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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH AT L U C K N O W

Dated the 7th day of October, 1988 :

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. AJAY JOHRI .. MEMBER (A)

O.A. NO. 35 OF 1988 (L)

Prakash Chandra Shukla .. Applicant
-vs.-
Union of India and others .. Respondents.

This application coming on for hearing this day, Hon'ble Vice Chairman, made the following:

O r d e r

This is an application made by the applicant under Section 19 of the Administrative Tribunals Act, 1985 (Act).

2. In response to an advertisement issued by the Superintendent of Post Offices, Rae Bareli Division (Superintendent), calling for applications for the post of an Extra Departmental Branch Post Master (EDBPM) of village Chahotar, Tahsil Lalgang, District Rae Bareli, the applicant, respondent-4 and 4 others applied for selection. On 12-5-1988, the Superintendent had selected and appointed respondent-4 in

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preference to the applicant and 4 others. In pursuance of the same, respondent-4 has reported for duty on 16-6-1988 and is working as EDBPM of Chahotar from that date. In this application made on 26-5-1988, the applicant has challenged the selection and appointment of respondent-4 and his non-selection.

3. Among others, the applicant had asserted that respondent-4 who was not a resident of the village, was not eligible for selection and that he was the most suitable person to be selected and appointed to the post of EDBPM of Chahotar.

4. In justification of the selection and appointment of respondent-4, respondents 1 to 3 have filed their reply. Respondent-4 has also filed a separate reply supporting respondent-3.

5. Shri T.N.Tiwari, learned Counsel for the applicant, contendsthat the selection and appointment of respondent-4 who was ineligible and unsuitable, was illegal and the applicant who was eligible and suitable in all respects, be selected and appointed in the place of respondent-4.

6. Shriyuths: V.K.Choudhry and R.P.Pandey, learned Counsel for respondents 1 to 3 and 4, respectively, sought to support the non-selection of the applicant and selection and appointment of respondent-4.

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7. The selection and appointments to the post of EDBPMs is regulated by the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (Rules).

8. In the Tabular Statement prepared by the Superintendent, he has found that the applicant and respondent-4 were eligible for selection.

9. But the applicant disputes the eligibility of respondent-4 on the grounds that he is not a resident of Chahotar village and that he does not own any property and house in that village. From the records produced, it appears to us that the Superintendent had not riveted his attention to these aspects and had not decided on any of them one way or the other.

10. Whether the assertions of the applicant against respondent-4 are true or not, has necessarily to be examined and decided by the Superintendent in the first instance. If the Superintendent finds that respondent-4 is not eligible for selection on any of the grounds urged by the applicant, then the question of his suitability for the post will not arise. Before adjudging on the suitability of respondent-4, it is for the Superintendent to ascertain on his eligibility under the Rules and then decide the matter. As the Superintendent had not addressed himself on the eligibility of respondent-4, we must necessarily quash his selection and direct a fresh selection.

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11. We find that the Superintendent had selected respondent-4 by stating only thus:

"ORDER

(Ref.215-209/C)

Appointed candidate
at Sl.No.2, Shri Vijay-
Shanker.

Sd. M.J.Siddiqui,
Superintendent,
12-5-1988."

Except for this, the records do not disclose any other reasons for selecting respondent-4 and for not selecting the applicant also. From this, it is clear that the Superintendent had selected respondent-4 without really applying his mind and without finding as to who was the best person to the post. We are of the view that this order is plainly arbitrary and illegal and calls for our interference on that ground also.

12. We have earlier noticed that respondent-4 is functioning as EDBPM at Chahotar village, from 16-6-1988. Even though we have come to the conclusion that there should be a fresh selection, then also we consider it proper to permit respondent-4 to discharge the duties of the post in the public interest till a fresh selection is made. But, in making a fresh selection, the Superintendent shall not take into consideration the permission granted by us.

13. In the light of our above discussions, we make the following orders and directions:

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(i) We quash the selection and appointment of respondent-4 made by the Superintendent in Memo No.E-3/86 'B', dated 12-5-1988.

(ii) We direct the Superintendent, Rae Bareli Division, to make a fresh selection to the post of EDBPM of Chahotar village confining the range of selection to the applicant and respondent-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 with all such expedition as is possible in the circumstances of the case and in any event, on or before 31-12-1988. But till a fresh selection and appointment is made, respondent-4 is permitted to function as EDBPM of Chahotar, without any right in the fresh selection.

14. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.

15. Let this order be communicated ^{all} to the parties, within a week from this day.

3 P.R. 10/12/88

(AJAY JOHRI)
MEMBER (A).

M.S. Puttaswamy
(K.S.PUTTASWAMY)
VICE CHAIRMAN. 7/10/1988