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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 03 APR 2002

OA No. 106/2000

Banwari Lal Jangid son of Shri Mohan Lal Jangid, aged about 20 years, resident of Village & Post Shyaroli, Tehsil Gangapur City, District Sawaimadhopur (Rajasthan).

....Applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Department of Post, New Delhi.
2. Superintendent of Post Office, Karauli Division, Karauli (Rajasthan).
3. Sub Divisional Inspector (Posts), Hindan City, District Karauli (Rajasthan).
4. Bane Singh Mali Son of Shri Chauthya Mali, resident of Village Khatipura, Post Bajeerpur, Tehsil Gangapur City, District Sawaimadhopur (Rajasthan).

....Respondents.

Mr. Shailender Khandelwal, Counsel for the applicant.

Mr. N.C. Goyal, Counsel for the respondents.

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Hon'ble Mr. H.O. Gupta, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)



ORDERPER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985, praying for the following reliefs:-

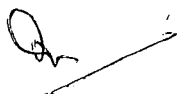
- (i) to declare the appointment of respondent no. 4 on the post of EDMC in Bazirpur Post office in pursuance of notice Annexure A/1 as illegal, unconstitutional and void.
- (ii) to call for the order of appointment of respondent no. 4 from the respondents 1 to 3 and to quash the same with all legal consequences.
- (iii) to direct the respondents no. 1 to 3 to appoint the applicant in place of respondent no. 4 w.e.f. the date of his appointment and to pay and allow the petitioner all consequential service benefits;
- (iv) to issue any other order/direction or declaration which this Hon'ble Tribunal deems just fit and proper in the facts and circumstances of the case may kindly be also passed in favour of the applicant.

2. The brief facts of the case are that the applicant has passed the Secondary Examination with 52% marks. He has also passed Senior Secondary (Vocational) Examination in the year 1997. A notification was issued for inviting application for filling up the post of Extra Departmental Male Carrier



(hereinafter referred as EDMC for brief) vide notification dated 16.6.99. The minimum qualification was fixed as VIII Std. but the selection was to be based on passed marks obtained in tenth class. The applicant fulfilled the eligibility condition and submitted his application. However, he was not selected and a person named Shri Bane Singh Mali, Respondent no. 4, was selected. It has been averred that respondent no. 4 obtained only 42% marks in the Secondary Examination. The respondent No. 4 has been given appointment to the post of EDMC at Bajearpur in pursuance with the aforesaid notification. Despite of higher percentage of marks, the applicant was not placed on the select list and there was violation of Article 14 & 16 of the Consitution of India. The applicant has filed a Civil Writ Petition No. 4620/99 before the Hon'ble Rajasthan High Court at Jaipur Bench but the same has been rejected on the ground of jurisdiction vide order dated 10.2.2000 (Annexure A/4). Thereafter this OA has been preferred before this Hon'ble Tribunal with the prayer mentioned above.

3. Show cause notices were issued on the admission of the OA to the respondents. Reply was filed on behalf of respondents no. 1 to 3. Respondent no. 4 did not choose to contest the case. The respondents have controverted the facts and grounds taken in the OA on the ground that the applicant did not fulfilled the eligibility condition in as much as he did not have any independent income. It has been admitted that the applicant had secured 52% marks in the matriculation and the respondent no. 4 obtained 50.8% marks instead of 42% as alleged by the applicant. Despite having higher percentage of marks in matriculation, the applicant as well two other persons namely Shri Brahmn Singh Mali and Usman Teli (who secured 56% and



53.63% marks, respectively in matriculation), were not placed on the panel since they did not submit the certificate of private income and as per rules they did not fulfilled the eligibility condition for appointment to the post of EDMC.

4. We have heard the learned counsel for the parties and have perused the records of the case.

5. The learned counsel for the applicant has argued that as per rules in force, there is no requirement of submitting any certificate regarding private income or ownership of property in case of appointment to the post of EDMC. The only requirement of the EDMC is that he should reside at the station where the post office is located. The extract of Paras 3 & 4 from Section 3 relating the method of recruitment as relevant is reproduced as : -

"3. Income and ownership of property:

The person who takes over the agency (ED SPM/ED BPM) must be one who has an adequate means of livelihood. The person selected for the post of ED SPM/ ED BPM must be able to offer space to service as the agency premises for post operations. The premises must be such as will service as a small postal office with provision for installation of even a PCO (Business premises such as shops, etc. may be preferred).

