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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA 466/92.

Dt. of Order:23-1-95.

N.Sivaraj

.. Applicant

Vs.

Union of India rep. by :

1. The Secretary to Government,
Department of Posts, New Delhi.
2. The Chief Post Master General,
Hyderabad.
3. The Post Master General, Kurnool.
4. The Superintendent of Post Offices,
Chittoor.
5. E.Venugopal, Branch Post Master,
Rajulakandriga B.O., A/W, Kovanur,
Tirupathi, Chittoor Dist.

.. Respondents

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Counsel for the Applicant : Shri K.S.R.Anjaneyulu

Counsel for the Respondents : Shri N.R.Devraj, Sr.CGSC

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CORAM:

THE HON'BLE SHRI A.V.HARIDASAN : MEMBER (J)

THE HON'BLE SHRI A.B.GORTHY : MEMBER (A)

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... 2.

DA 466/92.

Dt. of Order:23-1-95.

(Order passed by Hon'ble Shri A.V.Haridasan, Member (J)).

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In this application the applicant has assailed the selection and appointment of Respondent No.5 as Extra Departmental Branch Post Master, Rajula Kandrika and prayed for a direction to the Respondent No.3 to appoint him on the basis of his merit as ED Branch Post Master in the place of Respondent No.5. The facts in brief can be stated as follows :-

2. The applicant who was working as ED Branch Post Master, Rajula Kandrika on a provisional basis was one of the candidates considered for regular appointment to the post. The Respondent No.5 was among other candidates. Though the applicant satisfied all the essential qualifications for being appointed as EDBPM, Rajula Kandrika and was in fact serving on provisional basis and had also obtained higher marks at Matriculation, the Respondent No.5 was selected and appointed. The applicant's grievance is that in appointing the Respondent No.5 the authorities have acted arbitrarily and unreasonably because in the matter of merit the applicant stood higher than the Respondent No.5. Under these circumstances, the applicant prays that the appointment of the Respondent No.5 may be set aside and the Respondents 1 to 3 be directed to select and appoint him on that post.

3. The Respondents 1 to 4 in their reply statement have admitted that the applicant was eligible to be considered for appointment in all respects and that he had higher marks at the S.S.C.Examination than the 5th Respondent. But they seek to

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justify the selection of the 5th Respondent on the ground that in the matter of ownership of the property, the 5th Respondent was better placed as he owned the building offered for running the post office ~~while~~ the applicant had only a partial right on the building offered by him. They have also contended that the building offered by the applicant is in a corner of the Village and that the provisional service of the applicant was not all a factor to be taken note of in making selection according to the rules and instructions in the matter of selection to E.D.Posts. The fifth respondent though served with notice did not appear.

4. We have heard the learned counsel for the parties and have gone through the materials on record as also the file relating to the selection and appointment. From the file it is evident that the applicant had obtained much higher marks than the 5th respondent in the SSC Examination, that he has independent income, that he also offered a building for ~~housing~~ the post office which is suitable for running the post office and that he has landed properties. It was also admitted by the departmental representative who was present in Court that the branch post office was being run in that premises while the applicant was working provisionally as ED Branch Post Master and that there has ^{not} been any complaint from the public about the location of the building or sufficiency of the space there. The only basis on which the respondents 1 to 4 over-

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looked the higher merits of the applicant and selected the 5th respondent is that he owns the building offered by him while the applicant did not exclusively own the building. This does not appear to be either just or reasonable. There is no requirement in the rules and instructions in regard to appointment as E.D.Branch Post Master that the selected candidate must be the exclusive owner of the building offered for running the Postoffice. It would be sufficient if the selected candidate be able to offer a suitable accommodation. He can either be a ~~partial~~ owner or a tenant of the premises. The contention of the respondents that if all things are equal only the marks at the SSC Examination is a factor to be considered is also against the instructions of the DGP & T on the subject which clearly states that among matriculates those who have higher marks would stand a better chance for selection; among the eligible candidates. There is no case for the respondents 1 to 4 that the applicant was ineligible. The further contention of the respondents that provisional service is not at all an aspect which should be considered while making regular selections is against the ruling of the Full Bench of this Tribunal on this issue where in it has been held that though previous service is not the sole basis, some weightage has to be given in making selection.

5. To sum up, here is a case where the applicant who has got more marks in the SSC Examination, who is eligible and qualified in all respects for appointment was ignored and the 5th respondent who has obtained less marks in the SSC and has no provisional service at all being selected and appointed on the

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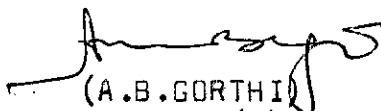
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Chittoor.
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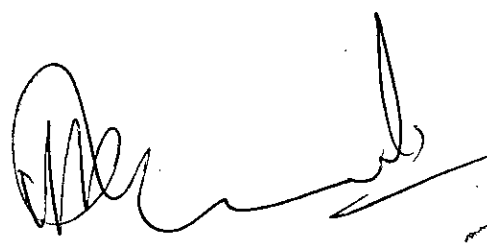
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ground that in the matter of ownership of the building he is on better footing. We are of the considered view that this action of the official respondents is absolutely arbitrary and unreasonable which calls for judicial intervention. Normally in the matter of selection for appointment if the selecting authority has considered the relative merits of the candidate and made a selection, the Courts or Tribunals may not interfere. But once it is seen that the selecting authority has acted arbitrarily and ignored a candidate with more merit on unreasonable grounds then judicial interference is fully justified. Equal treatment in the matter of appointment under the government is a fundamental right and if that is violated, the aggrieved party has a valid cause of action.

6. In the light of the above discussion we find that it is a fit case where the action of the respondents has to be quashed. In the result the application is allowed. The selection and appointment of the 5th respondent as E.D.B.P.M., Rajulakandika is set aside and the respondents 1 to 4 are directed to terminate the illegal appointment and to appoint the applicant on that post if he is not otherwise unsuitable. Action in the above lines should be completed within two months from the date of communication of this order.

7. No order as to costs.


(A.B. GORTHY)
Member (A)


(A.V. HARIDASAN)
Member (J)

Dt. 23rd January, 1995.

Dictated in Open Court.


Dy. Registrar (J)

Catd.

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.A.V.HARIDASAN : MEMBER(J)

AND

THE HON'BLE MR.A.B.GORTHY : MEMBER(A)

DATED : 23-1-95

ORDER/JUDGEMENT.

M.A./R.P./C.P.No.

in
O.A.No. 466/92

~~Admitted and Interim directions
issued~~

~~Allowed~~

~~Disposed of with Directions~~

~~Dismissed~~

~~Dismissed as withdrawn~~

~~Dismissed for Default.~~

~~Rejected/Ordered~~

~~No order as to costs.~~

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