

18

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.116 OF 2000
Cuttack this the 18th day of October/2001

Amapurna Behera

...

Applicant(s)

- VERSUS -

Union of India & Others ...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? **Yes**.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? **NO**.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18-10-2001

18.10.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.116 OF 2000
Cuttack this the 18th day of October/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Annapurna Behera, aged about 22 years,
D/o. Biswanath Behera, At/PO-Pailo,
PS-Patkura, Dist-Kendrapara

...

By the Advocates

Applicant

M/s.Ashok Mohanty
T.Rath,
J.Sahu
J.Samantsinghar

-VERSUS-

1. Union of India represented through its Secretary,
Department of Posts, Dak Bhawan, New Delhi
2. Director General of Posts, Dak Bhawan, New Delhi
3. Chief Post Master General, Orissa Circle, Orissa,
Bhubaneswar, Dist-Khurda
4. Superintendent of Post Offices, South Division,
Cuttack-1
5. Shri Kailash Ch.Behera, At/PO-Pailo B.O.,
P.S. Patkura, Via-Kolar, Dist-Kendrapara

...

Respondents

By the Advocates

Mr.S.Behera, A.S.C.
(Res. 1 to 4)

M/s.S.K.Mohanty
S.P.Mohanty
P.K.Lenka
S.K.Das
M.K.Das

(Intervenor - Res.5)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): The post of Extra
Departmental Branch Post Master (in short E.D.B.P.M.),
Pailo Branch Office in account with Kolar Sub Office
fell vacant on 3.7.1999 on account of retirement of the

regular incumbent. Pursuant to the advertisement inviting applications for filling up of the said post of E.D.B.P.M., 17 candidates including the applicant and Respondent No.5 applied for the post. This post was advertised for reserved communities in a descending order, i.e., S.T./S.C./O.B.C. No S.T. candidate having applied for the said post, the candidatures of S.C. candidates were taken into consideration. The applicant as well as Respondent No.5, viz., Kailash Chandra Behera are candidates belonging to Scheduled Caste.

2. There is no dispute that the applicant Kumari Annapurna Behera had secured higher percentage of marks in the H.S.C. than the selected candidate Kailash Chandra Behera (Respondent No.5). Annexure-R/1, the check-sheet reveals that while the selected candidate Kailash Chandra Behera had secured 52.85% of marks, applicant Annapurna Behera secured 66.93%. Yet the applicant was not selected because she had not filed income certificate in her name but filed income certificate in the name of her father.

3. In this Original Application filed on 18.2.2000, applicant's case is that inadvertantly she sent the income certificate standing in the name of her father along with her application. Subsequently ^{being} ~~becoming~~ aware of this, she sent the income certificate issued in her name by the Tahasildar, Marsaghai, but it was received after the last date of receipt of applications. Apprehending that the income certificate in her name could not be taken into consideration, she had filed this application even challenging the constitutional validity the criterion that a candidate to be eligible to become E.D.B.P.M. must have "adequate means

of livelihood". The relief sought is as follows.

"...to admit this application and to issue notices to the Respondents and after hearing the respondent to declare the rules prescribing that the person who takes over the agency must be one who has adequate means of livelihood as ultra vires to the Constitution of India and therefore, quashing the same and directing to treat the application made by the applicant as valid and consider her case for appointment to the post of E.D. SPM/BPM, Pailo Post Office along with other candidates on merit".

4. On 18.3.2000, when the application was listed for the first time and when notices were ordered to be issued to the respondents requiring them to file counter, Shri Ashok Mohanty, the learned counsel for the applicant pressed for interim relief. After hearing Shri Mohanty as well as Shri S.Behera, the learned Addl.Standing Counsel, the following order was issued.

" If any selection is made in pursuance to the advertisement, the selected candidate should be specifically informed that his/her appointment shall be subject to the result of this application and this condition should be specifically mentioned in the order of appointment".

5. The selected candidate Kailash Chandra Behera having intervened has been added as Respondent No.5 by order dated 12.5.2000. Annexure-A of his counter reveals that he was intimated about the selection in letter dated 21.2.2000. Annexure-C, the order of appointment dated 19.4.2000 reveals that he has been appointed with effect from 29.3.2000 and in this appointment order it has been clearly mentioned that this appointment is subject to the outcome of the present Original Application, as ordered by this Bench. Annexure-B discloses that he had taken the charge as E.D.B.P.M. on 29.3.2000. At this stage we may take note that it is not the

case of the applicant that Respondent No.5 has no adequate means of livelihood.

