

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1209 OF 1996

Present : Hon'ble Mr. Justice S. N. Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Member (A)

GUNADHAR MONDAL

VS

1. Union of India through the Secretary, Ministry of Communication, Deptt. of Post Offices, Dak Bhavan, New Delhi
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhavan, P-36 C.R.Avenue, Calcutta-12
3. The Superintendent of Post offices, South 24 Parganas, P.O. Baruipur,
4. Employment Exchange Officer, Diamond Harbour, 24 parganas (South)
5. The Sub-divisional Inspector of Post Offices, Muthurapur Sub Division, P.O. mathurapore, Dist. 24 Pgs (S)
6. The Post Master, Kankandighi BPO, P.S. Raidighi, Dist. 24 Pgs, (S)
7. Sri Raj Kumar Ghorami, Vill. Dakshin Kankandighi, P.O. Kankandighi, PS, Raidighi, Dist. South 24 Parganas
..... Respondents

For the applicant : Mr. N. Bhattacharjee, Counsel

For the respondents : Mrs. B. Ray, Counsel

For Pvt. respondent : Mr. P. Chakraborty, Counsel

Heard on : 12.5.98 : Order on : 19.5.98

O R D E R

S. Dasgupta, A.M.

The applicant is aggrieved by the appointment of private respondent No. 7 on the post of Extra-departmental Mail Peon (EDMP for short) at Kankandighi Branch Post Office under the Baruipur Head Post Office. Through this application filed u/s 19 of the Administrative Tribunals Act, 1985, he has sought a direction upon the official respondents not to confirm the private respondent No. 7 on the post of EDMP and to hold a

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fresh selection ^{from} amongst the candidates who possess qualification of Matriculation Examination passed by terminating the service of the private respondent No. 7

2. The applicant's case is that he had applied for the aforesaid post of EDMP in response to a notification dt. 17.7.96 inviting applications for the said post. Respondent No. 7 was also one of the candidates for the said post and he was selected and appointed on the post by the official respondents although he is allegedly an Asthma patient, deaf and dumb, having no landed property or any source of income. The applicant, on the other hand, it is alleged, has landed property and also other source of income in tailoring business. It is also alleged that the respondent No. 7 has failed to provide any rent free accommodation while the applicant was in a position to offer rent free accommodation. Further case of the applicant is that he has passed the Matriculation Examination in Second Division obtaining 469 marks.

3. The official respondents have contested the case by filing a reply in which it has been stated that the respondent No. 7 does have landed property and also has other source of income of Rs. 300/- per month. However, for the purpose of selection to the post of EDMP, possession of landed property or solvency is not a criterion. The respondent No. 7 was selected for the post as he had obtained 468 marks out of total marks of 900 whereas the applicant had secured 469 marks out of total marks of 1000. Thus, the applicant secured only 46.9% marks in the Matriculation examination whereas the respondent No. 7 had secured 52% of marks in the said examination. The respondent No. 7 was, therefore, considered the best candidate.

4. The applicant has filed a rejoinder in which he has taken a plea that the rules relating to the recruitment to the

post nowhere mention that percentage of marks should be considered. On the other hand, the total marks obtained in the qualifying examination should be the criterion.

5. We heard the learned counsel for the parties and perused the pleadings on record.

6. The only plea canvassed before us by the learned counsel for the applicant was that the applicant having obtained more marks than the respondent No. 7 in the Matriculation Examination, he should have been selected for the post of EDMP and that the percentage of marks should not have been the criterion for such selection.

7. The method of recruitment to the Extra-departmental posts has been detailed in Sec. III of Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department. It appears that for all Extra-departmental posts other than Extra-Departmental Sub Post Master or Extra Departmental Branch Post Master, the qualification prescribed is Class VIII standard. It is also provided that preference would be given to the candidates with matriculation qualification. There is also an extract from a circular letter of DG of Post dt. 10.5.91 which reads as thus :

" The deciding factor for the selection of EDBPMs/EDSPMs should be the income and property and not the marks, has been examined threadbare but cannot be agreed to as this will introduce an element of competitiveness in the matter of possession of property and earning of income for determining the merit of candidates for appointment as ED Agents. proof of financial status is not only subject to manipulation but is also detrimental to merit. When the Constitution of India guarantees equal opportunity to all for their advancement, the reasonable course would be to offer ED appointments to the person who

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secured maximum marks in the examination which made him eligible for the appointment, provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED Allowance."

8. From the aforesaid extract of the circular dt. 10.5.91, it would be clear that the person who secured maximum marks in the examination which made him eligible for the appointment, shall be ~~the determining factor for selection~~ ^{selected}. In the case before us, the marks obtained in the Matriculation Examination was taken as a determining factor. Admittedly, the applicant obtained 469 marks whereas the private respondent No. 7 obtained 468 marks. However, also admittedly, the applicant obtained such marks out of total marks of 1000 whereas the private respondent No. 7 obtained such marks out of total marks of 900. It is common knowledge that the maximum marks for the same or equivalent examination conducted by various Boards differ considerably. Even under the same Board, the maximum marks differ depending on the year of examination. Comparison of marks obtained has to be made on a rational basis. If only the total marks secured is considered without any reference to the maximum marks allotted for the examination, there would obviously be a miscarriage of justice. Comparison has to be made on equal footing based on a common denominator. When the total marks in the examination in which the applicant appeared were 1000 whereas the same in respect of the examination in which the private respondent No. 7 appeared were 900, the only equitable course to compare the two marks would be to compare the percentage of marks obtained with reference to the total marks. Admittedly, respondent No. 7 had secured higher percentage of marks than the percentage of marks secured by the applicant. We, therefore, see no irregularity in the selection of respondent No. 7 for the

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