FREE COPY U/R 22 OF CAT (PROCEDURE RULES)

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT RANCHI

O.As. No.: 181 & 312 of 1996.

Date of decision : 5th oct. -~~SEPT~~-2000.

O.A.NO.: 181/96

1. Ajit Kumar Singh, son of Jitendar Singh, resident of New Colony, Chhotki Delhi, P.S.: Delhi, P.O.: Gaya, R.S.Gaya-2.

2. Ashok Kumar, son of Shri Hari Pandit, Vill.: Shrinagar, P.O. & P.S.:Mapaurahi, District : Patna.

3. Satendra Kumar, son of Shri Brijkishore Prasad Sharma, Vill.: Pakaria, P.O.: orhanpur, District : Nawada.

4. Arvind Kumar, son of Shri Abhai Bahadur, resident of vill.: Gobina, P.O.: Karu Indrahian, P.S.: Sasaram [Mufassil], District : Rohtas.

5. Chandra Shekhar Singh, son of Vaidya Nath Mahto, resident of Chak Musallahpur, P.O.: Kadamkuan, P.O.: Mahendru, Patna-6, at present C/o Shri Arun Kumar Singh, Sr. Executive Engineer, Moridih Coal Washery, P.O.: Moridih, District : Dhanbad. .....APPLICANTS.

Vs.

1. The Union of India, through the Secretary, Government of India, Ministry of Communication, Deptt. of Posts, New Delhi-cum-The Director General, Department of Posts, Dak Bhavan, New Delhi-110 001.

2. The Chief Postmaster General, Bihar Circle, Patna-800 001.

3. The Director of Postal Services, Patna Region, Patna-800 001.

4. The Supdt. of R.M.S., 'C'Division, Gaya.

5. The Sub-Record Officer, Sub-Record Office, R.M.S.'C' Division, Dhanbad. .....RESPONDENTS 1ST SET.

6. Shri Nanu Ram Murmu, son of [Father's name not known], E.D.Mailman, S.R.O., R.M.S.'C'Division, Dhanbad.

7. Shri Uday Bhan Singh, son of [Father's name not known], E.D.Mailman, S.R.O., R.M.S.'C'Division, Dhanbad.

8. Shri Jai Ram Singh, son of [Father's name not known], E.D.Mailman, S.R.O., R.M.S. 'C'Division, Dhanbad.

9. Shri Md.Shahid Raza, son of [Father's name not known], E.D.Mailman, S.R.O., R.M.S. 'C'Division,Dhanbad.

10. Shri Subodh Kumar, son of [Father's name not known], E.D.Mailman, S.R.O., R.M.S. 'C'Division, Dhanbad.

11. Shri Upendra Prasad, son of [Father's name not known], E.D.Mailman, S.R.O., R.M.S.'C'Division, Dhanbad.

12. Shri Shyam Kishore Roy, son of [Father's name not known], E.D.Mailman, S.R.O.,R.M.S. 'C'Division, Dhanbad.

13. Shri Ramashish Choudhary, son of [Father's name not known], E.D.Mailman, S.R.O., R.M.S. 'C'-Division, Dhanbad. .....RESPONDENTS 2ND SET.

Counsel for the applicants. : Shri S.N.Tiwary.
Counsel for the official respondents. : Shri V.M.K.Sinha, SSC.
Counsel for the private respondents. : Shri N.P.Sinha with Shri I.D. Prasad.

O.A.NO.: 312/96

1. Upendra Prasad, son of Shri Krishna Prasad, resident of vill.: Tankuppa, P.O.: Tankuppa, P.S.: Wazirganj, District : Gaya.

2. Nunu Ram Murmu, son of Late Chand Lal Murmu, Vill.: Ramnagar, P.O.: Maharajganj, P.S.: Tundi, District : Dhanbad and Ex-Mailman, SRO 'C'Division, Dhanbad.

