

Central Administrative Tribunal, Lucknow Bench, Lucknow

T.A. No. 28/1992 in O.A. No. 338/1989

This the 27th day of September, 2011

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

Phool Chand Yadav aged about 25 years son of Sri Raja Ram Yadav resident of village and post Office Bhatauta, Tulshi Patti, Tahsil Kadipur, District-Sultanpur.

Applicant

By Advocate: Sri Udaibhan Pandey

Versus

1. Union of India through its Secretary, Ministry of Communication and Postal Department, New Delhi.
2. Director, Postal Services ,Allahabad region, Allahabad.
3. Post Master General, Uttar Pradesh, Lucknow, U.P.
4. Sub Dy. Inspector of Post Offices, Kadipur, Sultanpur.
5. Sri Sant Lal Harijan son of Sri Chirkut Harijan, resident of village and post office Bhatauta, Tulshi Patti, District-Sultanpur.

Respondents

By Advocate: Sri A.P. Usmani of official respondents
Sri Nirmal Pandey for respondent No.5

ORDER

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- a) issue suitable order , direction in the nature of writ of certiorari to quash the illegal appointment of Sri Sant Lai Harijan as extra departmental Mail Peon based on bias and prejudice act and omission of Sri S.P. Prashad, Inspector of Posts Offices.
- b) Issue suitable order or direction in the nature of writ of mandamus commanding the respondent its agents servants and authorities to issue the appointment letter to the applicant after considering the merits of the application and provides all the benefit of the post and pay scale of Extra Departmental Mail Peon as are admissible under rule.
- c) Issue any suitable order or direction which this Hon'ble Tribunal may deems fit and proper in the interest of justice in

favour to the applicant under the facts and circumstances discussed in the proceeding paragraphs of this application.

d) Award of the cost of the application to the applicant

2. This case pertains to an appointment on the post of Extra Departmental Mail Peon (EDMP), village Bhatqauta, Tulshi Patti, Kadipur, District- Sultanpur. It is said that the applicant is eligible and qualified for the aforesaid post as he belongs to the same village and the minimum prescribed qualification is class VIII, while he has passed High School in 11th Division. Besides, he has also experience of six months working of EDMP. He applied along with other persons. Though, his claim was better but ignoring his claim, respondent No. 5, who belongs to Scheduled Caste, was given appointment on the post, though he has been previously convicted by Nyaya Panchayat under Section 379 and 506 of IPC in 1974 (Annexure -4) A complaint was also made by Branch Post Master Kamla Kant against him against his working in December, 1988 (Annexure 2). The Village Pradhan has also made a complaint against him (Annexure -3). The applicant had also preferred a representation against the illegal appointment of respondent No.5 on 24.2.1989 (Annexure -7/6). It is further said that the appointing authority i.e. S.P. Prasad was related to respondent No. 5 (Sant Lal) and belonged to same caste. That, the appointment of respondent No.5 is based on biased and prejudicial act of Sri S.P. Prasad (but Sri S.P. Prasad has not been made a party).

3. The official respondents have contested the O.A. saying that a requisition was sent to employment exchange, Sultanpur vide letter dated 7.11.88 calling for the names of eligible candidates (Annexure CA-1) for the post in question. The Employment Exchange forwarded the names of four candidates vide letter dated 7.12.88 (Annexure CA-2). Thereafter, a notice/ information dated 20.12.88 was sent to each individual instructing them to file an application in the prescribed form along with required certificates (Annexure CR-3). In response to the