6. While opposing the prayer of the applicant, the Department as well as Respondent No.5 through separate counter, question the genuineness of Annexure-5 to the application, i.e., Income Certificate, purported to have been issued by the Addl.Tahasildar, Marsaghai on 3.12.1999 in the name of the applicant.

7. We have heard Shri Ashok Mohanty, the learned counsel for the applicant and Shri S.Behera, the learned Additional Standing Counsel for the departmental respondents as well as Shri S.P.Mohanty, learned counsel appearing for the intervenor-Respondent No.5. Also perused the records.

8. Page 75 of Section IV of Swamy's Compilation (1999 Edn.) of Service Rules for the Postal E.D. Staff provides three essential qualifications for a candidate to be eligible to the post of E.D.B.P.M./E.D.S.P.M., which are as under:

- i) The minimum age limit for employment as E.D. Agent will be 18 years and maximum age upto which an E.D.Agent can be retained in service will be 65 years. The D.G.(P&T) may consider relaxation of this age limit in exceptional case.
- ii) Educational Qualification: Matriculation (the selection should be based on the marks secured in the Matriculation or equivalent examinations. No weightage need to be given for any qualification higher than Matriculation)
- iii) Income and Ownership of Property: The person who takes over the Agency (EDSPM/EDBPM) must be one who has adequate means of livelihood.

Thus, a candidate who is about 18 years of age and who is a Matriculate or passed equivalent examination (H.S.C.) securing higher percentage of marks among the candidates

applying for the post of EDBPM/EDSPM and has adequate means of livelihood has to be selected for the post.

9. In order to determine whether a candidate has adequate means of livelihood, filing of income certificate is insisted. The relevant instructions in D.G.(Posts) Circulars dated 18.9.1995 is - if such certificate and other documents in proof of adequate means of livelihood are received after the last date fixed for receipt of applications, the same will not be taken into account. It is the admitted case of the applicant that income certificate in her name was submitted after the last date of receipt of applications. Of course, the genuineness of this certificate has been questioned by the departmental respondents. Hence, under the prevailing law on the point even though the applicant had secured higher percentage of marks than the selected candidate (Respondent No.5) she could not have been selected for the post in question for want of materials to establish her adequate means of livelihood, before the last date of receipt of applications.

10. However, the applicant, as earlier stated, questions the Constitutional validity of this condition of "adequate means of livelihood". Shri Mohanty's contention is that this condition of requirement is hit under Articles 14 and 16 of the Constitution. According to him, this requirement of adequate means of livelihood puts an embargo on highly meritorious Matriculate or H.S.C. pass candidates in the arena of selection, because of their economic backwardness for which they may not be at fault and this is not desirable in a Welfare Country like India, where majority of people

live below the poverty line.

11. The learned counsel in this connection, besides relying on some extracts of Justice Talwar Committee's Report (Annexures-6 and 7, not disputed by the Respondents), places reliance on order dated 24.1.2001 of this Bench in Original Application No.608/99, final order dated 22.9.2000 of this Bench in Original Application No.65/98 and final order dated 21.10.1998 of Bangalore C.A.T. Bench in O.A. 38/98, as reported under Serial 223 of Swamy's News of November, 1999 (xerox copies of these three orders are on record). Constitutional validity which is an issue before us at present was not urged in those three cases. In the case before Bangalore Bench it was held that a candidate's ownership of over any property is not relevant if he is found to have some source of regular income and is otherwise available. In the two cases dealt by this Bench, we held that the property in question need not necessarily be exclusively in the name of the candidate concerned and it is enough that property documents disclose that the candidate has an identifiable share therein. Hence these decisions are not direct to the point at issue before us.

12. Then comes Talwar Committee report for consideration. On being appointed as Chairman of the One-Man Committee by the Government of India to go into the service conditions, wage structure and to examine the reasonableness of introducing a social security scheme for the E.D.Agents working in the Department of Posts, Mr.Justice Charanjit Talwar, a former Judge of Delhi High Court had assumed the charge on 10.5.1995 (vide Page 1 of Section I of Swamy's

Compilation, Supra), One of the conclusions of this Committee is that the existing condition of "adequate means of independent livelihood" is constitutionally invalid and not workable and recommended for deletion of this condition. But the Government have not accepted this recommendation, as stated in the counter, yet the counter is silent about the reason or grounds for not accepting this recommendation.

