

ANNEXURE M-I

- 4 -

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO. 217 OF 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M.S.Mukherjee, Member (A)

MRINMOY BANERJEE

45

1. Union of India through Secretary
Ministry of Communication, New Delhi
2. Sr. Superintendent of Post offices,
P.O. Kadamtala, Dist. Howrah
3. Inspector of Post Offices,
P.O. Uluberia, P.S. Howrah
4. The Branch Post Master, Dhulasimla,
Uluberia, P.S. Howrah
5. Sanat Chakraborty,
Vill. & PO Dhulasimla, Uluberia,
Dist. Howrah

----- Respondents

For the petitioner : Dr. (Ms) S. Sinha - Counsel

For the respondents : Mrs. B. Roy, Council

Heard on : 5-2-97 : Order on : 10-1-97

Q R D F R

M. S. Mukherjee, A.M>

affested.

This is a petition u/s 19 of the Administrative Tribunals Act, 1985, in which the petitioner prays for a direction of the respondent-postal authorities to consider the case of the petitioner for appointment to the post of EDMC, Dhulasimla BPO, being aggrieved that in the regular selection process, the official respondents have not considered his case and that they omitted to give due weightage to the experience already gained by the petitioner for earlier having worked as EDMC of the same branch post office.

2. The petitioner claims to have worked as substitute Extra-departmental Mail Carrier (EDMC for short) at Dhulasimla BPO from 30.11.94 to 29.1.96 i.e. for about 13 months continuously. He further claims that even prior to 30.11.94, he had also worked as EDMC and EDBPM of the said post office.

(2)

for a long period, yet his experience as having worked as ED staff had been ignored by the respondent authorities when they considered for regular selection for the post of EDMC of the said post office at Dhulasimla. However, from 30.11.94 to 29.1.96 he has experience of continuously working as EDMC. The petitioner's contention is that he appeared along with other candidates for an interview before the authorities on 30.1.96. But the respondents did not select him inspite of his experience and are going to give appointment to one Shri Sanat Chakraborty, private respondent No. 5 ignoring the claim of the petitioner and without giving any weightage to his past experience. He has, therefore, prayed for the reliefs already indicated in para 1 above.

3. The official respondents have contested the case by filing a written reply. Their contention is that when the post of EDMC at Dhulasimla BPL fell vacant due to promotion of the existing incumbent of that post to Gr. D cadre and accordingly the Deptt. initiated steps to regularly fill up the said post. The employment exchange was requested to send names and in all 29 candidates were sponsored by the employment exchange. The name of the present petitioner was also included in that list. The candidates were called to appear with all necessary certificates and testimonials for verifying their bio data on 30.1.96 and as per rules and various circulars, respondent No. 5 i.e. Shri Sanat Kumar Chakraborty, who fulfilled all the requisite conditions, was selected and he joined as EDMC of the said post office on 1.2.96 i.e. before the present petition was filed before this Tribunal. According to the respondents, since the selection has been done by strictly following the rules, the present petition should be dismissed as without any merit.

(3)

We have heard the learned counsel for the parties and have gone through the documents produced. There is no dispute about the fact that the petitioner has acquired some experience as EDMC for having worked for the period from 30.11.94 to 29.1.96 and it is conceded by the respondents through the reply. However, the fact remains that the petitioner worked during the aforesaid period as substitute nominee of the regular EDMC of the said post office because of his promotion to regular Group D cadre. But the said regular EDMC happens to be the brother of the present petitioner and the petitioner worked as his brother's nominee during the period. Therefore, the petitioner acquired the said experience as a substitute nominated by his own brother and not by the department. At the time of regularly filling up the post, the Deptt. invited names from the employment exchange and the petitioner along with others were considered. The petitioner's main grievance that he had not been considered at all is not, therefore, justified.

5. Dr. (Ms) S. Sinha, the 1d. counsel for the petitioner, however, has argued at the stage of hearing that the said consideration has not been adequate one as the petitioner's past experience has been totally ignored by the selection authority. According to her, if the past experience had been counted, the petitioner is the most eligible persons to be selected. The petitioner, according to the 1d. counsel, possesses all other conditions of eligibility for the post.

6. The respondents' main ground for rejection is that while the petitioner is Madhyamik plucked candidate, there were many other candidates who produced Madhyamik passed certificates and the selected candidate (respondent No. 5) has fulfilled all the criteria and hence he was found to be most suitable.

7. The respondents have also denied the allegation in the petition that the respondents have selected the respondent No. 5 by taking bribe and monetary consideration.