aforesaid letter, only three candidates, namely Sant Lal Harijan, Shri Phool Chand Yadav (Petitioner) and Sri Kapil Muni Upadhyaya submitted their applications. According to instruction issued from time to time, the candidate belonging to Scheduled Caste/ Scheduled Tribes has to be given preference. In this connection, a photo stat copy of circular dated 19.2.1981 (CA-4) has been brought on record. It is further said that according to this circular, the post in question was reserved for SC/ST candidate and keeping this in view, Sri Sant Lai Harizan (respondent No. 5) was given appointment vide memo dated 21.2.1989 (CA-5). It is also said that the post in question was at Sl. No. 21 of the roster point which is reserved for SC candidate and therefore, the applicant and one Sri Kapil Muni Upadhyay were not considered fit for appointment and only respondent No.5, being a Scheduled caste, was given the aforesaid appointment. About alleged conviction and punishment of respondent No.5, ignorance has been pleaded. At the same time, it has been said that conduct of respondent No. 5 is still under verification with SSPO, Sultanpur. In respect of roster point No.21, an order dated 1.2.86 issued from the Ministry of Personnel and Administrative Reforms (Annexure No. CA-6) has also been brought on record. In reply to para 6 of the O.A., it has been said that the applicant did not avail the departmental remedy of preferring a representation and therefore, the O.A. should be dismissed on this ground alone.

4. The applicant filed Rejoinder Reply controverting the aforesaid pleadings and saying that in the letter sent to Employment Exchange or in the application forms, it was nowhere mentioned that SC/ST candidate will get preference in any manner in the recruitment process. As such, it is an after thought. About roster point at Sl. No. 21 also nothing was indicated in the aforesaid correspondence. It has been further said that the post in question is the only post in the cadre in

unit and as such their cannot be any reservation as per law laid down by the Hon'ble Apex Court.

5. Respondent No. 5 also filed a counter reply saying that the O.A. was dismissed in 1995 and the applicant filed restoration application after a long gap of six years on 27.3.2001, which was allowed on 2.12.2010 restoring the O.A. to its original number. About his alleged conviction and fine, it has been said that the allegations are fake and incorrect. Similarly, in respect of alleged complaint made by village Pradhan (Annexure -3) it has been said that for the purpose of this O.A., the documents has been cooked. Against the conviction/punishment order, it has been said that it is a forged one. In support of the contention, a notary affidavit of the then elected Sarpanch , namely Ram Pratap Upadhyaya has been brought on record as CA-1 saying that respondent No.5 was never impleaded in case No.3 nor convicted in that matter. It has been further said that the complainant of that case has been shown to be one Satya Dev son of Mata Badal who died in the year 1970 itself and therefore, there is no question of his being complainant in the alleged case No. 3 dated 1.10.1973. The extract of the Family register showing the date of death of Satya Dev has been brought on record as Annexure CA-2. Lastly, it has been said that the applicant has not availed the departmental remedy by presenting a representation and as such the O.A. is liable to be dismissed on this ground alone.

6. The applicant has filed Rejoinder Reply against the above C.A. also.

7. Heard the learned counsel for parties and perused the material on record.

8. The points argued on behalf of the applicant are being discussed in the following manner:-

a) Placing reliance on the case of ***N.T. Devin Katta and others***

Vs. Karnataka Public Service Commission and others reported in

(1990) 3 Supreme Court Cases, 157, it was argued that a person applying in pursuance to an advertisement has a vested right to be considered for the post in question.

In the present case, admittedly there was no advertisement. The names were sought from the Employment Exchange. As per instruction 18 of the Method of Recruitment (Swamy's Postal Gramin Dak Sewak) in view of D.G. P&T letter No. 45-22/71 SPB-I /10 dated 4.9.82, employment of ED Agents are required to be made through employment exchange and for this purpose, a requisition has to be sent to the local employment exchange, which was done in the present case. The point of eligibility, e.g. a permanent resident of the village where the post office is located, adequate means of income from an independent source of livelihood, ability to offer suitable accommodation for the purpose of functioning of the post office are also required to have been mentioned. Some of these points were mentioned in the requisition CA-1. Besides, the educational qualification of VIII class, age from 18 to 65 years etc. were also mentioned. There is no pleading that the requisition was wanting in respect of points of eligibility. The only objection on behalf of the applicant is that it was nowhere mentioned in this requisition that the post is reserved for SC or preference would be given to SC candidate.

b) Reliance has also been placed on the case of Yogesh Kumar and others Vs. Govt. of NCT, Delhi and others reported in 2003

(21) LCD 425. It was held in this case that recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any.