13. The aforesaid conclusion of the Committee appears to have been based on the following data, collected and mentioned in the report (Annexures-6 and 7).

- a) In the days of 'Raj' to be associated with the 'Regime' in any capacity, high or low meaning recognition and status, and therefore, was considered a privilege. At any rate, by then an E.D.Agent was man having another avocation, when
- b) During 1946, the 1st Central Pay Commission was set up, the E.D.Agents were subject to Government Conduct Rules and Postal Regulations. They were generally Men of Means and avocations of their own.
- c) E.D.B.P.Ms were being paid for their part-time work allowance which was based on point system of workload linked up with the money value of transactions done in the Post Offices.
- d) In the beginning, recruitment to the post of E.D.B.P.M. was confined mainly to the School Teachers. At the time Rajan Committee was constituted in the year 1958, the emphasis made by the Department seemed to be to employ only those who were in Government or quasi Govt. service. School Teachers constituted 34% of the B.P.Ms. Gradually employment of school teachers asBPMs decreased and now the Department give

least preference to the school teachers. The State Government have prohibited the teachers to take up employment as E.D. Agents

- e) Although recommendation of Rajan Committee that condition of BPM having another avocation be strictly ~~in force~~, was accepted by the Government, ^{and} gradually this policy has been completely diluted.
- f) Expression "adequate means of independent livelihood" having been not defined, the Appointing Authorities confined verification only to the existence of the property and its worth. Thus this condition has been diluted and it can be said that it has been given a go-bye.
- g) Though the Postal Department throughout insisted that the other sources of income should be enough for an E.D. Agent to subsist and that the wages earned by him from the Department are to be considered only as the supplemental to that income factually this condition has not been complied to a large extent during the preceeding four decades.
- h) 3/4th of E.D. Agents including EDBPMs & EDSPMs do not have anyother avocation. 72% of E.D. Agents had Rs.10,000 or less annual income from other sources during 1993-94, when the monthly per capita consumption expenditure estimated to be Rs.229.14 in rural areas and consumption unit per family of an E.D. Agent was estimated to be five and consequently an E.D. Agent to remain above the poverty line must have had an annual income of Rs.13,740/- in the ^aleast. Thus even then 72% of E.D. Agents were below poverty line and had no adequate means of livelihood.
- i) It is logical to presume those who have adequate means of livelihood from other independent source^a to subsist are not volunteering to join as E.D. Agents. The overwhelming majority of E.D. Agents come from a strata of society for whom it is not

possible to fulfil this condition as condition precedent.

- j) An Educated Unemployed Youth in rural area can be said to have adequate means of livelihood if he has inherited sufficient landed property to generate an income of Rs.14,000/- annually or richman's son, who has been given enough funds to derive that income.
- k) At present the post of E.D.Agent is considered lower than even Group D in the hierarchy. Still over 95% of candidates join this "not whole-time employment" to get "whole-time employment".
- l) The condition of "adequate means of livelihood" was insisted because it would reduce the chances of an BPM committing any fraud or misappropriation of Govt. money. Yet data collected during 1994-95 reveals that out of 2411 cases of misappropriations and frauds throughout India (figures do not include West Bengal) 1156, i.e. 48% cases were committed by the BPMs to a tune of Rs.98 lacs, which means the amount in each Post Office came to Rs.8500/- only.
- m) Property declared by an E.D.B.P.M. is not required to be pledged or mortgaged by him. He cannot even be asked to deposit the title deeds. There are negligible cases where the Department was able to get the property attached or auctioned to recover the amounts involved in fraud cases.

14. At present pursuant to Office Memorandum No.26-1/97-BC & E.D.Cell dated 17.12.1998 of the Department of Posts, EDBPMs are being paid Related Continuity Allowance (Time Related Continuity Allowance), depending upon the work-load, the minimum of which is three hours. For work-load upto three hours allowance is Rs. 1280 - 35 - 1960 and if the work-load is more than three hours,

the allowance is Rs.1600-40-2400/-. So far as EDSFMs are concerned, such allowance is Rs.1225-50-3125/-. Thus the system of allowance being paid on point-wise linked up with the money value of transactions has been given a go bye.

