

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**LUCKNOW BENCH**

Original Application No.195/2010  
This the 5<sup>th</sup> day of October, 2012

**Hon'ble Sri Justice Alok Kumar Singh, Member (J)**  
**Hon'ble Sri D.C. Lakha, Member (A)**

Radhey Krishna Tripathi, aged about 21 years, son of Sri Bhrigu Narain Tripathi, resident of Village Purey Basanti, Post Office Wazirganj, Distract Gonda.

**...Applicant.**

**By Advocate: Sri Anand Kumar Tripathi.**

**Versus.**

1. Union of India, through the Secretary, Government of India, Ministry of Posts and Communication, Department of Posts, New Delhi.
2. The Chief Post Master General, Gorakhpur Circle, Gorakhpur.
3. The Chief Post Master, Gonda.
4. The Sub Divisional Inspector of Post Offices, Nawabganj Sub Division, Gonda.
5. Superintendent of Post Offices, Gonda.
6. Sub Post Master, Naipur Post Office, Nawabganj, Gonda.
7. Sub Post Master, Chandapur Post Office, Nawabganj, Gonda.
8. The District Employment Officer, Gonda.
9. Sri Malkhan Singh, son of Sri Chittra Bahal Singh, resident of Village and Post Office Naipur, (Chandapur), Nawabganj, Gonda.

**... Respondents.**

**By advocate: Sri S.P. Singh.**

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**(Reserved on 03.10.2012)**

**ORDER**

**By Hon'ble Sri Justice Alok Kumar Singh, Member (J)**

The O.A. has been filed for the following relief (s);-

**“8.01** To issue an order or direction quashing the impugned order dated 18.02.2010 as communicated by the respondent no: vide his letter dated 05.03.2010 contained in Annexure-1;

**8.02.** To issue an order or direction commanding the respondent no.4 to stop the employment of the respondent no.9.

**8.03.** To issue an appropriate order commanding the respondent no.4 to issue the order of appointment of the applicant on the basis of the recommendation made by the District Employment Exchange, Gonda, and the satisfactory report of the concerned educational authority in respect of his documents;

**8.04.** To issue such other order or orders as the Hon'ble Tribunal may deem just and proper under the facts and circumstances of the case and

**8.05.** To allow this Original Application with substantial costs to the applicant.”

**2.** Briefly stated, the case of the applicant is that in response to the requisition sent by Respondent No.4 to the District Employment Exchange, Gonda, Respondent No.8, names of five candidates were sponsored for the post of Dak Runner in the Post Office, Nawabganj, Postal Division, Gonda. The name of applicant was at Serial No.3 but, he was not selected by the Respondent No.4. Under Right to Information Act, he was informed that Respondent No.9 has already been appointed on the post in question on 18.02.2010. The name of said Respondent No.9, Malkhan Singh was neither sponsored by the Employment Exchange nor his documents were verified

in the prescribed manner. Sri Malkhan Singh is a nephew of Gram Pradhan and near relative of Appointing Authority and is also Dealer of Government Fair Price Shop. Barring the requisition from District Employment Exchange, Gonda no notification regarding post in question was made by the Respondent No.4 in accordance with the relevant instructions. The applicant has made two representations dated 22.02.2010 and 16.03.2010 to the Respondent No.2 against the impugned selection and appointment of Respondent No.9. But, he did not receive any response. Hence, this O.A.

3. The official respondents of the postal department have contested the O.A. by filing a detailed Counter Affidavit sworn by the then Superintendent of Post Offices, District, Gonda saying that post of G.D.S.M.C. (Gramin Dal Sewak Mail Carrier) was advertised by the SDI (P), Nawabganj, District Gonda (Appointment Authority) by means of advertisement dated 04.12.2009 inviting applications directly from the willing candidates. Simultaneously, the request was also made to District Employment Officer, Gonda to sponsor the names of three to five candidates for the post in question. Four applications were received in pursuance of the advertisement-dated 04.12.2009 and names of five persons were sponsored by the Employment Exchange, Gonda. The applications were invited from the sponsored candidates to be filed by 19.01.2010. Out of five sponsored candidates only four applications were received. Thus, in all the applications of eight persons were received. Their names and details are as under;

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1	Shri Akhilesh Shukla	307/600	51-16%	Marks in High School
2	Shri Nahar Singh	287/600	47-83%	-do-
3	Shri Malkhan Singh	312/600	52%	-do-
4	Shri Nirbhai Singh	274-600	45-66%	-do-
5	Shri Mohan Lal	263/600	43-83%	-do-
6	Shri Dileep Kumar Singh	257-600	42-83%	-do-
7	Shri Radhey Krishna Tiwari (Applicant)	272/600	45-33%	-do-
8	Shri Dileep Kumar Goswami	240-600	40-00%	-do-

**4.** For the appointment on the above post in question the minimum educational qualification is Class VIII standard. Preference could have been given to the candidates who possess matriculation qualification. All the five candidates mentioned in the above chart were having matriculation and therefore on the basis of merit, the applications of top five candidates were verified by the department. After verification Sri Malkhan Singh, who secured highest marks in matriculation amongst the candidates and also fulfilled other eligibility criteria and conditions for selection, was appointed on the said post vide order dated 18.2.2010. In reply to the representations of the applicant, he was duly informed by letter dated 22.4.2010 and 19.5.2010.

