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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 241/2003

DATE OF ORDER: 21st November, 2006

Narendra Singh Kanawat : Applicant (s)

Mr. Kamal Dave : Advocate for the Petitioner (s)

VERSUS

The Union of India & Ors. : Respondent(s)

Mr. M. Godara & Mr. Vinit Mathur : Counsel for the Respondents.

CORAM:

**Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. R.R. Bhandari, Administrative Member.**

1. Whether Reporters of local papers may be allowed to see the Judgement ? *NO*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

R. R. Bhandari
(R.R. Bhandari)
Administrative Member

J. K. Kaushik
(J K Kaushik)
Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

O.A.NO.241 OF 2003

24th November 2006

CORAM :

**HON'BLE MR.J K KAUSHIK, JUDICIAL MEMBER AND
HON'BLE MR.R R BHANDARI, ADMINISTRATIVE MEMBER.**

Narendra Singh Kanawat S/o Shri Nand Singh aged about 24 years, Resident of Nimbhera Kalan Tehsil Banera District Bhilwara, 311803, Official Address presently serving as EDBPM Nimbhera Kalan.

.... Applicant

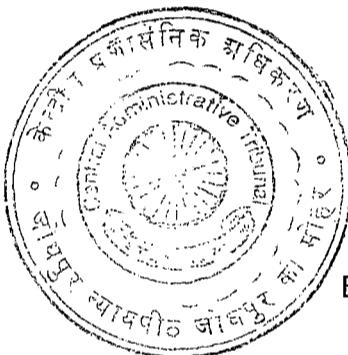
By: Mr. Kamal Dave, Advocate.

Versus

1. The Union of India through The Secretary, Ministry of Posts, Communication, and Telegraphs, Dak Bhawan, New Delhi.
2. The Superintendent of Post Office, Bhilwara Division, Bhilwara-311001.
3. Inspector Post office, Shahpura.

.... Respondents

By : Mr.M.Godara, Advocate and Mr. Vinit Mathur, Advocate.



ORDER

(HON'BLE MR.J.K.KAUSHIK,JM)

Shri Narendra Singh Kanawat has filed this Original Application praying for restraining the respondents from finalizing the selection process initiated vide, Annexure A-1, without considering applicant's preferential right of consideration and till then the respondents be restrained to terminate the applicant's service.

2. We have heard learned counsel for both parties and have carefully perused the record of this case. The brief facts of this case are that applicant was assigned the duties of EDBPM at Nimbahera Kalan on

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provisional basis. The said post fell vacant on account of retirement on superannuation of the regular incumbent. The applicant possesses the requisite conditions for regular appointment as EDBPM. His name is registered with the employment exchange. A notification came to be issued on 14.9.1998 vide which applications were invited for selection to the said post which was declared as reserved for SC candidate. Another notification came to be issued on 22.1.2001 for the same post but the post was said to be reserved for OBC. The later notification came to be challenged before this Bench of the Tribunal and respondents were directed to consider applicant's representation. In another O.A.No.69/2002, this Bench of the Tribunal declared the post to be belonging to the general category. The applicant was allowed to continue on the said post on provisional basis.

3. It has been averred that the applicant has a preferential right in view of clause 15 and 19 of the method of recruitment as GDS but the applicant's case was ignored and despite the fact that he has completed 5 years of continuous service, he was not given preferential consideration.

The Original Application has been filed on numerous grounds mentioned in Para 5 and its sub paras.

4. The respondents have contested the case and have filed a detailed reply to the Original Application. It has been averred that the applicant was provisionally appointed and since sufficient number of candidates did not apply for selection, the further notification had to be issued and finally a selection was concluded and merit list was prepared. The person who secured highest percentage of marks in the secondary examination was selected and given appointment. It has also been averred that the selected person has not been impleaded as a party respondent, therefore, O.A.



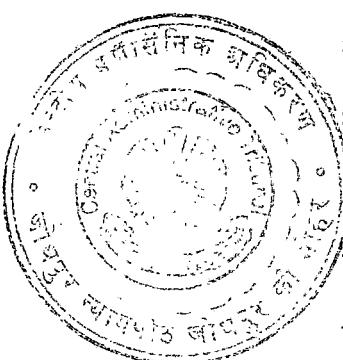
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cannot be proceeded with and it deserves to be dismissed on this ground alone. The case of the applicant was duly considered in accordance with the rules. The grounds raised in the Original Application have been generally refuted.

