

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....
Date of order : 27-9-2000

O.A.NO.320/1998

Hamid Hussain S/o Shri Gulam Farid aged about 26 years, R/o Bharat Colony, Ship House, Jodhpur.

.....Applicant.

VERSUS

1. Union of India through the Secretary to the Government of India, Ministry of Communication (Department of Posts), Dak Bhawan, Sansad Marg, New Delhi.
2. The Post Master General, Rajasthan, Jodhpur Western Region, Jodhpur.
3. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
4. The Post Master, Shastri Nagar, Jodhpur Division, Jodhpur.
5. Mrs. Sangeeta D/o Shri Laxmi Narayan Prapapati ED Stamp Vender, Shastrinagar, HQ, Jodhpur.

.....Respondents.

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Mr. R.S. Saluja, Counsel for the applicant.

Mr. M. Siddique, Adv. Brief holder for Mr. N. M. Lodha, Counsel for the respondents No. 1 to 4.

Mr. D. K. Bhootra, Adv. Brief holder for Mr. Vijay Mehta, Counsel for the respondent No. 5.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

The applicant had filed this O.A. with the prayer that the appointment of respondent No. 5 to the post of E.D. Stamp Vendor be declared illegal and be quashed. The respondents be directed to give appointment to the applicant on the post of E.D. Stamp Vendor in

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place of respondent No.5. Cost of the litigation be also awarded.

2. It is alleged by the applicant that the 4th respondent invited applications from amongst the eligible candidates from market for the post of E.D. Stamp Vendor vide its letter dated 19.7.94, Annex.A/3. The applicant was fully eligible for the above mentioned post and sent his application for the post of E.D. Stamp Vendor to respondent No.4 on 27.7.94. The respondent did not take any action to fill-up the advertised vacancy and gave appointment to one Shri Veeru Das. When the applicant came to know of this, he made a representation to respondent No.4. Respondent No.4 replied to the applicant vide its letter dated 23.11.94, Annex.A/4. In this reply, it is mentioned that the appointment was given to Shri Veeru Das as per the instructions of the D.G., Posts, New Delhi, dated 12.9.88. Not being satisfied with the reply, Annex.A/4, the applicant filed an O.A. before this Tribunal, which was registered at No. 429/95. The O.A. was disposed of by the Tribunal vide its order dated 7.8.98. The operative part of the order is as follows :-

"As we have observed that transfer of Respondent No.5 from neighbouring Post Office to Shastri Nagar Head Post Office was not in accordance with conditions laid down in the Departmental circular dated 12.9.1988 (Annexure.R/1), therefore, we have no alternative but to quash the transfer order of Shri Veeru Das, E.D.SV., Respondent No.5. Consequently, the Department is directed to re-transfer Shri Veeru Das to Industrial Area Post Office where he was working earlier and consequently vacated post of E.D.S.V. be filled in from amongst the candidates as empanelled by the Department for fill in the post E.D.S.V. in the Shastri Nagar, Head Post Office by offering appointment strictly in accordance with merit position of the selected candidates as per communication dated 27.8.1994 from the Post Master, Shastri Nagar Head Post Office to Senior Superintendent, Post Offices, Jodhpur, within three months from the date of communication of this order. The O.A. is, therefore, disposed of accordingly with cost which we quantify at Rs. 250/-."

3. It is further alleged by the applicant that the respondents thereafter checked the applications of the candidates who had applied for the post of E.D. Stamp Vendor. The applicant again made a representation to the respondent No. 4 on 8.9.98, Annex.A/2, that

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the respondent No.5 was not eligible to be appointed on the post of E.D.Stamp Vendor inasmuch as she had not submitted all the certificates as were required by the rules and the advertisement and yet she has been approved for appointment. But the representation of the applicant was of no consequence and the respondent No.4, appointed respondent No.5, Sangeeta. The applicant has challenged the appointment of Sangeeta on the ground that the applicant is more meritorious than Sangeeta, that sangeeta had not submitted all the requisite certificates to the respondent along with her application, that the respondent No. 5 is not fully eligible to be appointed on the post of E.D.Stamp Vendor, and that out of all the successful candidates, only the applicant challenged the action of the respondent No.4 appointing Shri Veeru Das. Therefore, only he was entitled to be appointed on the post of E.D.Stamp Vendor on quashing of the appointment of Shri Veeru Das by the Tribunal. Since the applicant was not appointed, hence, the O.A.

4. Notice of the O.A. was given to the respondents. Official respondents and private respondent No. 5 submitted their separate replies.

5. It is alleged by the respondents No. 1 to 4 that the O.A. is premature because the applicant did not avail departmental remedy against the order Annex.A/1. It is further contended by the respondents that the vacant post of E.D.Stamp Vendor was filled-up in compliance of the order of the Tribunal in accordance with merit position of the selected candidates. It is denied by the respondents that the respondent No.5 does not fulfil the eligibility conditions and that her application was received after the last date. It is also alleged by the respondents that respondent No.5 is more meritorious than the applicant so far as percentage of marks secured in secondary school examination is concerned. Other allegations of the applicant were also denied by the respondents. It is stated by

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them that the O.A. does not bear any merit and deserves to be dismissed.

