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O.A.NO.1018/2002

Order dated 24.06.2004.

Applicant Mr. Tuna Barik has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking a direction for declaration of the Rules regarding Income and ownership of the property as ultravires to the Constitution. He has also sought for a direction to the Respondents to reconsider his case for appointment to the post of Gramin Dak Sevak Branch Post Master/ GDSBPM of Dashipur Branch Post Office in preference to the private Respondent.

It is submitted by the Applicant that a notification dated 01.03.2002 was issued by the Respondent No.4 for filling up of the post of GDSBPM of Dashipur Branch Post Office, from <sup>a</sup> ~~the~~ candidate of unreserved community. The last date for receiving the application, as per Annexure-2 was 1.4.02; but for the same post the last date for receiving the names from the Employment Exchange was fixed till 30.4.02. Applicant had submitted his application on 22.3.02; which was received by the Respondents on 26.3.02. Applicant had also submitted a certificate of income and copy of the sale deed executed in his favour on 15.4.02. However, the Applicant was not selected for the said post of GDSBPM of Dashipur Branch Post Office but one Ms. Banaja Lata Jena has been selected.

*Chandra Kumar*

O.A.No.1018/02

The grievance of the Applicant is that he had secured more marks than the said Respondent No.6 Ms.Banaja Lata Jena.Learned Counsel for the Applicant invited our attention to the check-sheet dt.1.5.02(Annexure-R/3) filed by the Respondents and stated that the Applicant had secured 74.53% of marks in the matriculation examination whereas Ms.Jena Res.No.6 had secured only 67.02% of marks in the matriculation examination. In this check-sheet, it has been stated by the Respondents as a 'remark' that Sl.No.4 has secured more percentage of marks in the matriculation examination but submitted Income certificate in his name later on 16.4.02 though the last date was 1.4.2002 for open pool.Further it was examined that the Income certificate was issued on 9.4.02.Hence his case could not be considered.Respondents have further made remarks that inspite of others having higher percentage of marks,Res.No.6 was considered suitable for the post on account of deficiencies in the cases of candidates having higher marks than the Res.No.6. The Applicant,has therefore,claimed that the entire selection process should be declared null and avoid and the Applicant should be declared to have been selected.Accordingly,this O.A. has been filed.

Respondents have opposed the prayer of the Applicant and have filed a reply.It is submitted that the last date for submitting details for open pool candidates was 1.4.02 in this case but the income certificate was issued after that date .Therefore,

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not <sup>✓</sup>  
it can be said that it has been filed by the last  
date. Learned counsel for the Applicant placed  
heavy reliance on the clarification dated 18th  
September, 1995 of Director General of Posts; wherein  
it has been provided that eligibility should have  
been acquired before the last date. <sup>decision rendered by the</sup> The ~~Full~~ BENCH  
of this Tribunal in the case of RANA RAM Vs. UNION  
OF INDIA AND OTHERS- reported in 2004(1)ATJ, page-1  
was pointed out to the learned Counsel for the  
Respondents. He stated that this decision has been  
rendered by this Tribunal on 24.11.03. Therefore,  
cases decided before this date could not be affected  
by this decision. Therefore, this Original Application  
is liable to be rejected summarily.

We have heard learned counsel for the parties  
present. Respondent No. 6 was issued <sup>✓</sup> ~~with~~ notice but no  
appearance was made on her behalf. There is even no  
reply filed to the notice issued. We <sup>✓</sup> ~~are~~, therefore,  
inferred <sup>✓</sup> that she is not interested in defending  
her case in this proceeding.

