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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR**

CORAM

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER**

ORIGINAL APPLICATION No.222//2003

Ritu Raj Sangwa son of Shri Gena Ram Sangwa, aged 27 years resident of village Sadokan Post Office Sadokan, Tehsil and district Nagaur.

... Applicant.

Rep. By: Mr. Rakesh Kalla, Adv. Brief holder for
Mr. Anand Purohit, counsel for the applicant.

V E R S U S



1. Union of India through Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. Principal Chief Post Master General, Rajasthan, Jaipur.
3. The Postmaster General, Rajasthan, Western Region, Jodhpur.
4. The Superintendent, Post Office, Nagaur, Region Nagaur.
5. Shri Roshan Lal son of Shri Bhom Raj by caste Darji, resident of Ward No. 21, Hathi Chowk, Nagaur.

..... Respondents.

Rep. By: Mr. Vinit Mathur, counsel for the respondent Nos. 1 to 4 &
Mr. S.K. Malik, counsel for the respondent No. 5.

Date of Order: 16.02.2005

**:O R D E R:
(PER MR. J K KAUSHIK, JUDL. MEMBER)**

Shri Ritu Raj Sangwa, the applicant, has assailed the appointment of respondent No. 5 (sic. 4) on the post of Branch Dakpal, village, Sadokan, Tehsil and District Nagaur and has sought a direction to the respondents to consider his candidature

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or any other eligible applicant who submitted application in pursuance with the notification Ann. A and if found suitable, the due appointment be given.

2. We have heard learned counsel for all the contesting parties and have carefully perused the records of this case.

3. The brief facts of the case considered necessary for resolving the controversy involved are that a notification came to be issued on 27.08.2002, informing that a Branch Post Office was proposed to be open in village Sadokan and a Branch Postman (Shakha Dakpal) was to be appointed in the pay scale of Rs. 1290-35-1980 with admissible dearness allowance. The notification contains certain conditions relating to basic requirements, one of them being that one should be resident of village Sadokan only and should submit the certificate of his residence duly verified by the Sarpanch of concerned Gram Panchayat or by the Pradhan of the concerned Panchayat Samiti. The applicant applied for the same and fulfilled the eligibility condition but nothing was heard in the matter. On the other hand, he came to know that the respondent No. 5 (sic. 4) was given appointment despite the fact that he did not fulfill the mandatory condition of residency of particular village. A representation was made in the matter to the competent authority but of no avail. The certificate which was furnished by the applicant, was cancelled by the Sarpanch. The Original



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Application has been filed on multiple grounds raised in the para 5 and its sub-paras.

4. The official respondents as well as the respondent No. 5 i.e. private respondent have filed their separate reply. It has been averred in the reply that Shri Roshan Lal fulfilled all the prescribed conditions for the post and was most suitable candidate and having highest percentage of marks in matriculation amongst all the candidates applied for, was selected for the post on the basis of merit. The applicant has no right to challenge the same once he was not selected because he was lower in merit. There is no condition of resident in the particular village for the post of Gramin Dak Sevak, one should be the resident of post village or within the delivery jurisdiction of the post office before appointment. Therefore, the appointment of the respondent No. 5 is in order.

5. As per the averments made in the reply by the respondent No. 5 (sic. 4), it has been mentioned that he being more meritorious and fulfilling all mandatory condition for appointment, was given appointment as per rules and regulations on the subject. He has not done any forgery and was given appointment as per the rules. The Original Application deserves to be dismissed. He also submitted that there are catena of judgements on the subject matter that the selection is required to be made on the basis of marks obtained in the



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matriculation examination and this position has been consistently followed by this Bench of the Tribunal as well the other conditions are subsequently. In this view of the matter also the appointment of the respondent No. 5 cannot be faulted with.

6. The learned counsel for contesting parties have reiterated the facts and grounds raised in the respective pleadings of the parties as noticed above. The facts are not in dispute except in respect of the correct position regarding the marks obtained by the applicant, respondent No. 5 and other candidates which we shall amplify a little later. As far as the legal aspect of the matter is concerned, it is by now well settled that the selection/appointment of the EDBPM has to be made on the basis of marks obtained in matriculation examination and thereafter the persons selected can be given reasonable time to fulfil the other conditions especially relating to the providing of adequate space to serve as an agency premises for postal operation. For this purpose, we refer to a recent judgement of coordinate Bench at Calcutta in case of **Gorachand Naskar vs. Union of India and Ors.** [2004 (2) ATJ 620] where one of us (J.K. Kaushik, Judicial Member) was the party to the judgement. The said judgement was passed placing reliance in case of **Ranaram vs. Union of India** (2004 (1) ATJ FB-1-Jodhpur) and **Lakshmana and others vs. Superintendent Post Offices Bellari** (2003 (1) ATJ 277 FB – Bangalore). Therefore, the



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issue does not remain res integra and otherwise also none of the party disputes the legal position.

7. We have perused the comparative chart which is prepared by the selection committee and find that the applicant has secured 39.45% of marks in matriculation examination. The respondent No. 5 has secured 54.18% of marks in matriculation examination. We also find that there are three persons at Sl. No. 5, 7, and 9 who have secured 57.27%, 60.91% and 61.64% marks, respectively, in Madhyamic Pariksha/Secondary Pariksha. All these three persons have not been selected for the reason that they did not possess any property or agricultural land on their name. The condition relating to possessing of the property itself has been struck-down in the case of **Lakshmana and others vs. Superintendent Post Offices Bellari** (supra) referred in **Gorachand's** case, thus, their candidature has been wrongly rejected. As indicated above, the selection was required to be based only on the merits prepared strictly in order of marks obtained in the matriculation examination. In this view of the matter, it was the candidate at Sl. No. 9 i.e. Shri Sahadev son of Shri Ramniwas who have secured highest marks i.e. 61.64 marks in matriculation examination and ought to have been given offer of appointment and in case he did not fulfil the other condition regarding providing the suitable premises for postal operations, it was the next person in the merit who ought to have been given such offer. In this view of the matter there



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are three persons who are supposed to be higher in merits than the respondent No. 5, therefore, the selection/appointment of the respondent No. 5 cannot be sustained in the eyes of law and the same has to be cancelled on this count alone. We do not find any necessity to examine the other grounds raised in the Original Application regarding illegality in the appointment of respondent no. 5. As regards the consideration of candidature of the applicant, we find that as per the merit his name would fall at Sl. No. 15 and he has absolutely no standing in the merit.

8. In the result, the Original Application is disposed of with the following order:

"The appointment of Shri Roshan Lal i.e. respondent No. 5 to the post of Shakha Dakpal village Sadokan is hereby quashed. The official respondents are directed to prepare a fresh merit of the candidates strictly as per the marks obtained by them in the matriculation examination and give offer to the candidate who is at merit No. 1 of the select list i.e. Shri Sahadev son of Shri Ramniwas within a period of one month from the date of communication of this order and in case he is not able to satisfy the condition for providing adequate space to serve as an agency premises for postal operation within a period of two months, thereafter the offer may be given to the candidate next in merit. However, the respondent No. 5 shall be continued to work on the said post, provisionally, till the new incumbent is appointed. No order as to costs."



[G. R. PATWARDHAN]
ADMINISTRATIVE MEMBER

[J.K. KAUSHIK]
JUDICIAL MEMBER

Kumawat

RLO-
on 22/2/2005
(Mr
Datta & Am)
Adv

Received copy
Ritika Sengupta
(Ritu Ray)
21/2/09

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