In the matter before us, the only point for consideration is that though in the requisition or in the letter inviting the forms of the three applicants, nowhere it was mentioned that the post is reserved for SC, but now it is being said on behalf of the official respondents that it was reserved for SC.

c) Learned counsel for applicant has also placed reliance on the case of Dr. Anil Chandra Vs. Birbal Sahni Institute of Palaeobotany and others reported in 2003 (21) LCD 396. This case is also on the aforesaid point.

d) Learned counsel for applicant has also placed reliance on the case of Pramod Kumar Chaturvedi Vs. State of U.P. and others reported in 2006 (24) LCD 1364. In this case also, it was held that initially if a post was advertised which was not reserved for SC candidate and subsequently, a decision is taken to convert it as reserved after following interview, then it cannot be sustained.

In the case before us, there was neither any advertisement nor any written examination or interview. As far as reservation is concerned, we would be taking this point hereinafter.

e) Reliance was also placed on behalf of the applicant on the case of Ram Babu Lawaniya Vs. Basic Shiksha Parishad , U.P. Allahabad and others reported in (1995) 2 UPLBEC , 1286. It was held in this case that where there is a single institution in the concerned urban local area and a single post in the cadre of Head Master in the Institution, the post cannot be filled by a reserve category teacher except on the basis of seniority subject to rejection of unfit. Circumstances of the present case are somewhat different and therefore, this case has no application in the strict sense.

f) Learned counsel for the applicant also placed reliance on the case of Dr. M.S. Patil (Dr.) Vs. Gulbarga University and others reported in (2010) 10 Supreme Court Cases, 63. In this case, it was held that concept of adverse possession has no application in service law and a person whose appointment is illegal , who had been keeping post for all these years which lawfully belonged to someone else, could not be tolerated in the eyes of law. As such, the said illegal appointment was quashed after more than 17 years in the interest of

It was a matter of appointment to the post of Reader in an University who continued on the basis of interim order obtained from the Court and also helped by University authority. In the case before us, the facts and circumstances are different.

g) Lastly, reliance was placed on the case of Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and others reported in (1999) 1 UPLBEC (Sum) 20. In this case it was held that appointment on the basis of reservation on single post is violative of Article 14. It was also laid down that until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented.

9. From the side of the respondents, besides filing a copy of letter dated 30.1.1981 from DG, Post and Telegraph laying down the service condition of ED Agents (Annexure CA-4), a copy of O.M. dated 1.2.88 regarding reservation in favour of SC and roster showing Sr. No. 2,6,11, 16, 21 and so on have also been filed. Further for perusal of the Tribunal, a photo stat copy of letter dated 2.3.1972 as contained in the Swamy's book of Postal Gramin Dak Sewak, Method of Recruitment has been filed, which shows that wherever possible, first preference should be given to Scheduled Caste/ Scheduled Tribe candidates, apart from P&T and other Govt. Pensioners for appointment as ED Agents and matriculates should be given preference over those who have passed VIII standard. It is also mentioned in it that the candidates belonging to SC/ST should be given preference over the candidates belonging to other communities even if the latter are educationally better qualified.

10. In the case before us, the applicant and also respondent No. 5 both were matriculate. However, the applicant passed matriculation in

IIInd Division whereas the respondent No.5 passed it in IIIrd Division as is apparent from one of the annexure of C.A. as has been pointed out by the learned counsel for applicant. But concededly, respondent No. 5 was otherwise eligible for the post and therefore, in view of the directions contained in the above letter, there was nothing wrong , if preference was given to respondent No.5 in comparison to the applicant.

