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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.

Original Application No. 28/2003
Date of Decision: 11.09.2006

CORAM

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. J P SHUKLA, ADMINISTRATIVE MEMBER.

Khev Raj, S/o Mana Ram Jat, aged 32- years, Village Devergarh,
Tehsil-Shergarh Distt. Jodhpur.

: Applicant.

Rep. by Mr. P Bohra proxy counsel: Counsel for the Applicant.
For Mr. Rakesh Kalla

VERSUS

1. Union of India through Secretary Ministry of Communication
Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Department of Posts, Jaipur.
3. Senior Superintendent Post Offices, Jodhpur Division, Jodhpur
4. Deputy Superintendent of Post Offices, Jodhpur Division,
Jodhpur.

: Respondents.

Rep. by Mr. Mahendra Godhara Proxy counsel
For Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Per MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri Khev Raj has preferred this Original Application for
seeking the following reliefs:

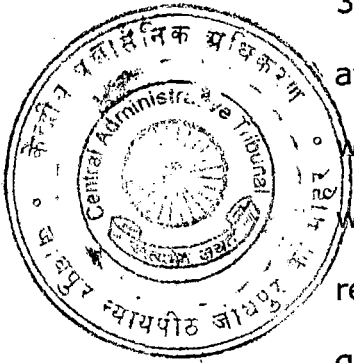
- a) the quashing of Annexure No. 2 to Annexure No. 5
- b) that the respondents be directed that the service
conditions of the applicant governed by his letter of
appointment.
- c) that any other relief which the Hon'ble Tribunal thinks
fit in the present circumstances may be awarded in
favour of the applicant."

2. The factual matrix of this case indicates that the applicant was
given provisional appointment to the post of Gramin Dak Sevak
(erstwhile known as EDBPM) at BO Devergarh Tehsil-Shergarh Distt.

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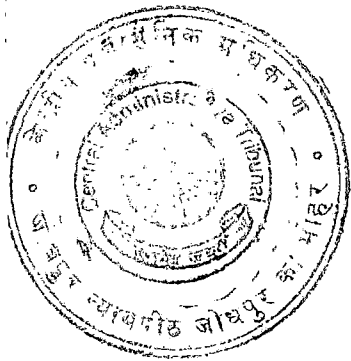
Jodhpur on dated 17.3.2001. He belongs to scheduled Caste. It has been averred by the applicant applied for selection to the post of in pursuance with advertisement-dated 16/19.7.2001. The said post was reserved for ST category. The same post was re-advertised on dated 12/18.9.2001 as well as on dated 19.12.2001 but it was said to be reserved for SC category and thereafter as general, respectively. In the last notification, even the criterion for selection was also changed by adding that it selection would be based on the marks obtained in Matric Examination. Finally, Shri Bhim Singh, who belongs to general category, came to be selected as well appointed on 25.9.2002. The applicant fulfilled all the conditions of eligibility. The OA has been filed on diverse grounds mentioned in para 5 and its sub-paras.

3. The official respondents have filed their reply countering the averments made in the OA. It has been averred that the said post was meant for ST reserve category. The successive advertisements were issued and since sufficient numbers of applications were not received from ST category candidates, the post had to be filled in from general category in accordance with the instructions in force. The applicant also appeared in the selection. He secured 37.8% marks in Matriculation Examination whereas Shri Bhim Singh had secured 48.8% marks in Matriculation Examination. Selection was made strictly in according to the marks obtained in Matriculation Examination. The said Shri Bhim Singh came to be selected as per the merit in accordance with rules; placed at merit Sl No. 1, having highest marks in Matriculation examination amongst all the eligible candidates.



