

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

29/03/1988

Heard learned advocates Mr. K.K. Shah and Mr. J.D. Ajmera, for the applicant and respondents respectively. The petitioner ~~who~~ has been appointed in terms until orders of appointment are passed, on a purely temporary and ad hoc basis and has applied for regular appointment and has not been selected and another person who according to the petitioner belongs to general community has been appointed. The petitioner states that he has performed his duties satisfactorily and there is evidence ~~in his~~ ^{of the another person} favour although ^{the} other person has been selected whose application being incomplete and was not qualified to be considered. Under the orders, the petitioner ^{is} to hand over the charge on 2nd April, 1988. The respondent states that the appointment order of respondent No. 4 has been passed on 18th March, 1988 but the petitioner has been informed about the termination of his service only on 26th March, 1988. Mr. Ajmera states that on merit, as well as on interim relief he will file reply on 5th April, 1988.

In the circumstances of this case, it is ordered that the respondents to reply on interim relief and on merit on or before 5th April, 1988 when the case be posted for hearing on interim relief. In the meantime, the following direction will comply with.

Status quo be maintained. Direct service for respondents No. 2, 3 and 4 be permitted to the petitioner.

P. H. Trivedi

(P H Trivedi)
Vice Chairman

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CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
 Hon'ble Mr. P.M. Joshi .. Judicial Member

21/04/1988

Heard learned advocates Mr. K.K. Shah and Mr. J.D. Ajmera for the applicant and respondents respectively. On considering the reply, it is found that the respondents have gone through due process of selection. The petitioner's case ~~is~~ that the post was kept reserved for Schedule Cast and Schedule Tribe has been countered by the respondent that this reservation according to the policy circular relied upon by the petitioner does not apply to the Extra Departmental Post Master, The ^{Branch} petitioner reiterated that there is no difference between Extra Departmental Branch Post Master and Extra Departmental Agent, ^{because} they are part time and the petitioner, being fully qualified, ~~is~~ is entitled to the selection. Further the petitioner urged bias in favour of the person selected as shown by an opportunity given to the person selected to correct ~~his~~ application. In this circumstances, it is considered that while there is some case for admitting the petition and disposing the same after hearing the parties, ~~there~~ is no case for continuing interim relief in the light of the contention advanced. Interim relief therefore be discontinued and the case be admitted and be posted for final hearing on 2nd May, 1988.


 (P H Trivedi)
 Vice Chairman


 (P M Joshi)
 Judicial Member

Shri Kantilal Devsibhai Parmar,
AT. PO. Koliwada,
TA. Santalpur,
Dist. Banaskantha,
Pin : 385 340.

Versus

1. Director General,
Department of Posts,
Dak Tar Bhavan,
New Delhi.
2. Superintendent of post Offices,
Banaskantha Division,
Palanpur 385 002.
3. Sub-Divisional Inspector of Posts Offices,
Radhanpur Sub-Division,
Radhanpur,
Dist. Banaskantha.
4. Shri Kumbhar Ramchandra Kanjibhai
P.O. Koliwada,
TA. Santalpur,
Dt. Banaskantha.

Date : 2-5-1988.

O R A L O R D E R

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman.

Heard learned advocates Mr. K.K. Shah and Mr. J.D. Ajmera for the applicant and respondents respectively. The petitioner has relied upon the following pleas for supporting his contention that the impugned order appointing Mr. Ramchandra Kanjibhai Kumbhar - respondent No. 4 in preference to him is bad. (1) The petitioner is a matriculate and the educational qualification requires for the post of Branch Post Master is class VIII standard, thus in terms of educational qualification the requirement he is having more than minimum qualification, (2) the petitioner was appointed temporarily as Branch Post Master (3) the petitioner belongs to the local area and (4) the petitioner has cited rule 2(B) of Service Rules for Post and Telegraphs Extra-Departmental Staff in which the definition is that the Extra Departmental Agent includes the Extra Departmental Branch Post Master. The substance of the petitioner's submissions is that as he has gained experience by virtue of the temporary appointment for a period of 5½ months and as he belongs to Schedule Caste and minimum eligibility is satisfied

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preference should be given to him for appointment and that he has superior claim for such appointment.

