

YK

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

ORIGINAL APPLICATION NO.296/2006

Date of Order: 31 March, 2010

**Hon'ble Mr. Justice Syed Md. Mahfooz Alam, Judicial Member
Hon'ble Mr. V.K. Kapoor, Administrative Member.**

Heera Ram S/o Shri Nimba Ram, aged about 19 years, resident of village & post Pananyon ka tala (Taratra), Tehsil Chohatan, District-Barmer (Rajasthan).

: Applicant.

Mr. B. Khan : Counsel for a the applicant.

Versus

1. Union of India, through its Secretary to Govt of India, Ministry of Communication, Deptt of Post, Dak Bhawan, New Delhi.
2. The Post Master General, Western Region, Jodhpur (Raj.).
3. Superintendent of Post Office, Head Post Office, Barmer (Raj.).
4. Shri Surender Singh S/o Shri Amba Ram, GDS ED BPM Bud Jaitmal (Sanawada) District Barmer (Rajasthan).

: Respondents.

Mr. M. Godara, proxy counsel for

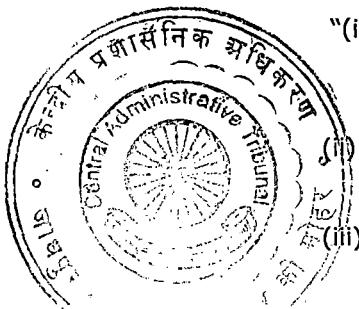
Mr. Vinit Mathur : Counsel for respondents No.1 to 3

Mr. K.R. Choudhary : Counsel for respondent No.4.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Shri Heera Ram has filed the present OA against the orders of the respondent seeking relief on the grounds that are as follows:-

- 
- "(i) That the non-consideration of applicant for the selection to the post of GDS EDBPM on the ground of reason mention in Annexure-A/1 dated 01.03.2006 may be declared illegal and same may be quashed.
That the selection/appointment on the post of GDS EDBPM may be declared illegal and same may be quashed.
 - (ii) That the respondent may be further directed to consider the candidature of applicant for selection on the post of GDS EDBPM as per Rule by treating his application form well within time.
 - (iv) That any other order(s) or direction may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
 - (v) That the cost of this original application may also be awarded to the applicant."

YK

2. The facts of the case in brief is that the respondent (1 to 3) department invited applications vide notification dt 29.8.2005, for one post reserved for OBC category, of GDS EDBPM at Bud Jaitmal (Snavada) through respdt 4, last date for submission of applications was fixed for 29.9.2005 prescribing certain conditions. In all, ten (10) applications were received in prescribed time; one application was from the applicant received on 30.5.2010. Applicant's version is that there was strike call on 29.9.2005 in the post office of Barmer division, thus with all his efforts, registry could not be made of his application to the concerned office (Ann.A-3). Thus, applicant sent his application through registered post on 30.9.2005, received by the respondent 3 office that very day. Applicant has passed matriculate examination with 73% marks (Ann.A-2) whereas respondent 4 received comparatively less marks in the secondary examination (Ann.A-2,Ann.A-4). On submitting representation, the applicant was informed by official respondents vide letter dt 01.3.2006 that his application was received one day late on 30.9.2005, thus his case was not considered for selection. As per applicant, he was denied opportunity of being considered for public employment without any cogent or bonafide reason. The applicant has prayed to declare the order dt 01.3.2006 (Ann.A-1) illegal and to quash the same and set aside the selection/appointment on GDS EDBPM post. In the process, applicant has requested to consider his case for the said post.