15. As earlier stated, even the E.D.Agents were subject to Government Conduct Rules and Postal Regulations. Now they are governed under P&T E.D.Agents(Conduct & Service)Rules, 1964, which have been issued under the authority of the Government of India. While interpreting ~~this~~ 1964 Rules, the Apex Court in P.K.Rajamma's case reported in AIR 1977 SC 1677 held that E.D.Agents connected with Postal Department hold civil posts and they cannot be removed from service without complying the provisions of Article 311(2) of the Constitution. In Para-4 of the judgment it was even held that an E.D.Agent is under the administrative control of the State. Further in S.D.I.(P) Vaikan vs.Theyyam Joseph reported in 1996 SCC(L&S) 1012, after interpreting some provisions of this Rule, 1964, the Apex Court in Para-11 of the judgment held that service conditions of E.D.Agents are governed by statutory regulations and they are as such civil servants. Further, the Apex Court in Union of India vs. Kameswar Prasad reported in (1997) 11 SCC 650, as quoted in Para-7 of the judgment of Karnataka High Court in the case of C.P.M.G. Bangalore vs.H.M.Dayananda reported in 2001 Lab. I.C. 191, observed that the Rules laid down a complete Code governing the service and conduct of Extra Departmental Agents including proceedings for taking disciplinary action against them for misconduct. Thus, it is clear the Rules

having been issued by the authority of the Government of India, have the force of law and lay down a complete code governing the Service and Conduct of E.D.Agents and even though E.D.Agents are not regular Govt.servants, yet, are civil servants regulated by those conduct rules. Since the post of an E.D.Agent has all the equivalence ~~with the~~ civil servant, following the Apex Court decision in Union of India & Ors. vs. Sanjaya Pant reported in AIR 1993 SC 1365 striking down the requirement of being a local candidate, in the matters of recruitment to the post of EDBPM/SPM, the D.G.Posts issued a circular ^{by} removing ~~by~~ the earlier condition of post-village criteria of the candidate. Similarly, earlier under Rule-9 of the Rules there was provision that during put off duty period an E.D.Agent shall not be entitled to any allowance. This provision was apparently made keeping in view that an EDBPM has adequate means of livelihood from other source. Since the post of EDBPM has been held to be a civil post, the Apex Court struck down this provision and directed the Department to frame rules for payment of allowance during the put off duty period and pursuant to that direction, instructions have been imparted by the Department for payment of allowance - compensation by way of exgratia payment during the put off duty period. Even pursuant to the decision of the Apex Court in Excise Superintendent(Malakpatnam) case reported in 1996 (6) SCALE 670 holding that in addition to placing requisition to the Employment Exchange for sponsoring the names of candidates, the appropriate Department or Undertaking or Establishment should call for the names by publication

in the newspapers having under circulation and also display on their Office Notice Board and so on, the D.G. Posts in letter dated 19.8.1998 issued instructions that in respect of vacancies of E.D.Agents, in addition to ~~notifying~~ through the Employment Exchange, the vacancies shall be simultaneously notified through public advertisement. The object underlying for giving the aforesaid instructions pursuant to the decision of the Apex Court is that there is growing need for employment day to day and that is why more and more candidates are applying even for a single vacancy of EDBPM/SPM and with a view to attracting more talented candidates the scope for securing employment as EDBPM/SPM has been extended to a wider range through public advertisement, ~~besides requisitioning to~~ the Employment Exchange.

As the records of this Bench speak ~~35~~⁴⁶ 40 per cent of the cases filed annually centre ~~round~~ E.D.Agents, 50 per cent of which relates to appointment of EDBPM/SPM. Thus it is clear, ~~off~~ late competition in the recruitment to the posts EDBPM/SPM has become cut-throat, obviously because ^{of} growing unemployment problem all over the country and side by side increase in the number of Educated Unemployed ~~Y~~ouths day by day. Thus as rightly observed by Talwar Committee, this "not whole-time employment" is being sought as "full-time employment" by a majority of the Educated Unemployed ~~Y~~ouths.

16. Question then arises whether it is still desirable to insist the criterion "adequate means of livelihood", as a condition precedent/~~criterion~~ to be appointed as EDBPM/SPM. Even during 1993-94, 72% of the E.D.Agents were below the

poverty line having no adequate means of livelihood. This percentage by now must have gone up. Moreover, a person, who has adequate means of livelihood, i.e., a person who is well above the poverty line, under normal circumstances would not be keen to seek "not whole-time employment" as EDBPM/SPM, which carries lesser emoluments, even than Group 'D' employees. Yet 95% of the candidates, as pointed out by the Talwar Committee are eager to compete for these posts, because of poverty. If this condition of adequate means of livelihood is retained, then it would mean that even though a candidate not having adequate means of livelihood and below the poverty line though more meritorious in the H. S. C. or equivalent examination will be disqualified/deprived from being considered for the said post of EDBPM/SPM, but a candidate being less meritorious, but born with a silver spoon in his/her mouth is eligible. In other words, it is only richer candidates above the poverty line are eligible for being considered to the post of EDBPM/SPM and not more meritorious candidates below the poverty line. This cannot but amount to discrimination in a Welfare Country like India, having the goal to attain Social, Economic and Political Justice, as provided in the Preamble of the Constitution.

