

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD**

O.A.No. 662/1993

Ahmedabad this the 17<sup>th</sup> day of August, 1999.

**Hon'ble Mr. V. Ramakrishnan, Vice Chairman**  
**Hon'ble Mr. A.S. Sanghavi, Judicial Member**

Kantilal Dayabhai Aghara  
Aged about 28 years  
Occu: Unemployed  
Add: Village: Bagathala,  
Ta: Morbi  
Distt. Rajkot.

Applicant.

By Advocate: Mr. B.B. Gogia.

VERSUS

1. Union of India,  
Through: Secretary,  
Postal Department  
Government of India  
New Delhi.
2. Senior Superintendent of Post Offices,  
Rajkot District,  
Postal Department  
Rajkot.
3. Shri A.J. Chavada  
Adult, occu: Service  
Working as EDBPM  
At Bagathala,  
Taluka: Morbi  
Distt: Rajkot.

Respondents.

By Advocate: Mr.B.N. Doctor.

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**ORDER (Oral)**

**Hon'ble Mr. V. Ramakrishnan, Vice Chairman.**

We have heard Mr. Gogia for the applicant and Mr. Doctor for the respondents. We have also gone through the files and the relevant portions have been shown to Mr. Gogia.

2. The applicant, who had applied for the post of EDBPM Bagathala, is aggrieved by the action of the respondents in not appointing him to the post and instead preferring respondent No.3 Mr. Chavada. The applicant had earlier worked on a provisional basis when disciplinary proceedings were initiated against the regular incumbent. It was made clear that he would continue in the post till the regular incumbent is reinstated or till regular appointment is made. The disciplinary proceedings against the regular incumbent resulted in his removal from service and the Department proceeded to take action to fill up the post on regular basis. They had sought for nominations from the Employment Exchange. The employment exchange sponsored 20 nominations by their letter dated 4.8.93 in which the name of the applicant was not included. The department took the view that as the applicant's name was not sponsored by the employment exchange he was not considered for the post of EDBPM and appointed respondent No.3 with effect from 1.11.93 as EDBPM. A formal order of appointment however was issued on 23.11.93 which states that Mr. Chavada was appointed from 1.11.93. Mr. Doctor says that the respondent No.3 in fact took over charge as EDBPM from November 1993.

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3. Mr. Gogia says that the only reason for which the applicant was not considered for the post of EDBPM was that his name was not sponsored by the Employment Exchange. The applicant's name was in fact registered by the employment exchange but it is not clear as to why the name was not sponsored. The learned counsel also contends that restricting the field of choice only to candidates sponsored by the employment exchange is not regular and is against the law laid down by the Hon'ble Supreme Court in the case of *The Excise Superintendent Malkapatanam, vs. K.B.N. Visweshwara Rao & Ors.* 1997(1) SC SLJ 3. He states that the applicant had worked for some time earlier on a provisional basis and had also acquired higher marks in the SSC and as such, he should stand on a better footing than respondent No.3 for appointment.

4. Mr. Doctor for the official respondents brings out that as per the relevant instructions of the Department, the respondents had restricted the selection only to those who were sponsored by the employment exchange. It is also seen from Annexure A-9 that the Employment Exchange had taken the line that as the applicant's name had been sponsored on the earlier occasion, they did not forward it this time. Mr. Doctor also refers to the requisition to the employment exchange as at Annexure R-4 where a specific mention was made that for the post of EDBPM preference is to be given to SC/ST candidates. He contends that as the respondent No.3 belongs to the SC, he was rightly preferred over the applicant whose name in any case was not sponsored by the employment exchange. He is however not able to indicate whether assessment was made in respect of short fall of SC for this category of EDBPM and on that basis a decision taken to give preference to the SC.

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5. The respondent No.3 has been duly served. He has sent a communication bringing out that in response to the application he has been selected by the Department.

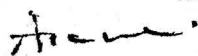
6. We find from the foregoing discussion that the stand of the official respondents seems to have been based primarily on the fact that the applicant's name was not sponsored by the employment exchange. As has been brought out by Mr. Gogia, the Hon'ble Supreme Court in the case of The Excise Superintendent's case, referred to supra, noted its earlier decision in the case of Union of India & Ors. V. N. Hargopal & Ors., 1987(3) SCC 308 which upheld the restriction imposed to consider the case of candidate to the employment exchange only. The Supreme Court, however, in Excise Superintendent's case, took the view that in the interest of principles of fair play, justice and equal opportunity apart from the candidates sponsored by the employment exchange the Government Department should also call for names by other means such as publication in the news papers etc. In the light of the law laid down by the Supreme Court, the Department cannot restrict its choice only to candidates sponsored by the employment exchange and should have considered the candidates who applied through other wings also. So far as the present applicant is concerned, he was actually serving on provisional basis in the post of EDBPM and had also applied when the regular selection for the post was taken up by the Department. The failure to consider his case only because his name was not sponsored by the employment exchange cannot be sustained.


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7. As regards the contention that preference was to be given to the SC as stated in the requisition to the employment exchange, Mr. Doctor is not able to throw light as to whether the assessment was made regarding the number of SC candidates in position and if it was found that there was a short fall of SC in the division which is to be made up. However, he submits that in view of the clear statement in the respondents reply <sup>about</sup> ~~above~~ preference for SC candidates, there would have been a short fall. M

8. In the light of the foregoing discussion, we hold that the action of the respondents to omit <sup>to consider</sup> the case of the applicant only on the ground that his name was not sponsored by the employment exchange and the appointment of Respondent No.3 on that basis cannot be sustained. We accordingly quash and set aside the order of the Department dated January 1996 issued by the Respondent No. 1 with effect from 1.11.93 and direct the Department to redo the selection taking into account all the applicants including those who have been sponsored by the employment exchange and those who had applied from other sources and select the best candidate as per the relevant rules and instructions. While doing so they shall also make an assessment as to whether there was a shortfall of SC in the division for the relevant category which was required to be made up and if there is such a short fall, they shall appoint the best available SC candidate in accordance with the relevant rules and instructions. Till they <sup>redo the selection</sup> ~~could be selected~~, the respondent No.3 shall continue in the present post. The entire exercise should be completed within three months from the date of receipt of a copy of this order. M

9. With the above direction/observation, the OA is finally disposed of.  
No order as to costs.

  
(A.S. Sanghavi)  
Member (J)

  
(V. Ramakrishnan)  
Vice Chairman

Vtc.