3. Uchay Bhan Singh, son of Shri Bhairab Prasad Singh of village Pathak Chak, P.S.: Sikandara, District : Jamui & Ex-ED Mailman, SRO 'C' Division, Dhanbad.

4. Jai Ram Singh, son of Shri Mundrika Prasad Singh, resident of village : Dhamaul, P.S.: Hasua, District : Nawada and Ex-ED Mailman, SRO 'C'Division, Dhanbad.

5. Md.Sahid Raza, son of Md. Siddique, resident of village Samsernagar, P.O.: B.Polytechnic, P.S.: Bank More, Dhanbad, District :Dhanbad and EX-EDMailman, SRO 'C'Division, Dhanbad.

Shri Subodh Kumar, son of Shri Jainarayan Singh, vill.: Samanpura, P.S.: Obra, District : Aurangabad, SRO 'C'Division, Dhanbad.

7. Shri Shyam Kishore Roy, son of Shri Chandrabhan Roy, resident of vill.: Tankippa, P.O.: Tankuppa, P.S.: Wazirganj, District : Gaya and Ex-ED Mailman, SRO 'C' Division, Dhanbad. .....APPLICANTS.

Vs.

1. Union of India through Director General, Department of Posts, Govt. of India, New Delhi-110 001.

2. Chief Postmaster General, Bihar Circle, Patna-800 001.

3. Director of Postal Services, Patna Region, Patna-1.

4. Superintendent, RMS 'C' Division, Gaya.

5. Sub-Record Officer, RMS, 'C'Division, Dhanbad.
.....RESPONDENTS.

Counsel for the applicants. : Shri N.P.Sinha with Shri I.D.Prasad.
Counsel for the respondents.: Shri D.K.Jha, ASC.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.
HON'BLE MR. L.R.K.PRASAD, MEMBER [ADMINISTRATIVE].

O R D E R

JUSTICE S.NARAYAN, V.C.:- Both the OAs, referred to above, relate to the selection made for appointment against, as many as, eight vacancies of ED Mailman for Sub-Record Office, RMS 'C' Division, Dhanbad, and, accordingly, both were taken up for hearing together for disposal by a common order.

2. The applicants in both the cases were amongst 47 candidates nominated and sponsored by the Sub-Regional Employment Exchange,Dhanbad, against the employment notice issued by the Sub-Record Officer, RMS 'C'Division, Dhanbad [Respondent no.5]. As a result of the selection process conducted, as many as eight candidates, being the respondents no. 6 to 13 in OA No.181/96, were appointed purely on temporary basis by an order dated, 13th Nov., 1995, of the respondent no.5, as at Annexure-A/18 of the said OA. The appointment as such, was, however, cancelled/terminated by a subsequent order dated, 23rd March, 1996, of the said respondent as at Annexures-A/8 to A/14 of OA 312/96.

3. Obviously, the applicants in OA 181/96 having failed to secure appointment in the selection process participated by them came-up first , assailing the appointment letter dated,13th November, 1995 [Annexure-A/18], issued in favour of the respondents 6 to 13 [of OA 181/96], including all the applicants of OA 312/96. During the pendency of the said OA No.181/96, the appointment made as per impugned letter dated, 13th November, 1995 [Annexure-A/18], was cancelled and terminated by the subsequent order of respondent no.5 issued on 23rd March, 1996 [Annexures-A/8 to A/14], and hence, was the necessity for the applicants of OA 312/96 to come-up with a prayer to quash the order of termination of their services.

Naturally, a part of the relief sought for in OA 181/96 became infructuous, insofar as, the prayer for cancellation of the appointment of the selected candidates was concerned. In any view of the matter involved in either of the two cases, the point for determination would be whether the selection process held among the candidates sponsored by the Employment Exchange was valid in accordance with law and, if not, what guideline has to be adopted for selection afresh among those candidates. It would not be out of place to mention here that while terminating the services of the pvt. respondents no.6 to 14 of OA no.181/96, including the applicants of OA 312/96, the official respondents had taken a decision to go for a fresh selection process only amongst the 47 candidates sponsored by the Employment Exchange, including the applicants of both the instant cases. To put it in other words, it was because of some wrong process adopted during the selection that the official respondents have resorted to adopt the correct procedure by way of fresh selection among the candidates under the zone of consideration.