17. This criterion of adequate means of livelihood would necessarily mean that the candidate applying for the post is not indigent. In other words, besides the allowance received from this employment, an EDBPM appointed must be able to make both ends meet from the income derived from other sources. Yet under D.G.(P&T) letter dated 4.8.1980, it has been

provided that a suitable job in E.D. Cadre can be offered to one dependant of an E.D. official, who dies while in service leaving the family in indigent circumstances and such employment to the dependant should be given only in very hard and exceptional cases. Here the expression 'E.D. Cadre' includes even the post of E.D.B.P.M./S.P.M., as is clear from D.G.Posts letter dated 2.2.1994, wherein it was clarified the condition for Matriculation qualification for EDBPM/SPM should be insisted upon in cases, where the death of the incumbent had taken place on or after 1.4.1993. In other words, as per this departmental circular/instruction, vide Section 10 of Swamy's Compilation of Service Rules for Postal E.D. Staff, 1999 Edition (Page-144-148), a dependant member of a deceased E.D. employee while in service, if he has got the educational qualification to be eligible for the post of EDBPM/SPM, can be appointed as EDBPM/SPM, even though he is indigent and without having adequate means of livelihood. By such appointment to the post of EDBPM/SPM under compassionate grounds of an indigent dependant family member of a deceased E.D. employee, the very object of insisting adequate means of independent livelihood, i.e., income from other source should be enough for an E.D. Agent to subsist and that the wages earned by him from the Department should supplement to that income, is given a go bye. Viewed from this angle also this criterion of adequate means of independent livelihood is discriminatory.

18 This apart, this criterion of adequate means of livelihood does not serve the purpose for which it is

introduced. There is no guarantee that after appointment the concerned EDBPM/SPM would not dispose or alienate even by way of gift the properties for which he filed documents at the time of selection in order to establish that he has adequate means of livelihood. There is no provision in the Conduct Rules, 1964 that after appointment the concerned EDBPM/SPM shall deposit the total deeds of his properties with the Department. There is also no provision in those Rules that he shall not, without prior approval of the authority concerned, transfer/alienate/dispose of his properties and/or acquire any new property, when such provision is applicable in case of regular Govt. servants under Rule-18 of CCS(Conduct) Rules, 1964, even though such regular Government servant can be eligible for employment without having the adequate means of livelihood. Thus the object for which this condition is provided is likely to be frustrated in very many cases, so much so, as pointed out in Talwar Committee Report, there is not a single instance of realising the misappropriated amount from E.D. Agents through attachment/Court proceedings. Thus this provision standing as an impediment for competing in the recruitment to the post of EDBPM/SPM prevailing all over the country, appears to be redundant and is not workable, more so when either EDBPMs or EDSPMs appointed under compassionate grounds are required to furnish a security of Rs.4000/-, subject to the condition of its increase/decrease depending on the amount of cash ^{or valuables} they are authorised to handle (vide Swamy's Compilation Page-76), there should not be any difficulty, if necessary, to increase this security amount.

19. As early as 1974, the Constitution Bench of the Apex Court in State Jammu & Kashmir vs. Triloki Nath Khosa reported in AIR 1974 SC 1, observed (Para-36) that since the constitutional code of equality and equal opportunity is ^a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons, who fall substantially within the same class. Again in Para-~~36~~³⁷ it was observed that classification, however, is fraught with the ^{danger} ~~chance~~ that it may produce artificial inequalities and therefore, the right to classify is hedged in with silent restraints, or else the guarantee of equality will be submerged in Class legislation masquerading as laws meant to govern well marked classes characterised by different and distinct attainments. This observation of the Apex Court, in my view, can as well be applied in cases of recruitments to the posts like EDBPMs/EDSPMs.

