

45

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

.... JUNE 1, 1990

Registration O.A. No. 87 of 1989(L)

Prakash Chandra Shukla ... Applicant

vs

Union of India and ors ... Respondents

Hon' Mr P.C. Jain, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr P.C. Jain, A.M.)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant who was a candidate for the post of Extra Departmental Branch Post Master (in short E.D.B.P.M.), village Chahotar, district Rae Bareilly, has assailed the provisional selection and appointment of respondent no.4 to the above post (Annexure-A-5) and has prayed for quashing and setting aside the appointment of respondent no.4 and for a declaration that the applicant is best candidate in comparison to respondent no.4. and accordingly fit to be appointed on the said post.

2. The background of the case is ^{that} in response to an advertisement calling for applications for the post of E.D.B.P.M. village Chahotar, the applicant, respondent No.4 and 4 others had applied. On 12.5.88 the respondent no.2 selected and appointed respondent no.4 in preference to the applicant and 4 others. He assumed charge on 16-6-1988. The applicant challenged the appointment of respondent no.4 and his non selection in O.A. No. 35/88(L). The Tribunal in their

3

order dated 7-10-1988 quashed the selection and appointment of respondent no.4 vide memo dated 12-5-1988, and the Superintendent of Rae Bareilly Division was directed to make a fresh selection confining the selection to the applicant and respondent no.4 only on the basis of the records already produced by them and such other reports as he may find necessary to collect in that behalf on or before 31.12.1988. However, till a fresh selection and appointment was made, respondent no.4 was permitted to function as E.D.B.P.M. of village Chahotar without any right in the fresh selection. The respondents again selected and appointed respondent no.4. The applicant filed a civil contempt petition (C.C.P.) bearing no.1/89(L) which was dismissed on 28-3-1989. An application for review of the orders passed in the C.C.P. was filed by the applicant, which was also dismissed on 18-5-1990.

3. The applicant's case is that the selection and appointment of respondent no.4 is in contravention of rules of recruitment; the order of appointment dated 29.12.1988 is based on un-lawful, malacious and defiant attitude of respondent no.2; is violative of Articles 14, 16 and 311 of the Constitution of India; and that the entire proceeding relating to appointment are illegal, invalid, void, unjust, un-lawful, discriminatory and against the principles of natural justice. It is asserted that the respondent no.4 is not a permanent resident of village Chahotar and also does not have any house or property in his name in that village. It is further contended that the applicant is the best suitable candidate for the appointment

119

as he is the permanent resident and has property and house in his own name in that village.

4. The respondents nos. 1, 2, and 3 in their reply have contested the application. Respondent no. 4 has also filed a separate reply in which he has adopted the reply filed by respondents nos. 1, 2 and 3 and has also asserted that his appointment is fully in accordance with the rules and he was found to be a better candidate in comparison to the applicant.

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

6. In accordance with the provisions of Posts and Telegraphs, Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as the Rules) which inter-alia govern the appointment to the post in question in this application, it is provided that the person who takes over the agency (E.D.S.P.M./ E.D.B.P.M.) must be one who has adequate source of livelihood and that he must be able to offer space to serve as the agency premises for Postal operations. He also must be a permanent resident of the village where the Post Office is located. Annexure-A5, which is a comparative analysis of the eligibility etc. of the applicant and respondent no.4, shows that applications of both these candidates were received within the prescribed time; (ii) both fulfil the age and the educational qualifications; (iii) both were found able to offer suitable space in the village to serve as the agency premises for Postal operations; (iv) and

