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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 51/2004

Date of decision: 15.07.2005.

Hon'ble Mr. J K Kaushik, Judicial Member.

Hon'ble Mr. G.R.Patwardhan, Administrative Member.

Hanuman Singh Bhakar, S/o Shri Aasu Ram by caste Bhakar, r/o
VPO Bethwasia, Tehsil Osian, Distt. Jodhpur.

Applicant.

Rep. By Mr. Nitin Trivedi : Counsel for the applicant.

VERSUS

1. Union of India, through the Secretary to the Government, Ministry of Communications, Dak Bhawan, New Delhi.
2. The Post Master General, Department of Posts, Jodhpur.
3. The Senior Superintendent of Post Offices, Main Post Office, Jodhpur, Division, Jodhpur.
4. The Inspector of Post Offices, Pokran Sub Division, Pokran, Dist. Jaisalmer.
5. Shri Om Prakash Bhadu, S/o Shri Chetan Ram Bhadu, r/o and Vill. Pandit Ji Ki Dhani, Post Bethwasia, Tehsil Osian, Dist. Jodhpur.

Respondents.

Rep. By Vinit Mathur : Counsel for respondents 1 to 4

None present for the respondents No.5

ORDER.

Per Mr. J K Kaushik, Judicial Member.

Shri Hanuman Singh Bhakar has inter alia challenged the advertisement dated 15.12.2003 (Annex. A/1) whereby Respondent No. 5 has been selected and has sought for quashing the said notification with a direction to the official respondents to consider his candidature in pursuance to the advertisement 21/24.02.2003 (Annex. A/5) amongst other reliefs.





2. With the consent of the learned counsel for both the parties and the pleadings being complete, we have heard the arguments advanced for final disposal in this case.

3. The material facts relating to the filing of this case as borne out from the pleadings of the parties are that the applicant is a resident of Village Bethwasia. He has applied for appointment to the post of Gramin Dak Sevak Branch Post Master Bethwasia sub Post Office vide application dated 12.11.2002. He was given charge of the said post on 18.11.2002. He discharged his duties quite satisfactorily without any complaint. In the month of February 2003, a notification was issued calling for applications for filling up the said post by fixing 10.03.2003, as last date for submission of applications. The said advertisement (Annex. A/5) contains certain conditions regarding bona fide resident of a particular village, property in the individuals name and person should be able to provide space for postal operations. In response to the said advertisement, the applicant has applied for the same. In the month of November 2003, the charge of the said post ^{was} taken over from the applicant and handed over to one Shri Mangey Lal vide certificate dated 27.11.2003. Thereafter, without canceling the earlier notification, another notification dated 15.12.2003(Annex. A/1) was issued which also contains certain conditions as mentioned in the earlier notification. The applicant again applied for the said post. One Shri Om Prakash Bhadu, (Respondent No. 5) has been selected for the said post and the formal order of appointment was yet to be issued. The Original Application has been



grounded on diverse grounds as mentioned in para 5 and its sub paras.

4. The Official respondents have filed a detailed and exhaustive reply, wherein it has been submitted that the applicant was charge of the said post on a temporary basis. In the meanwhile in pursuance with the direction from the higher authorities, the charge of the said post was ^{to} given ~~one~~ to Shri Mangey Lal, EDMC, till a regular appointment could be made. In the first advertisement issued on 13.11.2002, 7 applications were received but only one candidate was fulfilling the eligibility conditions, the issuance of second notification became essential since there should be at least three candidates to be considered for selection. Similar is the position again, whereby another notification came to be issued. It is only in response to notification dated 25.12.2003, 11 candidates had applied for the same and the person who got the highest mark was selected and had been given appointment. The applicant had secured only 54% marks and therefore he did not come within the merit. The grounds raised in the O.A have generally been denied. The same is followed by a rejoinder filed on behalf of the applicant, wherein it has been mentioned that there is inconsistency in the conditions mentioned in the various notifications. It has been averred that in response to the second advertisement though several applications were received only one candidate fulfilled the eligibility conditions and hence a fresh advertisement was issued changing the conditions.



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5. Both the learned counsel have reiterated their facts and grounds mentioned in their respective pleadings as noticed above. The learned counsel for the applicant has submitted that though the applicant was fully eligible and fulfilled all the requisite conditions his candidature was not considered when the second notification was issued. The whole exercise has been done again to deprive the applicant from selection and appointment. He has also submitted that the various judgments relied on by the respondents are subsequent development wherein it has been held that selection is required to be based only on the basis of marks obtained in the matriculation examination and the same was not the condition at the relevant point of time. He has submitted that on the basis of second notification, the second notification, the candidature of the applicant ought to have been considered.



6. Per contra, the learned counsel for the respondents have made clean breast of the complete factual and legal aspects. He has been quite fair in making available the relevant records for our perusal. From the records it is revealed that seven persons had applied in pursuance to the second notification and only one candidate was fulfilling all the requisite conditions it has been considered expedient to issue a fresh notification. As per the fresh notification, the respondent No. 5 was found to be more meritorious and therefore he has been selected.

7. We have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the

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matter is concerned there is no dispute that the applicant has secured only 54% of marks, whereas the respondent No. 5 has secured 74%. Incidentally, we also find that respondent No. 5 had also applied in pursuance to the second notification and he was placed at Sl. No. 1. Keeping aside the legal aspect of the matter which we shall deal in the subsequent paras, factually we find that the respondents ought to have concluded the selection in pursuance of the second notification itself and there was no necessity for resorting to the issuance of third notification. It is for the reason that the selection should be based on the marks obtained in the matriculation examination, which is a condition precedent and all other conditions relating to property, providing space for postal operations etc are conditions subsequent. However, the other conditions have now ~~been~~ withered away. We also find that if the selection is to be made on the basis of second notification still respondent No. 5 would have got the appointment and therefore the applicant cannot contend that there is procedural irregularity if at all any, is committed by the official respondents. Further the position does not get improved since in both the selections; respondent No. 5 being the most meritorious candidate. In this view of the matter, the action of the respondents cannot be faulted and their action rather well is in consonance with the rules and it does not call for any interference from this bench of the Tribunal.



8. 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

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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 therein is to be placed at merit No. 1 and offered the appointment and that is the condition precedent. Other conditions are only subsequent and can be fulfilled within a reasonable period. The law has moved a little further and the condition of having property either in the name of particular individual or as an ancestral or in the name of his guardian etc. has been withered away and impliedly struck down being in contravention with the equality clause as laid down under Article 14 & 16 of the Constitution of India. Similar is the position regarding the residence. It has been held that there can be no reasonable classification or discrimination on the basis of property, income or residence as per the Article 16 of the Constitution of India. The law is crystallized and now the only requirement is that one should be able to provide premises suitable for carrying out postal operations in the particular village and nothing else. 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) 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 respondent No. 5 who has secured highest percentage of marks in the selection, we find that no indulgence of this Tribunal is warranted and the action of the respondents is well in consonance with the rules in force and does have our concurrence.



9. The result is rather very unfortunate, but we are left with no option except to dismiss this Original Application, which we do so accordingly but without any order as to costs.

— S R —

G.R. Patwardhan

Administrative Member

J K Kaushik

J K Kaushik

Judicial Member

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10/2/13

Part II and III destroyed
in my presence on 10/2/14
under the supervision of
section officer () as per
order dated 12/12/13

Section officer (Record)

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