20. I have already held that imposition of condition of **adequate** means of livelihood for appointment to the post of EDBPM/EDSPM would ^{un} ~~un~~ necessarily mean that only richer class candidates even though educationally less meritorious or dependant members of deceased E.D. employees ^{who are} while in service, even though indigent and educationally less meritorious and having no means of livelihood would alone be eligible and this, in my view, would amount to discrimination and violative of Articles 14 and 16 of the Constitution. I, therefore, strike down this criterion "Adequate Means of Livelihood" provided under the recruitment rules for appointment to the post of EDBPM/EDSPM.

21. Since this condition is struck down, there is no necessity for scrutinising the income certificate furnished by the applicant even after the last date for receipt of applications and there is also no necessity to enquire whether the income certificate as produced by the applicant is a genuine one or not. Accordingly, Misc. Application filed by the respondents for causing necessary enquiry in this connection is disposed of.

22. Admittedly among all the candidates whose applications were received for the post in question the applicant has secured the highest percentage of marks in the H.S.C. Examination and not the selected candidate (Respondent No.5), Kailash Chandra Behera. In view of this, the appointment of Respondent No.5 (Kailash Chandra Behera) to the post of Extra Departmental Branch Post Master, Pailo Branch Office is quashed. The departmental respondents (Res. 1 to 4) are directed to consider the candidature of the applicant for appointment to that post within a period of 30 (thirty) days from the date of receipt of copies of this order.

23. In the result, Original Application is allowed, but without any order as to costs.

18.10.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM, VICE-CHAIRMAN

24. I have had the benefit of going through the order prepared by my learned brother and I am unable to agree with his conclusion that the requirement in the Recruitment Rules that to be eligible to be

Som.

appointed to the post of Extra-Departmental Branch Post Master/Extra-Departmental Sub Post Master, the candidate must have adequate means of livelihood is discriminatory and violative of Articles 14 and 16 of the Constitution. After having come to the above conclusion, my learned brother has struck down the above provision in the Recruitment Rules. I am unable to agree with this. Before setting out the reasons for disagreement, a few facts of this O.A. will have to be noted. These have been recorded in detail in the order of my learned brother and it is only necessary to note that in the public notice dated 21.10.1999 inviting applications for the post of EDBPM, Pailo B.O. (Annexure-3) it was specifically mentioned that the candidate must enclose income certificate granted by the Revenue Officer, not below the rank of Tahasildar, and it was also provided that applications not properly filled in and documents, as required, not submitted are liable to be rejected. In the instant case, the petitioner along with her application for the post submitted an income certificate in the name of her father. It is the admitted position that the rules require submission of income certificate by the candidate in her own name. The applicant later on submitted an income certificate in her name, the authenticity of which has been questioned by respondent no.5, the selected candidate. But admittedly this income certificate was filed by the applicant in her own name after the last date of submission of applications was over. It is also the position that under the instructions documents filed after the last date of receipt of applications cannot be taken into consideration. In the context of the above, the

J. Som.

petitioner has come up in this petition with the main prayer of striking down the requirement in the Recruitment Rules necessitating that the person selected for the post of EDBPM/EDSPM must have adequate means of livelihood of which income certificate is the proof.

25. Before considering the validity of this requirement in the Recruitment Rules, a few words regarding Extra-Departmental system will have to be referred to. I can do no better than quote from the decision of Bangalore Bench of the Tribunal in the case of Peter J. D'sa and another v. Superintendent of Post Offices, Udupi and others, (1989) 9 ATC 225:

"4. The Extra Departmental Agent ('EDA', for short) system, is said to have taken inception in the Department of Posts and Telegraphs ("Department" for short), as long back as in 1854, i.e., nearly a century and three decades ago. The object underlying was, a judicious blend of economy and efficiency, in catering to postal needs of the rural communities dispersed in remote areas, these needs being restricted and infrequent. The Department, therefore, hit upon the idea of availing of the services of school masters, shopkeepers, landlords and such other persons in a village, who had the faculty of a reasonable standard of literacy and adequate means of livelihood and who therefore, in their leisure hours, could assist the Department, by way of gainful avocation and social service, in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by that Department for the purpose. Persons in the above category, readily volunteered themselves to serve the Department in that manner, motivated more by the special status that such service conferred on them in the village, than the token financial incentive offered.

JDM

5. Thus, came into existence the EDA system, which gained vigour and impetus, with the advent of Independence and thereafter, when the postal needs in villages and smaller towns acquired momentum, apace with country's development, in the post-Independence era. By and by, the activities under EDA system increased and covered a wide gamut of duties such as; receipt and despatch of mail, booking of money orders, registration of letters and parcels, delivery of unregistered letters, registered articles, inclusive of letters and parcels, payment of money orders, savings bank works(small savings), booking and delivery of telegrams, booking and receipt of telephone calls, which came to be entrusted to the ED Branch Post Offices. Small Savings Bank work alone, reflective of economic progress in rural areas, occupied a major part of the hours of duty, of the ED Branch Postmasters ('EDBPM', for short).