**5.** A Counter Affidavit has also been filed by the Respondent No.8, the District Employment Officer, Gonda saying that in response to the requisition, five names were sponsored.

**6.** A Rejoinder Affidavit has also been filed by the applicant saying that Notification was issued only for the purpose of record and not for the public information, which ought to have been made by publication in any popular newspaper having wide circulation in the area

concerned. Besides, the pleadings contained in the O.A. were also reiterated.

**7.** We have heard the learned counsel for the parties and perused the entire material on record.

**8.** At the outset, it is worthwhile to mention that there is no Act or Recruitment Rules for the selection for the post in question. There are only relevant instructions, which have been issued from time to time. It is needless to say when there are no statutory rules, the field cannot be left unguided and the Government may issue relevant instructions from time to time. Accordingly, here also, relevant instructions have been issued from time to time.

**9.** There is no dispute regarding main eligibility criteria i.e. minimum educational qualification of VIII Standard and availability of residence in village/delivery jurisdiction of E.D. Post Office before appointment. But the selection/appointment of R-9 has not been challenged on either of these grounds. There is also no dispute with regard to the fact that in response to the requisition sent by the postal department, the Employment Exchange, Gonda sent a list of five candidates. All of them were called to submit their applications. In response thereof only four persons including the applicant had submitted their applications.

**10.** Initially, as per relevant instructions the names were obtained from the Employment Exchange by sending requisition by the postal department. This procedure came up for Judicial scrutiny before the

Hon'ble Supreme Court in the matter of Excise Superintendent, Malkapatnama, Krishna District, A.P. Vs. K.B.N. Visweswara Rao & Others [1996 (6) Scale-670] in which the Apex Court held that;

“ It should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange and Employment Exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or Undertaking or Establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and Employment News Bulletins and then consider the cases of all the candidates who have applied.”

**11.** In the context of selection of candidates to work as EDAs, the issue relating to notification of the vacancies to the local Employment Exchanges was further examined in the light of O.M. dated 18.05.1998 of the Ministry of DOPT and it was decided that in respect of all vacancies of EDAs, excluding those where the process of recruitment through Employment Exchange/open advertisement has already commenced, in addition to notifying through the Employment Exchange, the vacancies shall be also notified through public advertisement and the candidates nominated by the Employment Exchange as also those responding through the open advertisement will be considered. It was also decided that since the posts of ED Agents falling vacant are isolated and scattered and publication of the same through newspapers is considered cost prohibitive, the existing method of giving wide publicity by way of public advertisement in this behalf will be continued to be followed. These modified instructions were issued on 19.08.1998 as mentioned in the Swamy's Compilation of

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Service Rules for Postal Gramin Dak Sevak Eleventh Edition on page-122-123. In this backdrop besides asking names from the Employment Exchange, for the post in question, it was also advertised by the SDI (P), Nawabganj, District Gonda (Appointing Authority) vide advertisement dated 04.12.2009 inviting applications directly as has been specifically pleaded and which has not been denied. An Electrostat copy of such notification has also been brought on record as Annexure-CR-1. The copies of this notification have been endorsed to eight places including (1). Gram Pradhan, (2). Incharge Police Station, (3). Branch Post Master, (4). Postmaster Head Post Office, Gonda. (5). Up Dak Pal, Chandapur, (6). Superintendent, Gonda, (7). District Employment Officer, Gonda, (8). Office Notice Board. The only contention of the applicant is that, it ought to have been publicized in a Newspaper having wide circulation of the area. But, as noted above, an option has been given in the modified instructions itself as contained in the above O.M.dated 19.08.1998 issued by Director General (Post), according to which since the posts of ED Agent falling vacant are isolated and scattered and publication of the same through newspapers may be considered cost prohibitive, the existing method of giving wide publicity by way of public advertisement in this behalf will continue to be followed. Accordingly, it has been followed by issuing the above notification. Therefore,we do not find any flaw on this count.Otherwise also this point has no relevance as far as the applicant is concerned, because admittedly his application was duly considered for the selection.It is not his case that for want of publication in newspapers having wide circulation, the applicant could not come to

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know about it or could not apply. In response to above notification four applications were received. Thus, total eight applications were considered (out of the five sponsored candidates from the Employment Exchange naming the applicant at serial no.3 only four candidates had submitted their applications and the remaining four were received from open market). This fact is also not disputed. The names of the eight candidates and their details are as under:-

1	Shri Akhilesh Shukla	307/600	51-16%	Marks in High School
2	Shri Nahar Singh	287/600	47-83%	-do-
3	Shri Malkhan Singh	312/600	52%	-do-
4	Shri Nirbhay Singh	274-600	45-66%	-do-
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8	Shri Dileep Kumar Goswami	240-600	40-00%	-do-

**12.** There also does not appear to be any quarrel on the above details of the candidates. According to relevant instructions in vogue the minimum educational qualification being Class VIII standard, preference could have been given to the candidates who possess matriculation but no weightage for any higher qualification than matriculation qualification could have been given. The papers of top five candidates including the applicant were got verified by the competent authority. In the order of merit, as per information given under Right to Information Act contained in Annexure-1, the following were the top five candidates (i). Malkhan Singh 52 %, (ii). Akhilesh Shukla 51.16%, (iii). Nirbhay

Singh 45.66% and (iv). Radhey Krishna Tiwari (applicant) 45.33%.

