

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW**

**Original Application No.247/2010
This the 21st day of May 2012**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)**

Om Prakash Yadav, aged about 53 years, Son of Ram Kishore, Resident of Village and Post Amadarveshpur, District Ambedkar Nagar.

...Applicant.

By Advocate: Sri K.M. Tripathi for Sri P. Mishra.

Versus.

1. Union of India through the Secretary, Postal Department, Central Civil Secretariat, New Delhi.
2. Upper Superintendent of Postal/ Praver Superintendent Postal, Faizabad.
3. Superintendent of Postal, district Ambedkar Nagar.
4. Sub-Divisional Inspector (O) Akbarpur East Sub-Division, Ambedkar Nagar.
5. Smt Shashi Kala W/o Deelip Kumar R/o Village and Post Niba, District-Ambedkar Nagar.

.... Respondents.

By Advocate: Sri S.P. Singh.

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following relief's:-

“(a). The Hon'ble Tribunal may kindly be pleased to quash impugned order dated 26.3.2010 passed by the opposite party no.2 as contained in Annexure No.A-1 to the application.

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(b). The Hon'ble Court may kindly be pleased to quash the Advertisement dated 21.1.2010 together with Corrigendum dated 2.2.2010 so far as it provides reservation to the Scheduled Caste candidates for filling the post of Gramin Dak Sevak Branch Post Master/Dak Pal, Amadarveshpur as contained in Annexure No.A-2 and A-3 to this application.

(c). The Hon'ble Tribunal may also issue direction for any other relief as may deem fit and proper in the interest of the circumstances of the case.

(d). Allow the O.A. with costs."

2. The case of the applicant is that he is permanent resident of Village and Post Officer, Amadarveshpur. As such he was appointed as E.D.S.O.S./ Gram Dak Sevak at rural level sub-post office of Amadarveshpur and continued to work as such for sufficient long period. Meanwhile, one post of G.D.S.B.P.M. at Lakhni patti fell vacant on account of death of regular incumbent on 23.2.2007. The applicant was appointed as acting Branch Post Master/Dak Pal and was given the charge of the said post. Then on 11.07.2007, one Sri Ram Palat Yadav Branch Post Master, Amadarveshpur, retired. In his place applicant was appointed as Branch Post Master/Dak Pal and the charge was given to him vide order dated 29.6.2007. He joined in the afternoon of 11.07.2007. On this post he has continued for almost 3 years without any interruption and as such his services deserve to be regularized on the said post. This post was never reserved for Scheduled Caste. Earlier, it was occupied by Ram Palat Yadav, who was O.B.C. But, the opposite parties have converted the post as reserved for Scheduled Caste in a arbitrary manner. The interest of the applicant is likely to be affected on account of the above arbitrary act of the opposite parties. He therefore, preferred a detailed representation dated 29.1.2010 to

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the Senior Superintendent Postal. When no action was taken by the authorities concerned, he filed O.A.No.65/2010 and sought quashing of the impugned advertisement dated 21.1.2010 and Corrigendum dated 2.2.2010. The O.A. was decided on 18.2.2010 with a direction to the opposite parties to decide the representation within a period of 2 weeks by passing a reasoned and speaking order and till that date the advertisement was kept in abeyance. The opposite parties decided the representation on 26.3.2010 against the applicant which has been impugned in this O.A. In this order no reasons have been disclosed as to on what basis the post has been reserved for Scheduled Caste category.

3. The claim has been contested by filing a detailed Counter Affidavit saying that the process of appointment of G.D.S.B.P.M., Dershpur, Ambedkar Nagar has been started due to retirement of Ram Palat Yadav on 12.7.2007. The relevant advertisement was publicized on 21.7.2010 by the department. But, erroneously the post was shown as unreserved in the first page. However, in the second page, it was shown as reserved for Scheduled Caste. When, it came to the notice, the necessary Corrigendum was issued that the post is reserved for Scheduled Caste. The representation of the applicant dated 25.1.2010 has been disposed of by the respondents in compliance of the order of this Tribunal dated 18.2.2010 passed in O.A.No.65/2010. Feeling aggrieved the applicant has now filed this O.A., which is misconceived and liable to be dismissed. After deciding the representation, the respondents have appointed Smt. Sashi Kala as G.D.S.B.P.M., Anna Derveshpur subject to

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final out come of this O.A. The decision has been taken by the competent authority to reserve the post for Scheduled Caste community after taking into account the less representation of that community. The applicant does not belong to Scheduled Caste community therefore, he is not eligible for the said post.