3(a). The respondents 1 to 3 (official respondents) in reply have stated that applications were invited for the post of GDS ED BPM vide notification dt 29.8.2005. These applications were invited till 29.9.2005; the post was reserved for OBC category. In all, 10 applications were received by post & from district employment

Upar



exchange within scheduled time, one application was received from the applicant one day late i.e. on 30.9.2005. The applicant should have applied before the prescribed date, vide this notification 30 days' time was given to submit applications. The postal strike was in Barmer city only, but other post offices were open that day. The applicant should not have waited till last date; thus negligence on his part was apparent. The respondent 4 was selected being highest in merit list out of applications received within prescribed time frame. The official respondents have requested to dismiss the present OA as no *prima facie* case is made in applicant's favour.

3(b). The respondent 4 has narrated facts in reply that the applicant should have no grievance as he did not submit application within time. Applicant has given no proof to have posted the application from Barmer post office on 29.9.2005. Out of applications received, respondent 4 was rightly selected for the said post. No case is made out in applicant's favour, thus same deserves to be rejected.

3(c). In rejoinder, applicant has refuted details submitted by respdts. In advertisement dt 29.8.2005, it is mentioned that applications would be accepted by registered/speed post. There was no fault on his part as staff of respondent deptt was on strike, he could not post letter on 29.9.2005. The application posted by him on 30.9.2005 was required to be considered by official respdt authority. He is not supposed to suffer due to strike of official respondent staff.

4(a). Learned counsel for official respondents have contended that vide notification dt 29.8.2005, applications were invited from OBC category for the post of GDS ED BPM for Barmer post office (Ann.A-5); applications were invited by speed/registered post till 29.9.2005.



The applicant went to SPO Barmer, there was strike on 29.9.2005, which is supported by Ann.A-3; he with his best efforts could not send his application on 29.9.2005. Then he sent the application on 30.9.2005 to be received at SPO, Barmer the same day. He went to that very post office at Barmer so that the application was received on the same day i.e. 29.9.2005 itself. After looking to applicant's representation, in view of strike, his case should have been taken into consideration. The applicant obtained high marks in Higher Secondary examination, whereas educational merit of respondent 4 was relatively low. The official respondents gave reply on 01.3.2006 that applicant's case could not be considered as his application was received after 29.9.2005, last date of receiving applications (Ann.A1).

For no fault on his part, the applicant is being deprived of his right to get employment which is against the principle of natural justice.

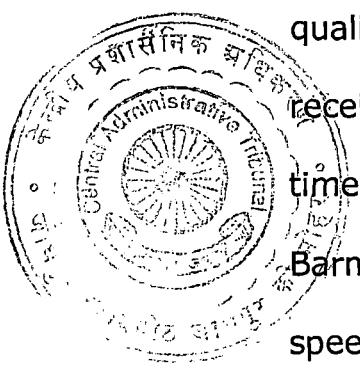
4(b). Learned counsel for respondents 1,2,3 in his arguments has stated that the name of respondent 4 was rightly considered; after notification/advertisement, the applicant did not apply. The applicant never bothered to send application by speed/registered post within the prescribed time. There was strike only at SPO Barmer, other post offices were open in district Barmer on 29.9.2005. The applications were to be sent by registered/speed post so as to reach respondent 3 office latest by 29.9.2005 as per advertisement. The respondent 4 joined on this post after selection on 08.02.2006, the applicant came to know about selection/posting of respondent 4, there was no fault of respondent 4 to have joined the said post. The action of official respondents is justified in selecting respondent 4 as per merit. Due to his own fault, his candidature was not considered for the said post. Thus the present OA filed by the applicant deserves to be dismissed.

LYNN

25

4(c). Learned counsel for respondent 4 in arguments has stated that the application sent by the applicant was late by one day, i.e. on 30.9.2005. In the selection process, respondent 4 being high in merit was selected on said post, where he gave his joining on 08.02.2006. The applicant after coming to know of selection/posting on 08.02.2006, gave representation to the official respondents.