6. Since Independence, the Department has, in keeping with the above situation, vastly expanded the network of postal offices in the rural, backward, hilly and remote areas of the country. At present, there are as many as 1,45,000 post offices operating in the country, of which, 1,17,914 i.e., nearly 80 per cent, function in rural areas. Since the Department did not consider it feasible, on grounds of economy and comparative lesser intensity of postal traffic, to man and operate the post offices in rural areas with whole-time departmental employees, it took recourse to the alternative, of opening of what are known as ED Offices."

V. Som.
The Hon'ble Supreme Court have held that ED Agents which include EDBPM/EDSPM are holders of civil posts. But they are not Government employees even though they are guided by Conduct Rules framed for them and are also entitled to the protection of Article 311 of the Constitution. But the difference between ED Agent and a regular Government servant has to be noted. Age requirement for appointment to the post of ED Agent is from 18 years to 65 years. It

is also provided that in exceptional cases the age limit can be relaxed. ED Agents are not paid any salary. They are paid allowances. Originally, the allowances of ED Agents were relatable to the volume of transactions handled by them. But the First Central Pay Commission recommended that their scale of remuneration must not be linked with the amount of money handled by the office, but must have reference generally to the work and attendance required. Currently, ED Agents are being paid allowance which is known as Time Related Continuity Allowance (TRCA). This allowance was also put in a scale of pay and is relatable to the working hours of the concerned ED Agents. Originally, EDBPM was expected to be a resident of the same village where the E.D.Branch Post Office is situated. But later on the basis of judicial decisions this was changed and it was laid down that residency in a village is not a pre-condition, but the selected candidate must take up residence in the village where the ED Branch Post Office is situated. The next condition is that he is required to provide rent free accommodation for holding the Post Office. Another important condition of his appointment is that while the EDBPM goes on leave, he must provide a substitute at his risk and responsibility who would carry on the work in his absence. All the above conditions like liability to provide rent free accommodation, a substitute, TRCA being relatable to hours of work and age limit for appointment as EDBPMs/EDSPMs make them different as a separate group from regular Government servants which they are not. The need for this is based on the very nature of Extra Departmental system. In rural areas, the system is

J. Som

expected to cater to the basic postal needs of rural communities which are expected to be restricted and infrequent. Because of resource constraint, it is obviously not possible for the Department to establish Departmental Post Offices in the remote areas and therefore, the Extra Departmental system serves a very important need of the rural communities and is fashioned in this way blending the requirement of economy for the Department and postal need of the rural population. Extra Departmental system has been examined by several Committees, the latest of which is Mr. Justice Talwar Committee, the portions of whose recommendations have been enclosed by the applicant at Annexure-6. Mr. Justice Talwar Committee has recommended that requirement of having adequate means of livelihood should be done away with firstly because it is unconstitutional and secondly because over a period this requirement has been diluted, and thirdly because this requirement does not serve any practical purpose.

26. In so far as the alleged constitutional invalidity of this provision is concerned, the learned counsel for the petitioner has stated that this requirement is hit by Articles 14 and 16. So far as Article 16 is concerned, Clause (1) provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Clause (2) provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. From the above,

J. Jom.

it is clear that Clause (2) of Article 16 does not specifically rule out classification on the ground of means of livelihood. Clause (1) of Article 16 speaks of equality of opportunity relating to employment or appointment to any office under the State. Article 14 assures equality before the law or the equal protection of the laws. Law is well settled that Article 14 does not rule out classification, and any classification necessarily involves special treatment. The law is well well settled that to decide if any classification is discriminatory or not, the test is whether the classification bears an intelligible differentia with the object sought to be achieved. It is in this context that the special character of the Extra Departmental system has to be kept in view. An EDBPM/EDSPM in his normal course of work has to handle not only Government cash but money entrusted to him by the public towards Savings Bank deposit and other type of deposits. He has also to handle both ordinary and high value money orders, and value paid parcels. In the context of the fact that an EDBPM right from the first day of his work has to handle Government and public cash and holds a position of trust not only for the Government but also for the public, it is not unreasonable, to my mind, for the Government to require that EDBPM should have adequate means of livelihood; or in other words, the TRCA will only be a supplemental income. The object of the classification in the instant case is to recruit persons with some financial standing to the post of EDBPM/EDSPM and the requirement of adequate means of livelihood and classifying the candidates on that basis cannot,

S. Dom.

therefore, be held a discriminatory or arbitrary classification. On the other hand, I feel that the classification has a direct nexus with the object sought to be achieved.