4. Residence :

(i) The ED BPM/ED SPM must be a permanent resident of the village where the post office is located. He should

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be to attend to the post office work as required of m keeping in view the time of receipt, despatch and delivery of mails which need not be adapted to suit his convenience or his main avocation.

(ii) ED Mail Carriers, Runners and Mail Peons should reside in the station of main post office or stage wherefrom mails originate/terminate i.e. they should be permanent residents of the delivery jurisdiction of the Post office. (emphasis supplied).

(iii) ED Agents of other categories may, as far as possible, reside in or near the place of work (Letters No. 5-9/72-EL Cell, dated 18.8.1973 and No. 43-312/78-Pen., dated 20.1.1979, stand modified to this extent)."


6. Besides above, even in cases of FDBPM/EDSPM also, the requirement of producing the certificate relating to source of income is condition subsequent. The maximum marks obtained by the individual is a deciding factor for the selection. This issue has been settled by the Hon'ble Tribunal at Madras Bench in P. Josephine Amuda vs. Union of India . This Bench in its judgement dated 10.1.2001 in OA No. 200/99 (Miss Shakuntla Sharma vs. Union of India & Others), has held that the production of property certificate is a post selection condition and after selection, the Selection Authority may give some time to the selected candidates to fulfil other conditions. The extract the judgement of Madras Bench, cited supra, is reproduced as under :-

"6. It is the contention of the respondents that since the applicant produced the income certificate in her father's name her candidature was kept in abeyance was

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appointed as a stop gap measure as EDBPM, Ammapatti PO. This argument of the respondents in our opinion is against the view held by this Tribunal in a catena of decisions relating to selection and appointment of personnel for the post of EDBPM. IN fact in similar cases, we have held that the respondents should not confuse with the pre-selection condition is concerned, it is the maximum marks obtained by the individual which will be the deciding factor for selection.

In so far as pre-appointment of post-selection conditions are concerned as per the regulations of the department the selected incumbent has to produce an income certificate in his/her name. Therefore, under such circumstances, if the individual was not able to produce the income certificate as expected by the department. This in no way should interfere with the process of selection. The equality of opportunity in the matter of public employment as envisaged under Art. 14 of the constitution would mean that the element of monetary consideration of financial status of an individual should not mix up with the process of selection and merit alone should be the deciding factor in the matter of selection. Therefore, the position relating to financial soundness of a candidate is something which can wait and for which the individual can be given some time to fulfil the said requirement. Therefore, the action of the respondents in not appointing the applicant on a regular basis because she had not produced the income certificate in her name is arbitrary and we hold that the applicant should be given adequate time for production of the income certificate in her name."

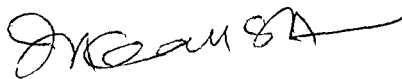


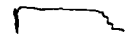
7. However, the respondents have not undertake the selection to the post of EDMC in accordance with the rules in force in as much as the candidates having higher percentage of marks in matriculation have not been considered and person having lower percentage of marks i.e. respondent no. 4 has been selected. The selection should have made by the respondents on the basis of marks obtained in the matriculation examination by the candidates. Thus, we are of the view that selection held by for the post of EDMC vide order dated 16.6.99 (Annexure A/2) should have been done on the basis of marks obtained in their matriculation examination and after such selection, the selected candidate be given some reasonable time to fulfill any other required condition as per rules. We are not shown any rule regarding the requirement of any property or income certificate in case of appointment to the post of EDMC other than the one we have referred to above, which do not contemplate any requirement in case of EDMC. Accordingly we pass the order as under :-

The OA is allowed. Selection & appointment of respondent no. 4, Shri Bane Singh Mali, on the post of EDMC in Bajearpur Post office in pursuance of notification (Annexure A/1) is quashed. The respondents are directed to finalise the selection on the basis of notification dated 16.6.1999 (Annexure A/1) from amongst the candidates who had applied in response to that notification strictly on the basis of marks obtained in matriculation examination and the selected candidate may be asked to fulfilled any other requirement regarding property or income etc. within a period of three months thereafter. This order shall be complied with within a period of three months from the date of receipt of a



copy of this order. However, there shall be no order as to costs.


(J.K. KAUSHIK)
MEMBER (J)


(H.O. GUPTA)
MEMBER (A)