The main issue for consideration is  
whether the provisions relating to furnishing of

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Income Certificate before the last date was essential qualification. The Full Bench of this Tribunal in the case of Rana Ram (supra) have placed heavy reliance on the decision of the Hon'ble Supreme Court in the case of INDIRA SAWHNEY AND OTHERS v. UNION OF INDIA AND OTHERS (reported in 1992 Supp(3) SCC 217) wherein the Hon'ble Supreme Court have observed as follows:-

"845. This clause provides for a 10% reservation (in appointments/posts) in favour of economically backward sections among the open competition (non-reserved) category. Though the criteria is not yet evolved by the Government of India, it is obvious that the basis is either the income of a person and/or the extent of property held by him. The impugned Memorandum does not say whether this classification is made under clause (4) of clause (1) of Article 16. Evidently, this classification among a category outside clause (4) of Article 16 is not and cannot be related to clause (4) of Article 16. If at all, it is relatable to clause (1). Even so, we find it difficult to sustain. Reservation of 10% of the vacancies among open competition candidates on the basis of income/property-holding means exclusion of those above the demarcating line from those 10% seats. The question is whether this is constitutionally permissible? We think not. It may not be permissible to debar a citizen from being considered for appointment to an office under the State solely on the basis of his income or property-holding. Since the employment under the State is really conceived to serve the people (that it may also be a source of livelihood is secondary) no such bar can be created. Any such bar would be inconsistent with the guarantee of equal opportunity held out by clause (1) of Article 16. On this ground alone, the said clause in the Office Memorandum dated May 25, 1991 fails and is accordingly declared as such".

On perusal of the principles enumerated by the Hon'ble Supreme Court, extracted above, it clearly shows that any such bar would be inconsistent with the guarantee of equal opportunity. The Tribunal has therefore held that

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possession of adequate means of livelihood in terms of Postal Departmental Circular was neither an absolute condition nor preferential condition required for consideration for selection to the post of GDSBPM. The Full Bench of this Tribunal in the case of Rana Ram (supra) have further held as follows:-

"The selections have to be made on the basis of the other qualifications minus the qualifications pertaining to immovable property. Thereafter the person selected can be given reasonable time to submit proof of income/property as per rules/instructions on the subject and in case he fails to submit the same within a reasonable time, the offer can be given to the next eligible/selected candidate".

On perusal of the above, clearly states that the basic qualification for being selected to the post of GDSBPM is the marks obtained in matriculation examination. Other ~~as~~ requirements could be submitted by the candidate if he was declared selected and after he was allowed opportunity of producing those details/documents. If one person <sup>4</sup>~~secured~~ in the merit list of selected candidate was unable to submit such details/documents, the next person could be considered for appointment, if he <sup>a</sup>~~was able to~~ <sup>a</sup>fulfill the conditions of appointment. In view of these decisions, we are of the view that the procedure adopted by the Respondents-Department is against the provisions of Article 14 and 16 of the Constitution of India. This view has been upheld by the Hon'ble Supreme Court of India in the case of Indira Sawhney and others (supra) as well as the Full Bench of this Tribunal in the case of Rana Ram (supra) and

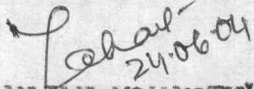
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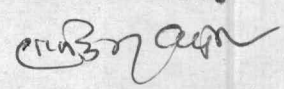
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in the case of H. Lakshmana and others Vs. The Supdt. of Post Offices and others (reported in 2003(1)ATJ 277).

The contentions of the learned Senior Standing Counsel that the decision of the Full Bench becomes operative only from its pronouncement on 24.11.03 has to be rejected particularly when the Hon'ble Supreme Court have already settled the law in the year 1992 in the case of Indira Sawhney (supra). Even otherwise, the decision of the courts is merely declaration of correct legal position.

In view of the facts as stated earlier and for the reasons mentioned herein before, this Application has to be allowed. The official Respondents are directed to consider the application of the applicant for appointment in preference to Respondent No. 6 in the light of the decision of the Full Bench reference to herein before; which exercise should be completed within a period of 3 (three) months from the date of receipt of a certified copy of this order.

In the result, this Original Application is allowed. There shall be no order as to costs.

  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

  
(R. K. UPADHYAYA)  
MEMBER (ADMN.)