

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 289 of 2011

This the 26th day of April, 2012

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

Deepak Kumar Dubey, aged about 26 years, S/o Sri Ram Bodh Dubey, r/o Village & Post Udharna, District Ambedkar Nagar.

.....Applicant

By Advocate : Sri V.K. Pandey

Versus.

1. Union of India through Secretary, Post & Telegraph, Government of India, New Delhi.
2. Director Postal Services, Chief Post Master General U.P. Circle, Lucknow.
3. Senior Supdt. of Post Offices, Faizabad Division, Faizabad.
4. Rana Raghvendra Pratap Singh, S/o Sri Paras Nath Singh, Village & Post Jai Singh Mau, District Faizabad.

.....Respondents.

By Advocate : Sri S.P. Singh

ORDER (Oral)

By Justice Alok K Singh, Member-J

This O.A. has been filed for the following relief(s):

- (i) That this Hon'ble Tribunal may kindly be pleased to quash the selection of Opposite party no.4 who is selected on the post of Branch Post Master, Udharana, District Ambedkar Nagar.
- (ii) That this Hon'ble Tribunal may also issue a direction that the opposite party no.2 to selected the legal candidates who fulfill all the requisite qualifications and conditions.
- (iii) That any other order or direction which this Hon'ble Tribunal may deem just and proper under the circumstances of the case be also passed.
- (iv) Allow this application with costs."

2. The case of the applicant is that pursuant to advertisement dated 16.7.2010 issued by Opposite party no.2 for appointment on the post of Gramin Dak Sevak Branch Post

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Master, Udharna, District Ambedkar Nagar, the applicant also applied alongwith other candidates. It is further said that a EDSPM must be permanent resident of the village where the post office is located. The applicant has a house in the above village. Though the Opposite party no.4 did not have any permanent residence in the village in question, still he has been given appointment by the official respondents. Hence this O.A.

3. The O.A. has been contested by the official respondents by filing a detailed Counter Reply by saying that the applicant had participated in the selection process without any objection. Unfortunately, he failed to secure any position within first five candidates. It is also pleaded that as per relevant instructions issued from time to time and particularly as per instructions dated 6.12.1993 (Annexure SCA-2), the Board had decided that in view of the judgment of CAT while making selections for appointment to ED posts, permanent residence in the village/delivery jurisdiction of the ED Post office has not to be insisted upon as pre-condition for appointment. Nevertheless, it has to be laid down as a condition of appointment that any candidate who is selected, must before appointment to the post take up his residence in the village/delivery jurisdiction of the ED Post Office, as the case may be, and the respondent no.4 has been appointed after fulfilling this condition.

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

5. At the threshold, it is worthy to mention that there is no Act or Recruitment rule for the selection for the post, in question. Infact there are only relevant instructions which have been issued from time to time. If there are no statutory enactments or rules, then the field cannot be left unoccupied and the Government may issue relevant instructions for the relevant purpose from time to time. Here also, relevant instructions have been issued accordingly. One of such relevant instructions is contained in letter dated 16.12.1993 circulated to all concerned vide covering letter dated 4.2.1994. It bears a caption – 'Income and Property qualifications etc. In para (II) the

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necessary instructions regarding having permanent residence in village are mentioned, which are extracted here-in-below:

“The Board also decided that having regard to the judgment of the CAT, it may be clarified that while making selection for appointment to ED posts, permanent residence in the village/delivery jurisdiction of the ED post office has not to be insisted upon as a pre-condition for appointment. However, it should be laid down as a condition of appointment that any candidate, who is selected must before appointment to the post take up his residence in the village/delivery jurisdiction of the ED Post office as the case may be.”

6. Nothing otherwise has been brought on record from the side of the applicant to show that these instructions were ever modified. Therefore, we do not have any reason for not accepting the specific pleadings contained in Counter Reply and Supplementary Counter Reply of the official respondents in above respect. We are unable to accept the contention made on behalf of the applicant that these instructions pertain to Income and property only.

7. An earlier judgment of co-ordinate Bench of this Tribunal dated 21.2.2002 rendered in O.A. no. 249 of 2001 has also been placed on behalf of respondents before us. In para 4 of this judgment, though the words “Section IV of the Service Rules” have been mentioned but infact there are no Act or Rules for this purpose as already said. But the relevant instructions which had been extracted on the top of page 4 of this judgment are significant, which are as under:

“The person who takes over the agency (ED SPM/EDSPM) must be one who has an adequate means of livelihood. The person selected for the post of EDSPM/EDBPM must be able to offer space to serve as the agency premises for Postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business premises such as shops etc. may be preferred).”

