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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR

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Date of Order : 17.07.2003

O.A. No. 203/2002

Jagdish Prasad Sharma S/o Shri Bega Ram aged about 27 years, R/o Village and Post 14 S Manjiwala, District Sriganganagar (Rajasthan) presently working as Branch Post Master (BPM) at Post Office 14 S Manjiwala District Sriganganagar (Raj).

.....Applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Sriganganagar Division, Sri-Ganganagar (Raj).
3. Sri Prithvi Raj S/o Shri Jetha Ram Ghotwal, Resident of Village and Post Sekasarpal District Sriganganagar.

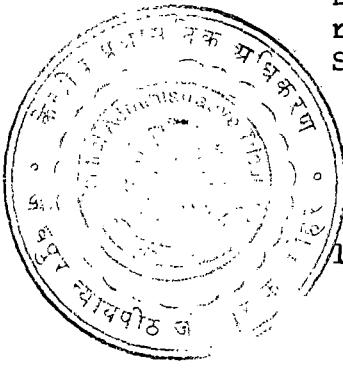
.....Respondents.

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O.A. No. 232/2002

Bholi Rani D/o Shri Late Hotu Ram by caste Arora, aged about 24 years, resident of Village 14 'S' Majhiwala Naggi, Tehsil Srikaranpur, District Sriganganagar (Raj.).

.....Applicant.

VERSUS

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1. Union of India through Secretary, Ministry of Communication, Department of Postal Services, Dak Bhawan, Sansad Marg, New Delhi.
 2. The Superintendent of Post Office, Sriganganagar.
 3. Sub Division Inspector (Post Office), Tehsil Raisingh Nagar, District Sriganganagar.
 4. Prithvi Raj S/o Shri Jetha Ram, by caste Gothwal, resident of Village Sakshapar, Post Nohar 9 F Majhiwala, Tehsil Srikaranpur, District Sriganganagar (Raj).

.....Respondents.

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Mr. S.K. Malik, counsel for applicant in O.A. No. 203/2002
 Mr. Prakash Sharma, counsel for applicant in O.A. No. 232/2002.
 Mr. Vineet Mathur, counsel for respondents No. 1 and 2 in OA 203/2002 and
 1 to 3 in O.A. No. 232/2002.
 None is present for the private respondent in O.A. No. 203/2002.
 Mr. Parmendra Bohra, counsel for respondent No. 4 in OA 232/2002.

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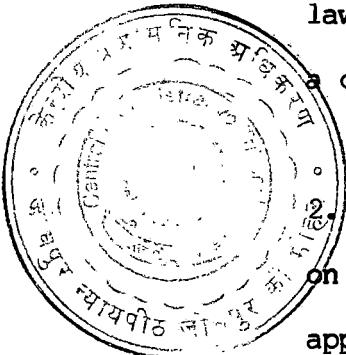
CORAM :

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

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ORDER
 (Per Mr. J.K. Kaushik)

Shri Jagdish Prasad Sharma and Bholi Rani, have filed O.A. Nos. 203 and 232 of 2002 respectively under Section 19 of the Administrative Tribunals Act, 1985. Both of them have assailed the selection and appointment of Shri Prithvi Raj to the post of Extra Departmental Branch Post Master (for brevity 'EDBPM'), at 14-S Manjiwala vide impugned order dated 6.8.2002 amongst other consequential benefits. Common question of law is involved in both the cases, hence both are being decided through a common order.



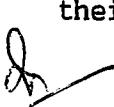
The brief facts of these cases are that a Notification was issued on 11.4.2002 by the office of second respondent for inviting applications for filling one post of EDBPM at 14-S Manjiwala. The post was reserved for Scheduled Tribe category with further condition that in case, three candidates from Scheduled Tribe category do not apply, the said post shall be filled in from General category candidate. Both the applicant as well as one Shri Prithvi Raj (Private Respondent), submitted their application for the same. Applicants in both the O.A.s

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belongs to Other Backward category and General category, respectively, however, Shri Prithvi Raj, belongs to Scheduled Caste category.

3. The further facts of the case are that the authorities violated the conditions mentioned in the advertisement and appointed one Shri Prithvi Raj (SC). There has been infraction of Articles 14 and 16 of the Constitution inasmuch as Shri Prithvi Raj does not belong to proper area. The post was required to be filled from amongst the General category.

4. The respondents have contested the case and a detailed reply has been filed on behalf of the official respondents. As per the reply, Shri Jagdish Prasad Sharma, Bholi Rani, applicants in both the OAs and private respondent Shri Prithvi Raj, respectively, have secured 38%, 45% and 41.45% marks in secondary examination. It has been averred that minimum number of three eligible candidates belonging to Scheduled Tribe category were not available and, therefore, the vacancy was treated as reserved for Scheduled Caste category as per the policy in vogue, i.e., Annexure R/1 to O.A. No. 232/2002. At the time of selection Shri Prithvi Raj, was residing in Village 14-S Manjiwala, hence, he fulfilled the requisite eligibility conditions for appointment to the post in question. Bholi Rani did not send her complete papers regarding income and property by the last date of submission of application, i.e., 11.5.2002. Her application was also not in proper form, therefore, her candidature was not considered. None of the applicants have got the highest marks in selection and they cannot get any effective relief in their respective O.A. even if, their contentions are accepted. The



Original Application may be dismissed with costs.

