisement dated 09.2.2005 (Annexure A-1 to the writ petition), the contesting respondents shall first ensure compliance of filling of the post in order of preference contemplated in the relevant Government Order, copy of which has been filed, particularly, para 18 of the relevant order contained in Annexure 7 to the petition, as well as the scheme providing induction of substitute against absentees placed in priority at serial No. 5 and placed above outsiders in the manner priority (As mentioned in para 5 of the writ petition and particularly, page 26 of the writ paper book). In case no suitable candidate as substitution is found fit,*



*no appointment shall be made in pursuance of impugned notification."*

7. The Writ Petition was subsequently dismissed in default and on a restoration application filed by the said Sita Ram Yadav, by order dated 08.12.2006, the Writ Petition was restored. In his counter the impleaded respondent contended that in view of the interim order dated 02.5.2005, the applicant cannot be permitted to continue on the post of GDS/MS, Malani, District Basti as on 12.03.2008. When the impleaded respondents filed the counter the Writ Petition was pending. When the case is listed for hearing on various dates, there has been no appearance on behalf of the private respondent.

8. Counsel for the applicant submitted that the impugned order vide Annexure A-I is so vague and ambiguous that it is highly impossible for the applicant to give his explanation. Further, he has submitted that in so far as the higher marks holder is concerned, there is a specific mention in the statement that he was not residing in the place where the post office was situated. Again, in the statement vide Annexure to the supplementary as well as Annexure 5 submitted by the respondents, it has been clearly indicated that the applicant belongs to OBC and on the basis of High School marks he is the most suitable person. Further, he has submitted that on the basis of the valid appointment order the applicant has been appointed as early in 2005 and he still continues uninterruptedly, though, from July 2007 his continuation in the office is under the stay order.





9. Counsel for the respondents submitted that it was on account of the fact for one more individual got higher marks that the applicant's appointment was considered as irregular.
10. There is no representation on behalf of the private respondent.
11. In view of the fact there has been an order from the Hon'ble High Court vide order dated 02.5.2005 the same has to be kept in mind while passing the order in this case.
12. According to the said order of the Hon'ble High Court, the High court has clearly stated that the filling up of the post shall be in order of preference contemplated in the relevant Government Order particularly Para 18 of the relevant order contained in Annexure 7 to the Petition as well as the scheme providing induction of substitute against "absentees" placed in priority at serial No. 5 and placed above outsiders in the matter of priority. In case no suitable candidate as substitute is found fit, no appointment shall be made in pursuance of the impugned notification.
13. The relevant priority prescribed by the department of Post in which substitutes have been indicated as priority No. 5 is contained in Department of Post letter dated 17.5.1989, and the same reads as under :-

1. *Part-time and Full-time Casual Labourers. - It is hereby clarified that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSDs/MMS under different designations (Mazdoor,---*



labourer, contingent paid staff, daily wager, daily rated mazdoor, out sider) are to be treated as casual labourers. Those casual labourers who are engaged for a period of not less than 8 hours a day should be described as full time casual labourers. Those casual labourers who are engaged for a period of less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued.

Substitutes engaged against absentees should not be designated casual labourer. For purpose of recruitment to Group 'D' posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed :-

- (i) NTC Group 'D' officials.
- (ii) EDAs of the same Division.
- (iii) Casual Labourers (full time or part-time. For purpose of computation of eligible service, half of the service rendered as a part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment, to have completed one year of service as full time casual labourer).
- (iv) EDAs of other divisions in the same Region.
- (v) Substitutes (not working in Metropolitan cities).
- (vi) Direct recruits through Employment Exchanges.

NOTE - Substitutes working in Metropolitan Cities will, however, rank above No. (iv) in the list.



14. The above order of the department of Post applies to regular Group 'D' in respect of the Department of Post and not to GDS category which is governed by a different set of rules/regulations. Preferential categories for GDS are contained in order dated 30<sup>th</sup> January 1981 as amended by Corrigenda dated 29<sup>th</sup> March, 1981, 6<sup>th</sup> June 1988 and 12.3.1993 and the same is as under :-

