

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 98 of 1999.

Dated this Tuesday, the 26th day of August, 2003.

CORAM : Hon'ble Shri Justice S. R. Singh, Vice-Chairman.
Hon'ble Shri S. P. Arya, Member (A).

Shri Anil Harishchandra Nagaonkar,
Extra Departmental Delivery Agent,
Kamarle B.O. Via Alibag.
Residing at - Kamarle,
Tal. Alibag, Dist. Alibag 402 201.

... Applicant.

(By Advocate Shri S. P. Kulkarni)

VERSUS

1. Union of India through
The Department of Posts,
Assistant Superintendent of Post
Offices, Alibag Sub Division H.O.,
At Post & Tal & Dist.
Alibag - 402 201.
2. The Superintendent of Post
Offices, Alibag Postal Division,
At : P.O. Tal & Dist. Alibag,
District Alibag H.O. 402 201.
3. Chief Postmaster General,
Maharashtra Circle through
Director Of Postal Services,
O/o. the Chief Postmaster General,
C.P.O. Building (City), Fort,
At P.O. Mumbai 400 001.
4. Shri Umesh Yashwant Shirke,
Ex.Provisional E.D.D.A.
At P.O. Kamarle, B.O. Via
Alibag, At P.O. Tal & Dist.
Alibag - 402 201.
5. Shri Mangesh Prabhakar Nagaonkar,
E.D.D.A. (Provisional),
Kamarle B.O. Via. Alibag,
At & P.O. & Tal. & Dist. Alibag H.O.,
Alibag - 402 201. ... Respondents.

(By Advocate Shri V.S. Masurkar for
Respondent No. 1 to 3.
By Advocate Shri S.P.Inamdar for R-4.
None present on behalf of R-5.)

O R D E R (ORAL)

PER : Shri Justice S. R. Singh, Vice-Chairman.

Heard Shri S. P. Kulkarni, Learned Counsel for applicant, Shri V. S. Masurkar, Learned Counsel representing respondents No. 1 to 3 and Shri S. P. Inamdar, Learned Counsel representing respondent No. 4. Despite service of notice, none has appeared on behalf of Respondent No. 5.

2. Challenged ~~herein~~ is to the validity of selection ^{and} ~~of~~ appointment of the 5th respondent as E.D.D.A. in Kamarle Branch Post Office. The 5th respondent has been selected for appointment on the premises that he was "meritorious among all candidates having highest percentage of marks in SSC".

3. The short question that has been raised by the Learned Counsel for applicant is that according to the relevant rules, 8th standard is the prescribed qualification for the post of E.D.D.A. and further stipulation in the qualification clause of the rules that "preference may be given to the candidate with ^{matriculation} ~~meritorious~~ qualification" has been struck down as arbitrary and ² ~~violation~~ of Article 14 of the Constitution in O.A. No. 266/HR/99 decided by the Central Administrative Tribunal, Chandigarh Bench, vide judgement and order dated 06.07.2000. The relevant part of the decision contained in para 4 of the judgement is extracted below for ready reference :

"4. The contention which goes to the very basis of passing of Annexure A-1 is that once the minimum qualification essential for recruitment to the post of EDA is passing of middle standard examination, no preference would be given to a person having higher marks in Matriculation. We

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agree with the learned counsel for the applicant as this has been a consistent view of this Bench of the Tribunal that when minimum qualification prescribed for this post is Middle standard examination and the applicant was having highest marks amongst all the candidates, his selection could not be held to be irregular and thus cancelled on the grounds that some other candidates have marks higher to him in the matric examination. This clause for giving preference to persons having matriculation qualification was introduced through circular dated 27.11.1997 copy of which is annexure R-1. Even earlier to this through a circular dated 12.3.1993 revised guidelines have been issued by the Department of Posts wherein the clause for preference to be given to the candidates with matriculation was included. This aspect came to be challenged in the case of A. Shankar V/s. Union of India & others 1993 (3) ATJ, P-576. A Division Bench of C.A.T. Madras Bench has held that when the minimum qualification for EDAs is prescribed as 8th Standard, the introduction of the clause for preference to be given to matriculate is arbitrary and with this respondents have embarked on an exercise whereby incomparable are being compared. With this clause respondents have totally negated their own idea by introducing this clause which will deny all opportunities to 8th standard qualified persons for getting this job. It was held "That is why we feel that one cannot compare the incomparable and held that the preference clause introduced in the said circular is arbitrary and violative of articles 14 and 16 of the Constitution. It was observed that respondents have no doubt liberty to prescribe minimum educational qualification be it matriculation or 8th standard passed. The moment they have prescribed by introduction of the preference clause will bring in tendency to go for higher qualified candidates." We agree with the views expressed by the Madras Bench and hold that such clause in circular dated 27.11.1997, Annexure R-1 shall have to be held to be arbitrary and violative of provisions of Article 14 of the Constitution of India. This preference clause shall have to be struck down. It is so ordered."

The original selection proceedings produced by Shri V. S. Masurkar for the perusal of the Court indicates that the 5th respondent has been selected on the basis of highest marks secured by him in S.S.C. examination and this is ^{what has been} stated in para 10 of the reply statement. Since the selection is required to be

made on the basis of minimum educational qualification prescribed in the rules by ignoring the preferential clause contained therein as per law laid down by the Chandigarh Bench of the Tribunal, the appointment of the 5th respondent has to be set aside.

4. In view of the above discussions, the petition succeeds and is allowed in part. The impugned selection and appointment of the 5th respondents is quashed. The Assistant Superintendent of Post Offices, Alibag Sub Division H.O., At Post & Tal & Dist., Alibag, shall determine the merit among the candidates who had applied pursuant to the notification which led to the impugned appointment and whosoever is found meritorious on the basis of 8th standard shall be offered appointment to the post in question within a period of two months from the date of receipt of a copy of this order. No order as to costs.

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(S. P. ARYA)
MEMBER (A).

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(S. R. SINGH)
VICE-CHAIRMAN.

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