5. With the consent of learned counsel for the parties, we have heard the elaborate arguments for final disposal at the admission stage and have carefully perused the pleadings and records of these cases.

6. The learned counsel for the parties have reiterated the fact and grounds mentioned in their respective pleadings. There is absolutely no quarrel regarding the facts of these cases. However, certain legal issues of seminal significance are involved in these cases which are as under :-

- (a) What is the principle of making selection to the post of EDBPM
- (b) Whether a reserved post meant for a particular community can be exchanged/filled from other reserved category candidate.
- (c) What is the role of income and property in case of selection to the said post.

Now, we advert to examine these issues in seriatum.

7. As regards the Issue (a) is concerned, it is now settled that selection to the post of EDBPM is to be made strictly on the basis of marks obtained in Secondary examinations. This proposition of law is laid down by the various Benches of the Tribunal, e.g., the judgements of Madras Bench in P. Josephline Amodha Vs. Union of India and Ors. 2000 (2) ATJ 329 and N. Shanmugashndari Vs. Union of India and Ors. 2000



(2) ATJ 329 as well as by Jaipur Bench of this Tribunal in O.A. No. 106/2000 in Bhanwari Lal Jangid Vs. Union of India and Ors. decided on 3.4.2002 in which one of us (i.e. J.K.Kaushik), was a Member, wherein, it has been held that the selection in the case of ED Agents has to be held strictly on the basis of marks obtained in the matriculation examination by the candidates and this is the condition precedent.

8. As regards the Issue No. (b), the policy of reservation (R-I), does not say anything regarding filling up a reserved post meant for a particular community from the candidate of other community in case the sufficient number of candidates belonging to a particular category are not available. The learned counsel for the respondents have not been able to pin-point any such rule regarding reservation and we are unable to subscribe with his contentions. There is, however, a specific rule of exchange of vacancies and a reserve post can be filled-up from other community only if the same remains unfilled for three recruitment years (which is not the case here), and it is laid down in O.M. dated 25.3.1970. An extract of relevant portion is reproduced as under :-



"Exchange of vacancies between Scheduled Castes and Scheduled Tribes in the last year to which the reserved vacancies are carried forward.

The question of utilisation of vacancies reserved for Scheduled Castes, in favour of Scheduled Tribes and vice versa has also been considered by Government, and it has been decided in modification of the orders contained in this Ministry's O.M. No. 1/7/62-SCT (I), dated 24th September, 1962 that while vacancies reserved for Scheduled Castes and Scheduled Tribes may continue to be treated as reserved for the respective community only, Scheduled Tribes candidates may also be considered for appointment against a vacancy reserved for Scheduled Castes candidates where such a vacancy could not be filled by a Scheduled Caste candidate even in the third year to which the

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vacancy is carried forward. While advertising or notifying a vacancy which has been carried forward to the third year, it should therefore be made clear in the advertisement/ requisition that while vacancy is reserved for Scheduled Castes, Scheduled Tribes candidates would also be eligible for consideration in the event of non availability of suitable Scheduled Caste candidates. This arrangement will likewise apply also in the case of vacancies reserved for Scheduled Tribes."

Thus, the action of filling the post in question from a candidate belonging to Scheduled Caste category is not in consonance with the rules and the impugned order is, therefore, illegal and inoperative deserving quashment.

9. As regards the Issue (c), the matter regarding possessing of adequate means of livelihood in terms of the Circular dated 6.12.1993 (Annex.R/2) of the Department is concerned, it is neither an absolute condition nor a preferential condition required to be considered for the post of EDBPM and this proposition of law has been propounded by the Full Bench of the Tribunal sitting at Bangalore in O.A. No. 1792 of 2000 H. Lakshmana Vs. Superintendent of Post Offices and Anr. vide judgement dated 2.12.2002 and, therefore, the issue does not remain res integra.

10. Applying the proposition of law laid down in the aforesaid judgements, it can be safely concluded that respondents have not followed the correct procedure and the selection/appointment of Shri Prithvi Raj on the post of EDBPM, 14-S Manjiwala, is illegal and thus inoperative and the impugned order cannot be upheld.

11. In the premises, the O.As have force. The impugned order dated 6.8.2002 by which Shri Prithvi Raj (Private Respondent) in both the OAs



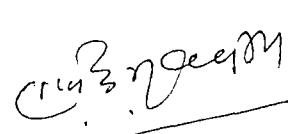
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has been appointed, is declared as illegal and inoperative and the same stands quashed. The respondents are directed to review the selection and make appointment to the post of EDBPM at 14-S Manjiwala, strictly on the basis of merit to be prepared as per the marks obtained in the Secondary Examination as per rules and the law laid down in the aforesaid paras of this order. This exercise shall be done within a period of one month from the date of receipt of a copy of this order. The O.As stand disposed of accordingly. However, there shall be no order as to costs.


J.K. Kaushik

(J.K.Kaushik)
Judl.Member

TRM


(R.K.Upadhyaya)

Adm.Member

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Part II and III destroyed
in my presence on 23.3.09
under the supervision of
section officer (J) as per
order dated 13.1.2009

Section officer (Record)

Copy
Dated
15/03/09
2/16

Recd
03/03/09