27. It has been submitted by the learned counsel for the petitioner that because of this requirement a person who has got higher marks in the HSC Examination may be left out even though he is more meritorious. Rules provide that amongst the eligible candidates, a person who has got the highest marks in the Matriculation/HSC Examination, will be taken as the most meritorious. The Rules do not provide for, rather instructions specifically forbid, selection of a person only on the ground of his having higher income. Having adequate means of livelihood is only an eligibility criterion and selection is not to be made on that basis. Amongst the eligible candidates having adequate means of livelihood, the person securing highest marks in the Matriculation/HSC Examination has to be considered most meritorious/suitable. It is also to be noted that in the present matter before us it is not the case of the applicant that she does not have adequate means of livelihood. She has submitted an income certificate after the last date showing that she has adequate means of livelihood. Therefore, for considering the case of the applicant, the validity of this requirement in the rules does not really arise for consideration. Had it been the case of the applicant that she does not have adequate means of livelihood and therefore she has been unjustly kept out of consideration because of the above requirement which is sought to be quashed on the ground of constitutional invalidity, then the question of validity of the requirement would have

J. J. M.

arisen. Here the applicant's case has been rejected on the ground that she gave the income certificate after the last date for submission of applications was over. It is not her case that she is a person without adequate means of livelihood. If on the ground absolute equality of opportunity this condition is struck down, then the requirement of providing rent free accommodation for holding the post office can also be challenged on the ground that by that requirement person in the lowest income group but having higher academic standard is kept out of consideration for selection to the post of EDBPM/EDSPM. As regards the point that this requirement has been diluted over the years, we note that all the Committees prior to Mr. Justice Talwar Committee had emphasised that this requirement of having adequate means of livelihood must be rigourously enforced. Mr. Justice Talwar Committee recommended doing away with this requirement, but apparently the Government have not accepted the same. This is again a matter of policy for the Government and the Tribunal should be circumspect in interfering in matters of policy though a policy matter is not necessarily excluded from judicial scrutiny by the Tribunal.

28. It has been urged by the learned counsel for the petitioner that many Government servants in their normal course of duties, handle large amounts of cash, but in their case there is no requirement of having adequate means of livelihood. Firstly, such Government servants are whole-time employees. They no doubt have to furnish fidelity insurance bond and in case of EDBPM/EDSPM also insurance cover is taken. But the

nature of job of EDBPM/EDSPM being part-time, it is not unreasonable to classify them differently from a Cashier in Government office. I find no illegality in this.

29. The next point urged is that even though the rules provide that EDBPM/EDSPM should have adequate means of livelihood, departmental instructions provide for compassionate appointment to widow/son/daughter of EDBPM/EDSPM in case he dies in harness. It is urged that as compassionate appointment is given only when the family after the death of the serving employee is in indigent condition and as in the case of EDBPM/EDSPM he has adequate means of livelihood, the very fact of coverage of EDBPM/EDSPM's family under the compassionate appointment scheme shows that the requirement of adequate means of livelihood is illusory in nature. I am unable to agree to this line of reasoning because compassionate appointment is given in terms of the scheme available in the Department and just because the Government, as an extra measure, have provided for compassionate appointment, it will not make the requirement of adequate means of livelihood for the EDBPM/EDSPM invalid.

30. In view of the above, I hold that the requirement in the rules for a candidate for the post of EDBPM/EDSPM to have adequate means of livelihood is constitutionally valid. I, therefore, hold that the O.A. is without any merit and the same is rejected. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.10.2001

45

-27-

31. In view of the above difference in opinion, we refer the matter to the Hon'ble Chairman under Section 26 of the Administrative Tribunals Act, 1985, for deciding the following points:

- (1) Whether the requirement in the recruitment rules for the post of EDBPM/EDSPM that the person selected for the post must have adequate means of livelihood is unconstitutional or not; and
- (2) To what relief the applicant is entitled?

L. N. 18.10.2001
(G. NARASIMHAM)

MEMBER (JUDICIAL)

Sonnath Som
(SONNATH SOM)
VICE-CHAIRMAN
18.10.2001

AN/PS