

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.297/2011

Reserved on 23.09.2015.

Pronounced on 07.10.2015.

HON'BLE MR. NAVNEET KUMAR, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Bali Ram (S/C) aged about 38 years S/o Sarju R/o
Husainpur Kaumahra Post Dharauncha Bazar District
Sitapur.

...Applicant.

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India through the Secretary Ministry of
Communication Department of Post Dak
Bhawan, New Delhi.
2. Chief Postmaster General U.P., Lucknow.
3. Superintendent of Post Offices, Sitapur.
4. Mohit Kumar GDS BPM Bania Mau (Sitapur).

...Respondents.

**By Advocate: Sri Pradeep Kumar Singh for Resp.Nos.1
to 3. Sri Prashant Kumar Singh for Resp.No.4.**

ORDER

Per Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by
the applicant under Section 19 of the Administrative
Tribunals Act, 1985 with the following relief(s):-

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"(a). That this Hon'ble Tribunal may kindly be pleased to quash the order dated 22/12/2010 as contained in Annexure No.A-1 and direct opposite parties to appoint applicant who is 1st in merit who fulfils all conditions laid down in Annexure No.2 notice dated 2/7/2010 with all consequential benefits.

(b). Any other relief deemed just and proper should also be allowed with cost of O.A."

2. The facts relevant to this case as averred by the applicant are that the applicant had applied for the post of GDS BPM Bania May, Sitapur in pursuance of vacancy Notification dated 02.07.2010. The respondents by the above notification had indicated that the applicants must have the following qualifications:-

"(1). Qualification -High School Pass.

(2). Age 0 18 to 62 years.

(3). Accommodation & Residence - will have to provide accommodation for P.O. and residence of HPM before appointment.

(4). Source of Income- The applicant should have personal source of income for which a certificate will have to be enclosed with the application.

(5). Security-Selected candidates will have to furnish security of Rs.25000/- in the form of fidelity bonds or NSC.

(6). Application should be with all above relevant papers and documents.

Note: (1). Application received after 2/8/2010 and those incomplete will be treated as rejected.

(2). Envelope should superscribe "Application for the post of BPM Bania Mau."

3. As per the merit list as seen at Annexure-4 the first candidate one Sri Rajesh Kumar, who obtained 438/600 marks in the High School had been ignored for the process of appointment. The person second in the list has also been ignored. Finally the Respondent nO.4 Sri Mohit Kumar has been given appointment by impugned order dated 22.12.2010 ignoring the guidelines as stipulated in the vacancy notification dated 02.07.2010. The applicant was the only candidate, who fulfill all the

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qualifications including the condition No.4 by which the applicant is required to have own sources of income. As per certificate dated 19.08.2010, it is seen that he earns Rs.24,000/- per year from Agriculture. The Respondent NO.4 however as per the certificate available does not have any personal income rather, he has given the income certificate dated 27.07.2010, which shows that his guardian's income is Rs.30,000/- source of income is studying. Thus, this action of the respondents demonstrated that they have flouted their own conditionalities as stated in vacancy notification.

4. The official respondent nos.1 to 3 have filed their counter affidavit through which they have stated that a total of 29 applications were received from all the sources in pursuance of the vacancy notification dated 02.07.2010. A comparative chart was prepared and a panel of 5 meritorious candidates was drawn up in which, Sri Rakash Kumar was the most meritorious candidate obtaining 73% marks in High School examination but he produced caste certificate issued by Gram Pradhan instead of competent authority i.e. Tehsildar. Therefore, his appointment was not considered. The second candidate i.e. Sri Hemant Kumar, who obtained 69% marks in the High School Examination, but he was unwilling as recorded in the comparative chart prepared by the then appointing authority, but unwillingness letter was not available on the file. The 3rd candidate i.e. Respondent No.4 Mohit Kumar obtained 66% marks in High School examination therefore, he was selected and appointment. The applicant had secured only 47.3% marks in High School

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examination, whereas Mohit Kumar (Respondent No.4) the candidate selected and appointed had secured 66.3% mark in High School examination fulfilling other terms and conditions notified in the vacancy notification dated 02.07.2010. Moreover, the selected candidate Mohit Kumar (Respondent No.4) attached income certificate of his guardian issued by Tehsildar, Sitapur dated 20.07.2010, which was issued prior to the date of the vacancy notification dated 02.07.2010. The applicant on the other hand submitted income certificate dated 19.08.2010. The sole criteria are the marks obtained in the High School examination and fulfilling of the other terms and conditions therefore, the Respondent No.4 was selected and appointed.

5. The private respondent no.4 has also filed his counter affidavit stating the same thing as stated in the counter affidavit of the official respondent nos.1 to 3. He has further stated that he has already completed the training for the post of GDS BPM and has been working with full satisfaction of the employer.

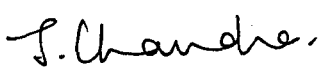
6. The applicant has filed a Rejoinder replies to both the counter affidavits more or less reiterating his contentions as raised in the OA.

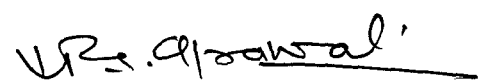
7. We have heard the learned counsel for both the parties and perused the entire material available on record.

8. The entire case of the applicant rests on the non-fulfillment of the condition No.4 by the Respondent no.4. We do not have and doubt with regard to the comparative

position vis-à-vis the applicant and the respondent no.4 in so far as merit position based on the High School marks since, it is matter of record. However, we find that the respondents have in the vacancy notification dated 02.07.2010 had stated that the applicant must have his "personal" source of income and for which a certificate issued by the competent authority have to be enclosed with the application. From the fact that the income certificate of the applicant was issued on 19.08.2010 as such it is clear that the said income certificate could not have been enclosed alongwith the application form as was mandatory condition of the vacancy notification dated 02.07.2010. On the other hand the respondent no.4 has annexed his income certificate dated 20.07.2010, which shows the income of his guardian. This income certificate is not in accordance with Clause-4 since he has to produce the income certificate in respect of his own income not the income of his family, which is also ambiguous as the applicant from his own date of birth is adult above 18 years of age. Thus, the question of guardianship is not legally tenable.

9. In view of the discussions made above, the impugned order dated 22.12.2010 is hereby quashed. The respondents are at liberty to conduct a fresh recruitment in accordance with the law in which both the applicant and the respondent no.4 may be given a fair chance to participate. No order as to costs.


(Ms. Jayati Chandra)
Member (A)
Amit/-


(Navneet Kumar)
Member (J)