5. Both the learned counsel for the parties have laid stress on the facts and grounds mentioned in their respective pleadings. The learned counsel for the applicant has made us to go through the Government of India Instructions No.15 and 19. He has submitted that the applicant's case ought to have been considered by giving him preference since he has got experience of about 5 years. He should have also been given weightage in the matter of selection, by taking into consideration the past satisfactory service but the respondents have not given due regard to the same. On a specific query from the court, it was submitted that the applicant had remained in the employment of the respondents up to the date of filing of this Original Application and subsequently a selected candidate joined on the post in question whereby the provisional arrangement came to be dispensed with.

6. We have considered the rival submissions put forth on behalf of both the parties. The main stress of learned counsel for the applicant has been that since the applicant has worked for a long time, he should have been given preference keeping in view his past satisfactory work. By now it is fairly settled that selection of EDBPM is made on the basis of marks obtained in the secondary examination and this is the condition precedent and all other requirements are subsequent. We are fortified this proposition law from catena of decisions on this Tribunal including full bench decisions. We may refer to one of the illustrative decision in case of

Shailesh Mahadeo Panchbhai v. UOI & Ors. (2004 (3) ATJ 528),



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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 CAT FB) and **Rana Ram Vs. Union of India** 2004 (1) ATJ 1 CAT FB have been relied upon and lucidly examined. In the instant case, the applicant does not claim to be having higher marks than the person who has been selected. Therefore, the selection of the person having highest marks in Secondary Examination cannot be faulted with and is held to be in order.

7. Secondly, as regard the weightage of working satisfactorily on the post in question for a long time is concerned, a Constitution Bench of this Tribunal in the case of **D. M. Nagesh and Others Vs. Assistant SPO Bangalore South**, 2000 (2) ATJ, (CAT) 259, have been pleased to hold that previous experience gained by a candidate due to his working as provisional ED Agent, cannot be given weightage at the time of regular selection. The decision of the Full Bench in the case of G.S. Partha was over ruled. Applying this proposition of law laid down in the aforesaid case, we have no hesitation in holding that no weightage could be given for the past experience gained by the applicant on the post in question. On this count also, the applicant's claim cannot be sustained.

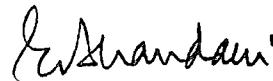
8. We may examine the question of preference from yet another angle. This issue has also been elaborately dealt with by the Apex Court in the case of the **Secretary, APPSEC Vs. Y.V.V.R. Srinivasulu**, 2003 (3) SLR 413 (SC) paras 10 & 11 wherein their Lordships have held that in a selection based on merits, when one or more candidates are found equally positioned, only then the tilting factor is to be applied in favour of preferential category vis-à-vis others in the matter of actual selection. In

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any case, there is no provision under the rules relating to the EDA for giving any preference in an open selection. In this view of the matter, the Original Application is not sustainable on any of the grounds and there is no illegality or arbitrariness committed by the respondents in filling up the post in question. The authority cited by the applicant in the case of **Union of India & Others Vs. Debika Guha & Others, (2000) 9 SCC, Page 416**, has no application to the facts of this case and is clearly distinguishable, having dissimilar fact than that of case in hand. Instructions No. 15 and 19 to the chapter Recruitment of EDA, regulate a different situation of providing alternative appointment to a provisional appointee who has rendered more than three years continuous service and here case is relating to selection of GDSBPM on regular basis. The applicant has incidentally has not passed the requisite selection and no right what so ever could accrue to him otherwise also.

9. In the result, the Original Application sans merit and substance. The same stands dismissed accordingly, but with no order as to costs.


(R R BHANDARI)
Administrative Member

HC*


(J K KAUSHIK)
Judicial Member

R/c for Kavita Dave

Bhawna
30.11.06

Part II and III destroyed
in my presence on 31/11/06
under the supervision of
section officer () as per
order dated 31/11/06

Section officer (Record)

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