6. **Preferential Categories :**

*With reference to the last orders issued under Letter No. 43-191/790 Pen., dated 22.6.1979, fixing the four preferential categories according to the earlier orders issued vide D.G., P. & T., Letter No. 43-14/72-Pen., dated 2.3.1972, No. 43-246/77-Pen., dated 8-3-1978, to Scheduled Castes and Scheduled Tribes candidates, and No. 43-231/78, to Scheduled Castes and Scheduled Tribes candidates; and No.43-231/78-Pen., dated 17.2.1979 (regarding Ex-Army Postal Service Personnel); No.43-312/78-Pen., dated 20.1.1979 (regarding Backward Classes and weaker sections of Society) and to the educated unemployed persons, it is clarified that the above preference should be subject to first and foremost condition that the above preference should be subject to first and foremost condition that the candidate selected prescribed, seems to have been ignored for some time past especially in view of these preferential categories being introduced in the above orders.*

*The criterion to judge "adequate means of livelihood" should be that, in case he loses his main source of income, he should be adjudged as incurring a disqualification to continue as EDSPM/EDBPM. In other words, there must be absolute insistence on the adequate source of income of EDSPM/BPM and the allowances for his work as EDSPM/BPM must be just*



*supplementary to his income. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such, business premises such as shops, etc., must be preferred regardless of the various categories of preference mentioned above.*

15. The private respondent does not come within the preferential categories of GDS though his submission before the Hon'ble High Court might have been that he should be treated as belonging to preferential category even for GDS.

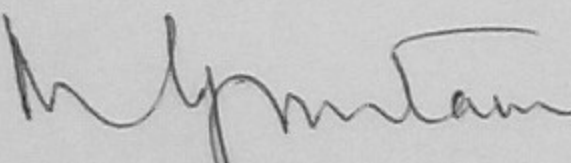
16. In their appointment to the post of GDS in question, non inclusion of the impleading respondent cannot be said to be violative of the prescribed procedure. To that extent, the respondents have certainly carried out the direction of the Hon'ble High Court. What is to be seen now is, whether, in making the appointment there has been any irregularity as the respondents claimed inasmuch as an individual who had secured higher position in matriculation examination has been omitted and the applicant selected. As per the chart produced by the parties, the respondents have indicated that the highest markholder (461/600) has been disqualified due to "अन्य पिछड़े वर्ग के लिए आरक्षित के कारण अनुपयुक्त" the next in the rank (Shri Shiv Kumar 360/600) was held disqualified as he was not resident of the place where the post office is situated. In addition, his disqualification has been due to "जू0हा0स्कूल भानपुर रानी सिद्धार्थनगर में अध्यापक के रूप में कार्यरत होने कारण अनुपयुक्त". The applicant happens to be next in the merit (353/600) incidentally the private respondent secured only 331 out of 600.

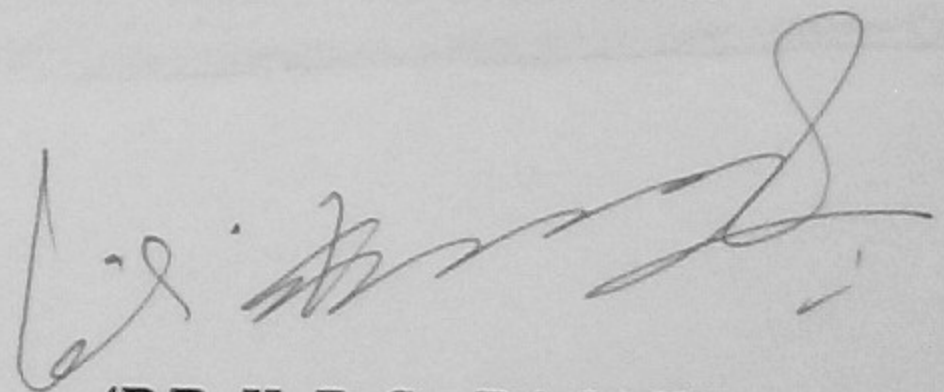


17. In view of the above, it is very clear that the selection procedure adopted by the respondent has been found to be strictly in accordance to the procedure and the more meritorious candidate were to be disqualified for one or another valid reason. The non selection of the private respondent is also not violative of any of the provisions though he had contended before the High Court, as if certain provisions relating to priority for those appointed as substitute are applicable to him, whereas such provisions do not apply for GDS Category which is governed by a different set of rules as indicated above.

18. The OA therefore, fully succeeds. Respondents are directed not to disturb the applicant from the existing place of posting. It is however, open to them to consider the case of private respondent in accordance with law. In any event they shall abide by the decision of the High Court as and when judgment is passed by the Hon'ble High Court in that case.

Under the above circumstances, there shall be no order as to costs.

  
(MRS. MANJULIKA GAUTAM)  
Member (A)

  
(DR. K.B.S. RAJAN)  
Member (J)

Shashi