11. It is true that neither in the requisition sent to the Employment Exchange nor in the letter by means of which three candidates were asked to submit their forms, it was indicated that the post was reserved for SC or preference would be given to the SC candidates. The pleadings of the respondents may not be aptly and suitably drafted. It appears that the post in question was construed to be reserved in view of one of the O.M./ circular which provided roster and it has been specifically pleaded by official respondents that the post in question was at Sl. No. 21 of the roster which had to go to scheduled caste candidate. This pleading has not been specifically controverted. Therefore, there is no question of converting this post subsequently as reserved. Had this post being reserved from the very beginning, then of-course, the official respondents were required to indicate in the requisition sent to the Employment Exchange and in that case only , names belonging to SC only could have been called for. Further, the contention on behalf of the applicant that it was a single post and therefore, it could not have been reserved, has not been substantiated, from any relevant material on record. It is true that in that particular area/ village, there has to be only one EDMP. But merely on that basis , it cannot be construed that it was a single post in the cadre. More so, no such indication has been given in respect of post of EDMP in village to be treated as single unit in any of the OMs/ circulars, which have been issued from time to time which is meant for postal department, for giving preference to SC candidates and for maintaining roster etc.

12. The allegations of the applicant in respect of alleged conviction of respondent No.5 by Nyaya Panchayat and other complaint also could not be substantiated. The respondent No. 5 in his counter reply has specifically pleaded that the alleged copy of order of Nyaya Panchayat in case No. 3 is fake. In support of it , an extract of family register has been brought on record which shows that alleged complainant of this criminal case had died much before the date which is mentioned in alleged case No. 3 in the order filed by the applicant. Moreover, a notary affidavit has also been brought on record of the then Sarpanch, saying that in no such case, the respondent No. 5 was ever convicted or sentenced and never such a case was registered on the alleged date nor any such order was passed on the alleged date. Similar, is the position in respect of another alleged complaint which is not on the official record of the Post Office as challenged by respondent No.5. As against this, the applicant could not bring on record any positive and reliable material to substantiate his allegation. Therefore, on this ground, or on the ground of giving preference to respondent No.5 on his being a scheduled caste candidate, his appointment cannot be held to be bad in the eyes of law.

13. Learned counsel for respondent No.5 submitted that even if his appointment was bad on account of some infirmity or other thing, but since he has been allowed to work for about more than 20 years, it will be unfair to remove him. In support of his contention, he has placed reliance on the following case laws:-

a) Kamal Nayan Mishra Vs. State of M.P. and others reported in 2010 (1) SCCD 495 (SC)

b) Dr. Prabhu Narain Saxena Vs. The Chancellor ,Agra University, Raj Bhawan, Lucknow and others reported in 2000(18)

c) Konch Degree College, Conch Jalaun and others Vs. Ram Sajwan Shukla and another reported in (1997) 11 Supreme Court Cases, 153.

14. The learned counsel for respondent No. 5 has also contended that the applicant had worked for about 5-6 months in the said post prior to recruitment and probably on account of that reason, he developed some greed coupled with high hopes and when he could not get appointment, then he filed this O.A. With the passage of time, he probably realized that he is not going to achieve any thing and that is why when the case was transferred from Allahabad CAT to this bench in 1992, then he lost interest and did not enquire about this case for several years. Ultimately, it was dismissed in 1995. Even then the applicant did not take any care of this case. Secondly, after a lapse of about 9 years, (the case was transferred from Allahabad to Lucknow in 1992) i.e. in the year 2001, he developed some hope and decided to prosecute this case by moving restoration application in the year 2001. Then again for about 9 years, he did not take much interest. Ultimately it was restored in the year 2010 and thus it is now attaining finality. We find some substance in these contentions. Be that as it may

15. Finally, in view of the above, this O.A. deserves to be and is accordingly dismissed. No order as to costs.

S.P.Singh
27.09.11
(S.P.Singh)

Member (A)

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

HLS/-