**13.** After due verification Sri Malkhan Singh, who secured higher marks in Matriculation amongst the candidates and also fulfilled other eligibility criteria and conditions for selection, was appointed by the SDI (P) vide Memo dated 18.02.2010 on the post in question. As such, we do not find any flaw or embellishment in this regard. The applicant has also made certain allegations of malafides against Appointing Authority. But, he has not arrayed him as one of the respondents by name. Hence those allegations of malafides are meaningless. In para 4.10 of the O.A., it has been said that Respondent No.9, who has been appointed on the post in question is unsuitable for the said appointment because, he is nephew of the Gram Pradhan and a near relative of the Appointing Authority. Firstly, the applicant has not disclosed as to how Respondent No.9 is near relative of the Appointing Authority or nephew of Gram Pradhan and what is the proof. Any material to prove this allegation has not been brought on record. Moreover, it could not be shown that even if the Respondent No.9 is the nephew Gram Pradhan or near relative of Appointing Authority, why he cannot be appointed on the post in question, if he was on the top in the merit and also possessed all the qualifications and eligibility. Besides, it has been also said being a Dealer of Government Fair Price Shop the Respondent No.9 could not have been appointed on the post in question. A photocopy of the 'Ration-Card' issued in favour of applicant on 29.3.2006 has been filed which is placed at Annexure-8. But, firstly,

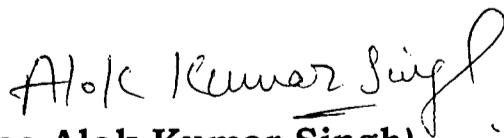
the ink by which word 'KoteDar' has been mentioned appears to be in different ink from the ink in which rest of the entries have been made. Moreover, neither its original was summoned nor it was duly proved. There is also no connecting evidence that the 'Ration-Card' issued in the year 2006 still subsists and Respondent No.9 continues to be 'KoteDar'. Moreover any O.M. or instructions could not be shown prohibiting such person being appointed on the post in question who had been doing or is doing work of 'Kotedar'. Not only that all the above allegations appear to be an afterthought. Because immediately after the appointment of Respondent No.9 on 18.02.2010 the applicant moved representation dated 20.2.2010 followed by another representation dated 10.03.2010 (Annexure-9 and 10). But, in neither of these representations there were any of the aforesaid three-four allegations. It is also wrongly mentioned in the representation dated 10.03.2010 that the person, who has been appointed was having less merit than the applicant. This allegation is against the record as we have already seen that the Respondent No.9 was found to be on the top i.e. at serial no.1 on the basis of merit while the applicant was at serial no.4. In respect of both these representations, it has also been wrongly pleaded in para-4.12 that none of these representations were replied. Reply of this paragraph has been given in para-10 of the counter affidavit according to which the office of the Superintendent of Post Office, District Gonda had duly informed the applicant in response of his representation /application by means of letter dated 22.4.2010. Further, the SDI (P), Nawabganj Sub Division, Gonda had also informed the applicant vide letter dated

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19.05.2010. Reply to this paragraph of counter affidavit has been given in paragraph-8 of the rejoinder affidavit. In this paragraph, the receiving of letter dated 19.05.2010 has been denied. But, this letter dated 19.05.2010 was sent in addition to the main reply dated 22.4.2010, which was sent in respect of his representations. There is no denial in the rejoinder affidavit regarding receiving of the above reply of the respondents dated 22.04.2010 pertaining to his representations. Thus, it is clear that original plea contained in paragraph 4.12 that both of his representations have not been replied with was false and against the record. A litigant should come with clean hands before a Court/ Tribunal. He should not make false pleadings to mislead the Court or Tribunal. This O.A. deserves to be dismissed on this ground itself. However in view of the above discussion, we come to the conclusion that firstly the allegations of malafides cannot be taken into consideration because, the relevant officers/officials have not been arrayed by name. Secondly, the allegations appear to be an afterthought which also could not be proved.

**14.** In the conspectus of the above, we do not find any merit in the case either for quashing of the appointment of Respondent No.9 or giving command to the Respondent No.4 to issue an order of appointment in favour of the applicant. The O.A. is therefore dismissed. No order as to costs.

  
**(D.C. Lakha)**  
**Member (A)**

  
**Justice Alok Kumar Singh** *5.10.12*  
**Member (J)**