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4. We have heard all the learned counsel for the parties and have carefully perused the records of this case. The learned counsel for both the parties have reiterated the facts and grounds raised in their respective pleadings as noticed above. The learned counsel for the respondents has submitted that it is a fact that the applicant has secured only 37.8% marks whereas Shri Bhim Singh has secured the 48.8% marks, which is the highest amongst all the candidates under consideration zone. The selection has been conducted well in accordance with rules in force. The applicant had no objection regarding any of the notification till he came to know that he did not find berth on the select panel and had to make a room for the selected candidate. The right of a failed candidate is quite feeble. He has also pointed out that the selected candidate has also not been impleaded as a party respondents and the OA suffers from non-joinder of necessary party. Thus OA is misconceived and deserves to be dismissed.

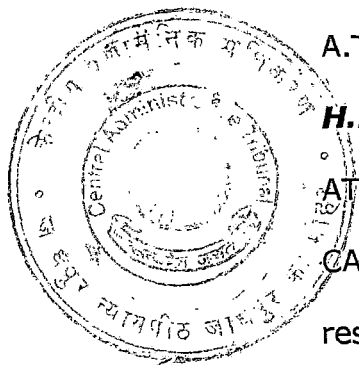


5. We have anxiously considered the rival contentions and submissions made on behalf of both the parties. As far as the factual aspects of the matter is concerned, there is absolutely no quarrel on the material facts as noticed above. We have no reason to disbelieve the version of the respondents that the post of GDS had to be ~~de reserved~~ since sufficient number of candidates from ST category did not apply in pursuance with the notifications. This is also fortified from the fact that no rejoinder in rebuttal has been filed on behalf of the applicant. If that were so, the action of the respondents cannot be faulted with and the same has to be held to be in order.

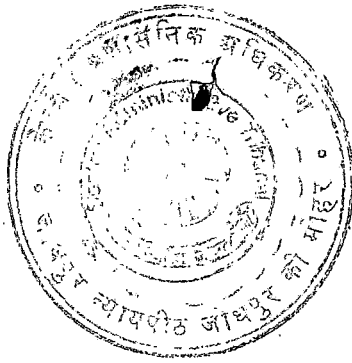
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6. Examining the matter from yet another angle, there has been long legal battle on the issues involved in the instant case as to on what basis the selection to the post of EDBPM is to be made. It has been fairly settled by now that the selection is to be made on the basis of percentage of marks in the matriculation examination and the one who secures highest marks is to be placed at merit No. 1 and is to be offered the appointment and that is the condition precedent. Other conditions especially relating to providing the suitable premises for carrying out the postal operation are only subsequent and can be fulfilled within a reasonable period. We are fortified with the aforesaid proportion of the law, which has been lucidly illustrated by a co-ordinate 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 CAT FB) and **Rana Ram Vs. Union of India** 2004 (1) ATJ 1 CAT FB, 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 Shri Bhim Singh who has secured highest percentage of marks in the selection, we find no infirmity with the action of the official respondents. If that were so, we have no hesitation in upholding the same and therefore no indulgence of this Tribunal is warranted or called for.

7. We also endorse the submission made on behalf of the respondents that the OA suffers from non-joinder of necessary party

as respondent. The selected candidate has already joined the post in question on regular basis and if the applicant's prayer were accepted, it would result in adversely affecting the legal rights of such candidate. This position was very much known to the applicant from the specific objection in the reply. We are little sad to observe that every now and then ~~the~~ the time was sought for impleading the selected candidate as party respondent but nothing was done in this regard. Equally, there is ample force in the stand of respondents that applicant became wiser only after having known of his failure and the rule of estoppel comes into play. Thus we find that this OA is not sustainable on any count, what so ever.



8. In the premises, we reach to an irresistible conclusion that this Original Application sans merits and stands dismissed but no order as to costs.

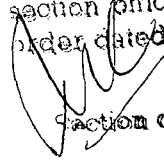
(Handwritten Signature)
(J P SHUKLA)
 Administrative Member

(Handwritten Signature)
(J K KAUSHIK)
 Judicial Member

jsv

~~File~~ 1819

Part II and III destroyed
in my presence on 11/14/14
under the supervision of
section officer (J) as per
order dated 31/01/14


Section officer (Record)