2. Learned advocate for the respondent has resisted these pleas on the ground that the mere fact that petitioner was appointed on purely temporary basis and has worked as Extra Departmental Branch Post Master has not confirmed on him any advantage or claim regarding regular appointment. The regular appointment has been made after proper selection by the authority competent to do so. So far as the ~~xi~~ inclusion of Extra Departmental Branch Post Master in the terms Extra Departmental Agent ~~is concerned~~, the learned advocate for the respondent states that "unless the context otherwise require" Branch Post Master are included as Extra Departmental Agent.
3. The rival contentions of the petitioner and the petitioner and respondents are derived from the various circulars of the respondent authorities; in particular, the following extract of the circular have been relied upon.

" (3) Giving preference to S.C. and S.T. in appointments :-

According to para 5 this office letter No:43-14/72-Pen, dated the 2nd March, 1972, wherever possible first preference should be given to Schedule Cast, Schedule Tribe candidates, apart from P & T and other Government Pensioners, for appointment as ET Agents. It is also prescribed in para 3 of this office letter No: 5-9/82-E.D. Cell dated the 18th August, 1973 that matriculates should be given preference over those who have passed VIII standard for appointment as ED BPM, and those who have passed VIII standard should be given preference over those who have passed VI standard for ED DAs, etc.

3. It is hereby clarified that candidates belonging to the Schedule Castes/Scheduled Tribes with the minimum educational qualifications prescribed in this office letter No:5-9/72-E.D. cell dated 18th August, 1973 viz., VIII standard for ED BPMs, VI standard for ED DAs and ED SVs and working knowledge of the regional language and simple Arithmetic for other EDAs (and working knowledge of English for ED Messengers) should be given preference over the candidates belonging to other communities, even if the latter are educationally better qualified, provided that the candidates belonging to Scheduled Castes/ Schedule Tribes are otherwise eligible for the post."

4. Learned advocate for the petitioner states that there is a clear direction to give preference to Scheduled Caste/Scheduled Tribes candidate provided minimum eligibility conditions all satisfied, as has been in **his case**. Learned advocate for the respondents states that in the meantime, in the compilation in an extract from the circular dated the October, 1980 sub para 4 at Annexure- A-7 a clarification has been issued that this preference is subject to the ~~quota~~ reserved for Scheduled castes and Scheduled Tribes candidates and if the ~~quota~~ is exceeded the preference has not to be shown for Schedule Caste/Schedule Tribes candidates. Learned advocate for the respondents states that it is for the petitioner to plead that **his case** can be supported in terms of the quota prescribed and to show that the quota has not been filled up and therefore preference can be claimed. The petitioner has also relied upon the circular dated 13th March, 1984 in which it is stated that " while making selection to the post of BPM in divisions where SC/ST representation in ED appointment in general is inadequate, SC/ST may be given preference. This is, however, subject to the condition that they fully satisfy all criteria for such appointment;"

5. The petitioner has relied upon **his case** having the **identical** merits as those of the person selected and also on the plea regarding **his** SC/ST status for claiming preference for appointment, although admittedly he has not taken the plea regarding his claim being covered by the quota for SC/ST candidates not having been filled up.

6. We do not find any merit in the respondent resisting the application of the general policy of preference SC/ST candidate for the appointment of

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ED BPM. The respondent could have shown whether the quota if any has been prescribed for SC/ST candidates in the category of ED BPM and, if so, whether that quota has been filled up and whether the appointment of the petitioner will cause an excess over that quota. We do not accept the plea that having pleaded that he is Scheduled Caste candidate and entitled to preference in appointment on that ground, the burden of establishing the extence of the quota or the fact of its not having been filled rests at or passes to the petitioner.

7. In the facts and circumstances of the case, therefore, we are persuaded that the petitioner has a claim to be appointed as Extra Departmental Branch Post Master and would direct as follows :

The respondent authorities are directed to continue the petitioner in the appointment of Extra Departmental Branch Post Master unless the respondent satisfies himself of the quota if any for SC/ST candidate having been exhausted and in that eventually to consider a fresh the claims of the petitioner and pass fresh orders. We further quash and set aside the appointment of Mr. Ramchandra Kanjibhai Kumbhar-respondent No. 4 by the impugned order.

8. With the above direction, the case is disposed of. There shall be no order as to costs.

(P H TRIVEDI)
VICE CHAIRMAN

(P M JOSHI)
JUDICIAL MEMBER