5. The present case pertains to Supdt of post office, Barmer (respondent 3), notification was issued for filling up one post of GDS ED BPM, reserved for OBC. By advertisement issued on 29.8.2005, the applications were invited upto 29.9.2005, minimum educational qualification was fixed upto 10th class pass. In all, 10 applications were received by post & from district employment exchange in prescribed time schedule i.e. upto 29.9.2005. The applicant went to post office, Barmer on 29.9.2005 to send his application by the registered or speed post; but on that day 29 Sept, 2005, there was strike of postal employees at PO, Barmer. The applicant has appended the copy of order dt 05.12.2005 that throws light on strike by postal employees at PO, Barmer (Ann.A-3). As per applicant, he sent his application by post on the very next day i.e. on 30.9.2005. This application was received by respondent 3 the same day. The official respondents have accepted the fact that there was strike on 29.9.2005 at head post office, Barmer only, but at other places in the district, the postal staff was working. But being last day for submission of applications, the applicant chose post office, Barmer, so that his application was delivered to respondent 3 the same day. Due to laxity and indecision on applicant's part for 29 days, the application could not be submitted by him in the prescribed time scheduled.



your

YK

6. The respondents have contended that 30 days' time was given to the candidates to submit their applications. In the advertisement dt 29.8.2005, it was clearly highlighted that last date for submitting applications was 29.9.2005. In fact, a sufficient time was given to the candidates to file applications before the prescribed date. Applicant should have filed the application well within the stipulated time frame without much waiting for last date. The applicant himself is at fault, he cannot shift blame on others' shoulders for inaction and laxity on his part. It is not necessary that a registered letter booked at post office, Barmer is delivered the same day; in normal conditions, 12 to 24 hours' gap is required for delivery of the registered or speed post.

The contentions put forth by the applicant cannot be given undue weight in the light of official behaviour & practical problems of routine nature. The applicant was not awake to his own right & future course of action, thus inaction on his part for a major period of 29 days proved expensive for him. There was a strike called by employees of post office, Barmer that added to his problems. In absence of his participation in the prescribed time schedule, the respondent 4 was selected for the said post being high in merit of the candidates who applied as per advertisement dt 29.8.2005. It is an undisputed fact that the applicant has scored 73% marks in higher secondary school examination. Because of his sheer negligence, his application did not reach the office of respondent 3 by 29.9.2005, the respondent 4 was selected. Because of strike at post office, Barmer, the onus cannot be shifted on the official respdts. This is quite apparent from the language of advertisement that applications for said post would be accepted till 29.9.2005 only. The action of official respondents in not extending the last date of receipt of applications cannot be termed as

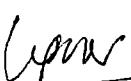
Copy

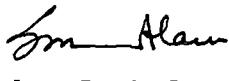


unreasonable or arbitrary. These applications were to be sent by the registered/speed post, as per language/conditions of advertisement dt.29.8.2005, the applications were to be sent to the office of respondent 3 by speed post or registered post only.

7. During the course of arguments, learned counsel for respdt 4 submitted that the respondent 4 joined the duty on the post in question on 08.02.2006. The applicant represented to the official respdts; reply was given to him vide letter dt 01.3.2006 (Ann.A-1). In other words, the application being received late, i.e. after 29.9.2005, thus applicant's case was not considered. The application sent by the applicant, was received on 30.9.2005, one day late, thus no wrong was committed by the official respondents in not considering his application. Thus, no prima facie case is made out in applicant's favour, the official respondents have committed no error or illegality in making selection/appointment of respondent 4 on the said post. The respondent was selected & given an appointment on the said post for no fault of his own. Thus, no case is made out as regards infringement of applicant's fundamental rights or violation of the principle of natural justice. The action of the official respondents' is proper & justified in the prevailing circumstances.

8. In view of the observations/deliberations made above, no interference is called for in the order dt 01.3.2006. Resultantly, the present OA is dismissed with no order as to costs.


[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

दिनांक १८/८/८६ के आदेशानुसार
मेरी उपस्थिति में दिनांक १८/८/८६
को भाष-११ वा १२ वां निम्न भए ।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकारी
जोधपुर न्यायपीठ, जोधपुर

614