4. In order to answer the question as raised above, it would be useful first to refer about the guideline in regard to appointment of ED Agents other than EDSPM/EDBPM, as contained in the circular No.Staff/ ED-1/Ruling/Chapter-IV, dated, Patna, 6th December, 1998, of the office of the Postmaster General, Bihar Circle, Patna. It prescribed the educational qualification for ED Agents as VIIIth Standard with the overriding clause to the effect that matriculation or equivalent may be preferred and favoured with amongst matriculate candidates with higher marks ——— having been ——— subject to the other conditions fulfilled by the candidates.

5. Yet another circular of the Chief Postmaster General, Bihar Circle, was issued on 26th April, 1993, incorporating the Director General's [Posts], New Delhi, letter No.17-366/91-ED&Trg., dated, 12th March, 1993. As per this circular, the minimum age limit of 18 years and the maximum age limit of 65 years for appointment of ED Agents was reiterated. It was further mentioned therein that the minimum educational qualification for EDDA, ED Stamp Vendors and other categories of ED Agents should be 8th standard with preference to be given to the candidates with matriculation.

6. It would be relevant also to refer to executive order dated, 10th May, 1991, of the Director General [Posts], as at Annexure-A/16 of OA 181/96, which says that when the Constitution of India guarantees equal opportunity to all for their advancement, the ordinary course would be to offer ED appointments to the person who secure maximum marks in the examination which made him eligible for the appointment provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED allowances.

7. Thus, on a careful study of the guideline, referred to above, we are confident that there was no provision for holding written test or viva-voce during the selection process of ED Mailman rather, it was on the basis of the eligibility criteria, including educational qualification being 8th standard, of course, that preference to be given to the candidates holding matriculation certificate or equivalent to that. Here was a case in which there was contest among candidates holding preferential educational qualification i.e., matriculation. And that being as such, the mode of selection did suggest that the candidates holding higher marks in the matriculation

standard would be preferred.

8. What happened in the instant case in the initial stage was that the selection of the respondents 6 to 13 of OA 181/96, which included the applicants of OA 312/96, was made on the basis of the result arrived at through the written and oral test.This was, of course, contrary to the guidelines issued by the department from time to time, which has statutory force. After once the above defect was noticed by the higher authorities of the Postal Department, it had no option left other than to cancel the appointment made through a selection proces which vitiated ab initio.The official respondents thereupon rightly resorted to rescind the selection of ED Mailman at SRO,RMS,'C'Division, Dhanbad, as per the letter dated, 31st January, 1996, issued by the Chief Postmaster General, Patna, vide Annexure-A/3 of OA 181/96.

In the result, we hold that OA 312/96 has no merit to stand and, accordingly, it is dismissed. The OA 181/96, however, succeeds, insofar as, it related to cancellation of the appointment of respondents 6 to 14 on the post of ED Mailman. The official respondents are directed to conduct the selection process afresh in accordance with law, as suggested above, for selection of suitable candidates amongst the 47 candidates nominated and sponsored by the Employment Exchange concerned. It is, however, made clear that while makeing the selection due regard has to be given for upholding the preference to be given to the Scheduled Caste/ Scheduled Tribe and OBC candidates in order to secure their representation. There shall be, however, no order as to cots.

[L.R.K.PRASAD]
MEMBER(A)

"True Copy"

Certified that ... true copy of the document ... O.A-181&312/96 ... MA/TA/CP/ ... Appeal ... all the matter ... copies ... carefully and faithfully

17/10/2000

5.10.2000
[B.NARAYAN]
VICE-CHAIRMAN

17/10/2000

B. K. Singh
Section Officer (J)
Central Administrative Tribunal
Patna Bench, Patna