8. Without going into this aspect of the allegation, we, however, find that the petitioner's case has been ignored on the ground that he is a Madhyamik failed candidate whereas other candidates were Madhyamik passed. The learned counsel for the respondents, Mrs. B. Roy, has mentioned that for the selection in the particular post, the educational qualification is VIII standard while Matriculation or equivalent has to be given preference.

9. We have carefully gone through the prescribed recruitment conditions and method of recruitment for ED staff. Chapter 11 of Swamy's Compilation of Service Rules for ED Staff in Postal Deptt. 1992 Edn. (page 52 onwards) gives detail of such method of recruitment. Under paragraph 1, ibid, it is seen that the educational qualification for ED Sub Postmasters, ED Branch Post Masters and ED Delivery Agents is VIII Standard but Matriculation or equivalent may be preferred. As regards ED Stamp Vendors, the educational qualification is VI standard but VIII standard may be preferred. While for all other categories of ED Agents, the qualification is that they should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily.

Categories such ED Messengers should also have enough working knowledge of English. For such other category of ED agent, there is no preference for the candidates having matriculation qualification. It is doubtless a part of the all other categories (Post, T.D., P.M., ED Agents). therefore, it is wrong to claim that VIII standard is the minimum qualification for EDMC and further that under the recruitment rules, Matriculation or equivalent have to be preferred.

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The respondents' action in rejecting the case of the petitioner's case on ground of educational qualification is, therefore, not justified.

12. The next issue is about the question of experience as repeatedly stressed by Dr.(Ms) Sinha. The relevant instructions regarding experience is provided in the Deptt.'s instructions available at pages 70-71 under the heading "(16) Selection and appointment of EDAs from those working". It has been specifically laid down therein as follows :

"It has been decided by the Post Master General that working ED Agents should be given priority over all other categories except retrenched ED agents for selection of various ED posts if they satisfy all the conditions prescribed in certain office letter dt. 24.10.76, as amended from time to time and if the appointment in the new post is in public interest. The concession is, however, applicable to the following categories of ED Agents only :-

- (i) ED Agents appointed prior to the introduction of the residence condition.
- (ii) ED Agents who had acquired residences in new locality by purchase or inheritance.
- (iii) All women ED agents who have to shift the residence after marriage"

13. There is no whisper in the respondents' reply that the petitioner's case has been rejected after specifically applying the aforesaid instructions of the Deptt.

14. The petitioner, it is admitted by the respondents, had been working as EDMC right upto 29.1.96 and his interview and bio-data verification was held on the following day i.e. 30.1.96, along with others. The private respondent No. 5 who was selected by the Deptt. joined the post of EDMC in that post

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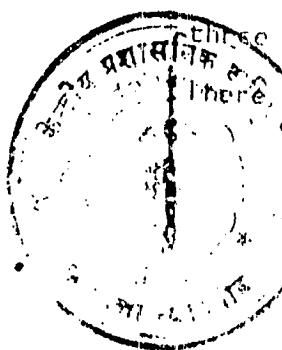
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office on the ~~next~~ day i.e. 1.2.96. So, it is very clear that upto the date of selection, the petitioner had actually been working as EDMC and prima facie, his case is covered under the aforesaid instructions about experience unless, he has been disqualified on other conditions prescribed therein. But it is not the case of the respondents that he has been disqualified on other conditions as indicated in the above.

14. Under the circumstances, we are of the view that the petitioner's case has been rejected by the respondents without any valid reasons. To that extent, the selection of Private Respondent No. 5 is bad and it is liable to quashed and is ordered to be quashed forthwith. ~~The appointment is also quashed accordingly.~~

15. This does not, however, automatically entitle the petitioner to be appointed as EDMC. We direct in this connection that the respondents shall freshly consider all the candidates, considered on earlier strictly in accordance with the rules and appoint the candidate so freshly selected. In view of the special circumstances of the case, we direct further that in the fresh selection, the officials who had been involved in the last selection, shall not be associated and the fresh selection process shall be completed within these months from the date of communication of this order.

There, it be no order as to costs.



MEMBER (A)

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Date of Applicant Dor S. Senhu, M.L.D.

Date of Selection or
Date of issue of copy ... 14/3/97

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(2)

14/3/97

SDY 123-8
(H.K. CHATTERJEE)

VICE CHAIRMAN

सत्याग्रह प्रविधि प्राप्ति
Certified to be true copy

Manohar

Court Officer

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14/3/97