6. The private respondent has stated in her reply that she has been appointed on the post in question as per her own merit in terms of the order of the Tribunal. All the requisite certificates were submitted by her. Certificate of good character implies that she is not a debtor. The application of the applicant is devoid of any merit and deserves to be dismissed.

7. We have heard the learned counsel for the parties and have gone through the case file.

8. First of all, it was argued by the learned advocate for the applicant that the application of Sangeeta, was not received in time and had been received after the last date but has been shown to have been received in time. The applications of all the candidates except the application of Sangeeta was received through Registered Post, thus manipulation in this regard cannot be ruled-out. He has further argued that the respondents have not produced Inward register of Dak to show that the application of Sangeeta was received on the date as alleged, therefore, adverse inference be drawn against the respondents.

9. We have considered the arguments advanced by the learned advocate for the applicant. The respondents have stated that no Inward Dak Register is maintained at the Post Office, therefore, the question of drawing adverse inference, does not arise. In view of this, it cannot also be concluded that the application of Sangeeta was not received by the respondents before the last date and has been anticated to show its timely receipt. There is nothing on record to suggest that the receipt of application of Sangeeta was manipulated

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to give her benefit of appointment. We have seen the departmental file relating to the notification and appointment in question. There is nothing on record to lend support ^{to} _L the contentions of the applicant in this regard. Therefore, the arguments of the learned advocate for the applicant are rejected.

10. So far as the question of merit is concerned, it can be safely said that the applicant is not the most meritorious candidate. From the comparative chart Annex.R/1, it is clear that Sangeeta has 53.75% marks in the secondary examination, whereas the applicant has only 47.75% marks i.e. 6% less than Sangeeta. While disposing of the earlier O.A. of the applicant challenging the appointment of Shri Veeru Das, it was clearly directed that appointment be offered strictly in accordance with merit position of the candidates. Since Sangeeta had the highest percentage of marks, she was offered the appointment. Her appointment was in terms of our earlier order, therefore, no fault can be found in Annex.A/1 issued by the respondent No.4.

11. The respondent No. 5 had submitted character certificate along with her application as is evident from the file. In our opinion, character certificate implies she is not a debtor. Even otherwise, indebtedness in something personal and has no relevance in the context. Essentiality of submission of certificate in this regard is also not supported by the rules. Hence, arguments in this regard are difficult to accept.

12. Lastly, it was argued by the learned advocate for the applicant that out of all the candidates only the applicant challenged the appointment of Shri Veeru Das and was successful in that case, therefore, only the applicant was entitled to be appointed on the post of E.D. Stamp Vendor and not Sangeeta or any other candidate. He has cited 1986 SCC (L&S) Page 759 Miss Neelima Shangla vs. State of Haryana and others and 1992 SCC (L&S) Page 38 - Ashok @ Somanna Godwa and Ors. Vs. State of Karnataka.

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13. We have considered the argument and the rulings cited by the learned advocate for the applicant. There can be no difference of opinion in respect of rule propounded in these rulings. But the rule propounded in these rulings does not apply in the instant case because of difference of facts.

14. In 1992 SCC (L&S) Page 38 - it was found by Hon'ble the Supreme Court that even if 15% of total marks were fixed for interview and list prepared accordingly then as per merit the applicants were bound to be selected and large number of selected candidates would have found place ^{Therefore,} much lower in the merit list than the applicant. ^{Therefore,} they were ordered to be appointed. It is in this context, it was held by Hon'ble the Supreme Court that other candidates who did not approach the Court within time though had higher marks, were not entitled to relief. But, in the case in hand, only one post was advertised. On that post a candidate who was having highest percentage of marks and was at No.1 in the merit, was appointed. Therefore, the applicant cannot claim to be appointed in her place taking advantage of the rule propounded in aforesaid ruling. Thus, this ruling does not help the applicant.

15. In 1986 SCC (L&S) Page 759 - it was found that the Haryana PSC instead of preparing complete list of all the successful candidates and communicating the same to the Government, withheld the names of several successful candidates including the petitioner on the ground of limited number of vacancies, and consequently the applicant was not appointed. It was also found that due to this error on the part of PSC many other successful candidates were not appointed. Since the petitioner had challenged the action of the PSC, he was directed to be appointed on the post kept vacant due to interim order. Other successful candidates had not challenged the selection and two years have since lapsed, general direction for appointing such successful candidates would disturb the subsequent selection and create confusion, ^{Therefore,} only the applicant was ordered to be

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appointed. Clearly the facts and circumstances of the case in hand, are different than the facts of the case relied-upon. Therefore, the rule propounded therein does not help the applicant.

16. In our opinion, respondent No. 5 was fully eligible and more meritorious than the applicant. She was rightly appointed to the post of E.D. Stamp Vendor by the respondent No. 4. Therefore, the letter of Appointment, Annex.A/1 dated 15.9.1998, is not required to be interfered with. Therefore, the present O.A. deserves to be dismissed and is hereby dismissed. No orders as to cost.

Gopal Singh

(GOPAL SINGH
Adm. Member

27/9/2000

(A.K.MISRA
Judl. Member

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Contra
Furnitur
3/13/2022

Rohit
Mishra
P.M.

Contra
Furnitur
3/13/2022

Part II and III destroyed
in my presence on 13.3.02
under the supervision of
Section Officer (J) as per
order dated 13.3.02.

Section Officer (Record)