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both were found fulfilling the required conditions of character, solvancy, honesty etc. As regards income and source of income, it is stated that both the candidates had produced income certificate from the revenue authority and also the source of income and that this aspect on verification by the Departmental Officers was found satisfactory in regard to both the candidates. The respondent no.4 did not have property in his own name in village Chahotar, but he has property in his own name at village Bhojpur (Rae Bareli) and thus he has also source of income. As regards the residence, on the basis of character certificate issued by Gram Pradhan, village Chahotar, voter list of village Chahotar, certificate issued by Tahsildar, Lalganj, xxx, Rae Bareli and the inquiries made by the Departmental Officers, respondent no.4 was found a "native" of village Bhojpur (Rae Bareli), but a permanent resident of village Chahotar, and therefore, the condition of residence was found to be fulfilled by both the candidates. The respondents in their reply have stated that the respondent no.4 has secured 300 marks as against 232 marks secured by the applicant out of a total of 500 marks in the Matriculation examination and, therefore, respondent no.4 was considered a better candidate, the other conditions being met by both of them. It has also been stated that respondent no.4 since his ~~from~~ marriage with Smt Kamla Devi, a permanent resident of village Chahotar, has been a permanent resident of village Chahotar for more than 20 years. In support of this, they have relied on the character certificate and the residence certificate issued by Gram Pradhan village Chahotar, the non resident certificate issued

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by Gram Pradhan Bhojpur, the voters list of 1975, 1979 and of 1988 of village Chahotar in which the respondent no.4 appears respectively at serial numbers 141, 640 and 112. He also offered the building in the name of his wife in which the Post Office Chahotar is now situated.

7. The learned counsel for the applicant vehemently argued that respondent no.4 was not born in village Chahotar and as such, he was not eligible for appointment to this post. He also argued that he has no property in village Chahotar in his own name and as such he does not fulfil the condition of being able to offer space for postal operation in that village. We are not impressed by these arguments. The rules nowhere prescribe that an applicant should be a 'native' of the village where he is to be appointed; what is prescribed is that he should be a resident of that village. The documents placed on record convincingly show that respondent no.4 has been a permanent resident of village Chahotar for 15 to 20 years. Similarly, the rules nowhere prescribe that the source ^{of} income of an applicant must originate in the village where the appointment is to be made; what is required is that, he must have an independent source of income apart from the agency commission. The documents filed by the respondents prove that respondent no.4 has satisfactory means of regular income from property in his own name. Again, it is nowhere prescribed in the rules that the applicant must be able to offer space for the Postal operations which is only in his own name. Of course he can offer only that space over which he has some control.

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The space offered by him is in the name of his wife with whom he has been living for long and in which in fact the Branch Post Office is now already located.

8. It would not be out of place to reproduce below the relevant observations by the Bench which had heard the civil contempt petition filed by the applicant:

" (3) The learned counsel for the petitioner laid great emphasis on the fact that Shri Vijai Shankar is not a permanent resident of the village and that he does not own any property and was therefore not eligible for appointment as EDBPM, Chahotar. In reply, it is explained that the wife of Shri Vijai Shanker, owns pucca house in village Chahotar and he has been living therewith his wife on a permanent basis. In addition to the property held by the wife of Shri Vijai Shanker, he also holds some properties in his own name in village Bhojpur, Tahsil Lalganj, district Rae-Bareilly. At present the Post office is functioning satisfactorily in a portion of the Pucca house owned by Smt. Kamla Devi wife of Shri Vijai Shanker. The method of recruitment of ED Agent is provided in section 2 of EDA (Conduct and Service) Rules, 1964, according to which a person, who is appointed as EDBPM must be one who has adequate means of livelihood and he must be able to offer space to serve as the Agency premises for postal operations. The person selected by the appointing authority fulfills all the qualifications for the post of EDBPM."

"(4) We have considered the matter and we are of the opinion that Shri Vijai Shanker, who has been selected by the opposite party no.1 as EDBPM, Chahotar is eligible for the post and there is no illegality in his selection and appointment as EDBPM, Chahotar Post Office. x" x x "

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9. In view of the above discussions, we find no merit in the application which is accordingly dismissed. The parties to bear their own costs.

For meee
MEMBER (J) 1/6/90

For me
MEMBER (A) 1/6/90

(sns)

June 1, 1990

Allahabad/Lucknow