

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A.No. 1381/1996

This the 7th day of March 2005

CORAM

**HON'BLE SHRI J.K.KAUSHIK, JUDICIAL MEMBER
HON'BLE SH. M.K.MISRA, ADMINISTRATIVE MEMBER**

Sheikh Abedin S/o Sheikh Allauddin
of Village and Post Sajina District – Birbhum.

...Applicant
(By Advocate : Sh. A.K.Sinha with Mr.R.Bhattacharjee)

V E R S U S

1. Union of India service through
The Secretary, Ministry of Post
and Telegraph, New Delhi.
2. The Superintendent of Post Offices
Birbhum Division, P.O.Suri Distt. Birbhum.
3. Assistant Superintendent of
Post Offices, Birbhum Division
P.O.Suri Distt. Birbhum.
4. Kajal Mondal S/o Subodh Mondal
Village & P.O. Sajina, P.S.Rajnagar, Distt. Birbhum.
...Respondents

(By Advocate : Sh. S.N.Das with Mr. J.M.Bhattacharjee)



ORDER

Per Mr. J.K. Kaushik, Judicial Member

Shri Sheikh Abedin has prayed for seeking a mandate to the respondents to appoint him on the post of Extra Departmental Branch Postmaster, Sajina in pursuance with advertisement notice dated 14.5.96 and has also challenged the appointment of Respondent No. 4 which may be made or has been made on the said post amongst other reliefs.

2. We have heard the learned counsel for both the parties at considerable length and have given our considerable thought to the pleadings and the records of this case.

3. Skipping up the superfluities, the material facts necessary for adjudication of the controversy involved in this case has borne out through the pleadings of the parties. Depict that the applicant worked on the post of Extra Departmental Agent on casual basis during the period from 1982-1996. A Notification was issued on 14.5.96 inviting the applications for appointment to the post of Extra Departmental Branch Postmaster (for brevity EDBPM) of Sajina, E.D.P.O. in the district of Birbhum. The applicant fulfils the requisite qualifications as well as other conditions as mentioned in the said Notification and applied for the same. He was subjected to the selection consisting of interview on 23.9.96. He also submitted the requisite certificates



and proof of the property etc to the competent authority. His name also was registered in the Employment Exchange. He faired well in the interview but did not seem to have found favour of the authority concerned. He came to know that the appointment was sought to be given to respondent No. 4, i.e., Sh. Kajal Mondal. Sh. Kajal Mondal failed to satisfy or meet up the necessary requirements of the said advertisement. The said respondent No. 4 misguided the authorities and executed the sale deed on 28.5.96 and mentioned therein that immovable property was transferred to him. But in record, his name does not find place. Therefore, respondent No. 4 is not entitled to such appointment surpassing the case of the applicant. The action of the respondents has been assailed on enormous grounds mentioned in para 5 and its sub-paras, which shall be conjointly dealt with at a little later in this order.

4. Per contra, the detailed and exhaustive reply has been filed on behalf of the official respondents. It has been averred that 26 candidates were found eligible to undertake the selection. It was found that respondent No. 4 Sh. Kajal Mondal secured 64.1 % marks in Madhyamik Pariksha, 1993 and he also fulfilled other requisite conditions. On the other hand, the applicant secured 59.6 % marks in the School Final Examination, 1972. He had not submitted any annual income certificate. Sh. Kajal Mondal, i.e., respondent No. 4 has secured the highest percentage of marks and fulfilled other eligibility conditions and, therefore, he was



found suitable as per the departmental rules and came to be provisionally selected for the post of EDBPM, Sajina. He was provisionally appointed w.e.f. 28.9.96 pending verification of characters and antecedents and the charge was taken over by him accordingly. The antecedents were got verified immediately thereafter. There is a clear annotation on the advertisement notice that the candidates securing highest percentage of marks in matriculation or equivalent examination having immovable property in his own name would be given preference subject to the fulfilment of other conditions. Respondent No. 4 having secured the highest marks and thus came to be selected. Certain repetitions of the factual aspects have been made in the reply. The grounds raised in the OA have been generally refuted. The applicant has filed the rejoinder (Sic. counter reply on behalf of the respondents) and has countered the defence of the respondents as set out in their reply.