8. The aforesaid instructions are the same which find place at page 103 of Swamy's Compilation of Service Rules for Postal Gramin Dak Sewak, eleventh edition, 2010. At the top of this page of the Book a heading “section IV” is mentioned. Infact the entire material which has been mentioned under this heading relates to various instructions only. As there is no Act or

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Recruitment Rule, the question of any section does not arise. The above heading may have been written to indicate section of the Chapter or compilation of instructions.

9. The aforesaid instructions dated 6.12.1993 have also been referred in the aforesaid judgment in the last of para 5. Therefore, we have no doubt that while making selection of the post in question the permanent residence of the village or the delivery jurisdiction of ED Post Office was not to be insisted upon as pre-condition for appointment. The only requirement was that any candidate, who is selected must before appointment to the post take up or have a residence in the village/delivery jurisdiction. If we go through the advertisement in question dated 16.7.2010 (Annexure SCA-1), then too we find that in para 4 a similar condition is mentioned that prior to appointment, the selected candidate must take up his residence in the village/delivery jurisdiction of ED Post office concerned and it was followed in the present case. Therefore, this point is decided against the applicant.

10. Another limb of argument is that a person who is said to have given his residence on rent to Opposite party no.4, has denied it. In support of this contention an electrostat copy has been filed as Annexure-3. Firstly, it is undated. Secondly, it has not been substantiated and its original has not been produced. More-over, no-where it has been said that it was written by its author in the presence of the applicant. Similarly, it has been no-where said that the applicant is well versed with the hand writing of Sri Uma Shanker Dubey, landlord the alleged author of this letter. Not only that, as pointed out, from other side, the author of this letter has written only Uma Shanker; whereas his full name is Uma Shanker Dubey. This letter has been totally denied by the official respondents as well as private respondent, who has adopted Counter Affidavit of the official respondents. More-over, from the other side a detailed letter written by Sri Uma Shanker Dubey has been brought on record as Annexure CR-2 in which it has been specifically mentioned that he has given his house on rent to Sri Rana Raghvendra Pratap Singh (Opposite party no.4) for the purpose. The boundaries have also

been indicated at the foot of this letter. This letter also bears a date i.e. 15.12.2010. More-over, it is said that the respondent no. 4 has been working for the last more than one year and no complaint has ever been received regarding not having house for running the post office in the village/delivery jurisdiction except one un-dated complaint filed by the applicant himself, which has been enclosed alongwith the O.A. Finally, therefore, this point is also decided against the applicant.

11. Learned counsel for the respondents submits that the above judgment of the co-ordinate Bench of this Tribunal dated 21.2.2002 rendered in O.A. no. 249 of 2001 (Suman Singh Vs. CPMG, Lucknow & Others) has been upheld by the Hon'ble High Court vide judgment and order dated 1.5.2002 dismissing the Writ petition no. 384 (SB) of 2002 after making few clarifications. The SLP filed before Hon'ble Supreme Court has also been dismissed. Therefore, the above line of action adopted by the respondents has attained finality.

12. Learned counsel for the respondents further submits that as would be apparent from the perusal of both the above judgments that according to relevant instructions, the selection was to be made on the basis of merit. But in the present case the name of the applicant does not find place within top five candidates, who were empanelled while respondent no.4 has been selected on the basis of merit. This fact has not been specifically denied by the applicant in Rejoinder Reply. Therefore, this point is also decided against the applicant.

13. Before parting with this case, it may also be added that as per the preposition of law laid down by various Courts once a person has participated in the process of selection without any protest and if he is not selected, then he does not have any right to take a 'U' turn and say that the selection process was not in accordance with law. In the present case also, the applicant had participated in the selection process without any demur. Therefore, now he has no right to question the selection process. Otherwise also, he has no vested right in his favour to challenge the selection/appointment of respondent no.4.

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14. Finally, therefore, in view of the above, O.A. deserves to be and is accordingly dismissed. No costs.

S.P. Singh
26.4.12
(S.P. Singh)
M(A)

Alok Kumar Singh
26.4.12
(Justice Alok K Singh)
M(J)

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