4. Rejoinder Affidavit has also been filed reiterating the pleadings contained in the O.A.

5. We have heard the learned counsel for the parties and perused the material on record.

6. At the threshold it is significant to mention that in pursuance of the advertisement and Corrigendum in question dated 21.1.2010 and 2.2.2010 respectively, the process has come to its logical end and private respondent no.5 Smt. Shashi Kala has already been appointed on the post in question i.e. G.D.S. Branch Post Office Amadarveshpur, Ramnagar, District Faizabad. Despite service of notice, respondent no.5 has however not turned up. Nevertheless, the official respondents have contested the O.A. by filing the detailed C.A. as mentioned above.

7. Two main reliefs have been sought in this O.A.

8. The first relief is for quashing of Annexure A-1 dated 26.3.2010. We have gone through the entire order carefully. This order has been passed in compliance of this Tribunal's another order dated 18.2.2010 passed in earlier O.A.No.65/2010 filed by this very applicant. From the perusal of this order, it appears that certain points were raised by the applicant of this O.A. in the earlier O.A. in his representation dated 29.1.2010. After dealing with all those points his representation has been rejected vide this impugned order dated 26.3.2010. The first point

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raised by the applicant was that he had been performing duty of G.D.S. in Branch Post Office Lakni Patti w.e.f. March, 2007 as acting Dak Pal. This point has been admitted by the department. But, it has been further mentioned that there are no rules/provisions for regularization of such persons, who had been working as acting Dak Pal for continuously three years. In respect of second point, it is mentioned in this order that the post of Branch Post Master, Amadarvershpur Post Office has fallen vacant on account of retirement of Sri Ram Patal Yadav on 12.7.2007 on attaining the age of 65 years. But, this post could not be filled up on account of several circular issued from time to time by Directorate. Ultimately, in furtherance of Divisional Office letter dated 13.01.2010 after approval, an advertisement was issued on 21.1.2010 for recruitment of Scheduled Caste candidate. In respect of next point, it is mentioned that as far as 80% population of O.B.C. and General is concerned such matter is dealt with by Ministry of Personnel an Postal Directorate from time to time. It cannot be examined by the respondents. In respect of next point, it has been admitted that on several occasions on the post of Dak Pal Lakhni patti and Amadarveshpur work has been done on ad-hoc/ acting basis. In the last, it is mentioned that there is no provision for regularization of the persons, who has been working continuously for the last three years as acting arrangement. On that basis the post in question has been reserved for Scheduled Caste and accordingly, advertisement has been issued.

9. The above order has been passed within the stipulated period and there does not appear to be any

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discrepancy or shortcoming or any other flaw in the above order. The main emphasis of the applicant is against reservation of the post in question upon which he had been working on acting basis for some time. It has been made clear that even if a person works as acting continuously for three years there is no provision for regularization as he wants. During the course of arguments no such rules or provisions could be shown on behalf of the applicant in his favour. Moreover, he has also not sought any regularization in this O.A. As far as keeping the post in question reserved is concerned, it is for the competent authorities i.e. Ministry of Personnel and Postal Directorate to decide as has been mentioned in this order dated 26.3.2010. Nothing could be shown on behalf of the applicant from which it may appear that the competent authorities could not have reserved the post in question for Scheduled Caste candidates. Thus, we do not find any flaw in this order. Hence there is no question of quashing.

10. The second relief is in respect of quashing of the advertisement dated 21.1.2010 together with Corrigendum dated 2.2.2010 so far it provides for reservation of Scheduled Caste candidate for the post in question. In fact this question has also been answered substantially while discussing the first relief above. On behalf of the applicant nothing could be shown on the basis of which the advertisement or Corrigendum may be quashed so far it relates to reservation for Scheduled Caste candidate for the post in question. It has been explained in the counter affidavit as also in the above impugned order dated 26.3.2010 that on account of the then incumbent attaining the age of 65 years and his

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consequent retirement this post had fallen vacant and in furtherance of approval and letter of Divisional Office dated 13.1.2010 the advertisement was publicized. In respect of Corrigendum, it has been clarified that though in the second page the post was shown as reserved for Scheduled cast, but due to inadvertence in the first page, it was shown as un-reserved. Therefore, this mistake was rectified by means of Corrigendum. We do not find any illegality or any other flaw either in advertisement or in the Corrigendum. Moreover, in pursuance of advertisement even the selection process has come to an end and scheduled caste candidate namely, Smt. Shashi Kala W/o Deelip Kumar (Respondent No.5) has already been appointed against which no relief has been sought. We do not find any justification to interfere in the matter.

11. Finally, therefore, in view of the above, this O.A. is deserves to be dismissed accordingly, it is so ordered. No order as to costs.


(S.P. Singh)
Member (A)


Justice Alok Kumar Singh 21.5.12
Member (J)

Amit/-