5. Learned counsel for the applicant has endeavoured hard to persuade us that a grave irregularity has been committed by the respondents inasmuch as the applicant did not fulfil the requisite conditions mentioned in the very Notification. He has made us to travel through the very Notifications as well as the other documents forming part of the paper book. He was specifically confronted with a question regarding obtaining of the marks in the matriculation or equivalent examination and the position that respondent No. 4 has obtained the highest marks as indicated in

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the reply came to be acceptable to the learned counsel for the applicant. Per contra, the learned counsel for the respondents has reiterated the facts and grounds raised in the reply filed on behalf of the official respondents as noticed above.

6. We have considered the rival contentions and submissions made on behalf of both the parties. As far as the factual aspects of the matter is concerned, there is absolutely no quarrel on the material facts relevant for resolving the controversy. We find that the learned counsel for the applicant has stressed that the respondent No. 4 did not fulfil the requisite conditions. But the respondents have amplified the position and have demonstrated us that the version of the applicant on this point is factually untrue and in fact the respondent No. 4 fulfilled all the eligibility conditions to the satisfaction of the authorities. We have no reason to disbelieve the version of the respondents in absence of any malafide or biasness towards the applicant in any manner. If that be so, the action of the respondents cannot be faulted with and the same has to be held to be in order.

7. Examining the matter from yet another angle, there has been long legal battle on the issues involved in the instant case as to whether on what basis the selection to the post of EDBPM is to be made. It has been fairly settled by now that the selection is to be made on the basis of percentage of marks in the matriculation examination and the one who secures highest

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marks is to be placed at merit No. 1 and is to be offered the appointment and that is the condition precedent. Other conditions are only subsequent and can be fulfilled within a reasonable period. The law has moved little further and the condition of having property either in the name of particular individual or as a ancestral or in the name of his guardian etc. has been withered away and impliedly struck down being in contravention with the equality clause as laid down under Article 14 & 16 of the Constitution of India. Similar is the position regarding the residence. It has been held that there can be no reasonable classification or discrimination on the basis of property, income or residence as per the Article 16 of the Constitution of India. The law is crystallized and now the only requirement is that one should be able to provide premises suitable for carrying out postal operations in the particular village and nothing else. We are fortified with the aforesaid proportion of the law, which has been lucidly illustrated by a coordinate Bench of this Tribunal at Bombay in the case of **Shailesh Mahadeo Panchbhai v. UOI & Ors.** (2004 (3) ATJ 528) wherein the judgments of **Vijay Rajaram Dhamale v. UOI & Ors.** (OA No. 747/2003), **D.M.Nagesh & Ors. V. ASPO, Bangalore** (1997 – 2001 A.T.F.B.J.160), **Madanlal v. Govt. of J&K** (AIR 1986 SC 1043) and **H.L. Lakshmana & Ors. v. The SPO, Bellary and Others** (2003 (1) ATJ 277) have been relied upon. The issue, therefore, does not remain res-integra. Applying the same to the facts of this case, since the applicant

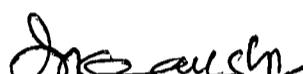


has admittedly secured lesser marks than respondent No. 4 who has secured highest percentage of marks in the selection, we find that no indulgence of this Tribunal is warranted and the action of the respondents is well in consonance with the rules in force and does have our concurrence.

8. The result is rather very unfortunate; but we are left with no option except to dismiss this Original Application, which we do so accordingly but without any order as to costs.



(M.K.Misra)
Administrative Member



(J.K.Kaushik)
Judicial Member

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