IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 06.02.2004

OA No.114/2001

Radheshyam Kawal s/o Bhairulal, aged about 39 years r/o House No.604/1, Shantipura Vaishali Nagar Road, Ajmer and working as Extra Departmental Sub Postmaster, Christianganj Post Office, Ajmer.

.. Applicant

VERSUS

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communications, New Delhi.
2. Postmaster General, Rajasthan Southern Region, Ajmer.
3. Senior Superintendent of Post Offices, Ajmer Division, Ajmer.
4. Shri Neeraj Kumar, Senior Superintendent of Post Offices, Ajmer Division, Ajmer.

.. Respondents

Mr. P.N.Jatti, Counsel for the applicant

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

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr.A.P.Bhandari, Member (Administrative)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs :-

"i) That the Annexure A-1 impugned order be quashed being illegal, unconstitutional and violative of

article 14 and 16 of the Constitution of India.

ii) That the respondents be directed to make selection and appointment of the E.D.S.P.M. Christianganj post office as per rules and not to reserve the post for any reserved category only. It should be open to all.

iii) Any other relief which this Hon'ble Tribunal thinks just and proper in favour of the humble applicant including costs."

2. The brief facts of the case are that the applicant was temporary engaged to look after the work of Extra Departmental Sub Post Master (for short, EDSPM), Christianganj during the leave period of Shri Kailash Chand, (the regular EDSPM) as a substitute. The applicant was given charge of EDSPM, Christianganj on 16.4.2000 by Shri Kailash Chand, the regular incumbent, on risk and responsibility of Shri Kailash Chand. Shri Kailash Chand produced his resignation from service w.e.f. 20.5.2000 and hence the vacancy for filling up the post of EDSPM, Christianganj was advertised. As there was a shortfall of ST community, therefore, it was decided to fill up the post by an ST community candidate and therefore, the vacancy was advertised to be filled by an ST candidate vide notification dated 2.3.2001. It is this notification which is under challenge in this OA and the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that appointment of the applicant was temporary and he was engaged to look after

the work of EDSPM, Christianranj during the leave period of Shri Kailash Chand as a substitute. As per the percentage fixed for ST candidate there should be 13 EDBPM/EDSPM of ST community whereas only 2 persons of ST community are working/employed in this recruitment unit out of 112 posts of EDBPM/EDSPM, therefore, it was decided to fill up the post by an ST community candidate on regular basis in the light of orders/instructions issued under DG Posts, New Delhi letters dated 8.10.80, 13.3.84 and 27.11.97 (Anns. R1, R2 and R3). It is further stated that as per the DG Post, New Delhi letter dated 8.10.80, the representation of SC/ST candidates in the employment of ED staff should be kept at least to the prescribed minimum limits in Group 'C' and 'D' post in the department. As per para 5 of DG Posts, New Delhi letter dated 27.11.97, the recruiting authority has to take concrete decision before advertisement of the vacancy whether the post has to be filled up by a candidate of reserved community. Therefore, due to shortfall of ST candidates, it was decided to fill up the post of EDSPM, Christianganj by an ST community candidate. It is furter stated that the applicant has got no indefeasible right to be appointed against the post as the applicant was engaged only by way of stop-gap arrangement. The respondents have also annexed various orders issued by the authorities which indicate that the reservation is applicable in the cases of Extra Departmental Agents.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties

and gone through the pleadings.

5.1 The main case of the learned counsel for the applicant in this OA is that no roster has been maintained for SC/ST candidates for Extra Departmental Agents and the post of EDSPM, Christianganj is a single post in a office which cannot be reserved for any particular community, even if reservation is applicable. As such, the action of the respondents in issuing notification dated 2.3.01 (Ann.A1) is arbitrary and violative of article 14 and 16 of the Constitution of India.

5.2 During the course of arguments, the learned counsel for the applicant did not press the point that reservation is not applicable in the case of Extra Departmental Agents and contended that he is entitled for the benefit as was extended in OA Nos. 207/99 and 263/2001, Kailash Chand Sharma vs. Union of India and Ors., decided on 14.9.2001 by this Bench of the Tribunal wherein the same issue was also involved.

5.3 We have considered the submissions made by the learned counsel for the applicant. We agree with the submissions made by the learned counsel for the applicant that the matter is squarely covered by the aforesaid decision rendered by this Bench in the case of Kailash Chand Sharma (supra). In that case also the ground taken by the applicant therein was that since he has been continuing as provisional EDBPM and his work and conduct has been satisfactory, there was no basis for issuing public notice for the post of EDBPM, Angai which post has been declared reserved for ST community. This Tribunal did not agree with the contention of the applicant that the post of EDBPM could not be reserved and it was held that

the respondents do have authority to reserve the post of EDBPM in the light of circular dated 27.11.97 by following the post based reservation policy laid down by the Government. The contention on behalf of the applicant that single post cannot be reserved, was also negated by holding that reservations are required to be made on the basis of vacancy available in the various recruitment units and not on the basis of a single vacancy arising as in the present case. The respondents have considered the matter in the light of vacancies available in a recruitment unit and have proceeded to reserve the post of EDBPM located at Angai in favour of ST community candidate. Thus, we cannot find fault on the discretion exercised by the respondents authority in this regard.

5.4 The ratio as laid down in this decision is fully applicable in the instant case and the contention raised by the applicant in the OA stands fully answered, though at the time of arguments, the learned counsel for the applicant has not pressed this point. The only indulgence the learned counsel for the applicant seeking in the instant case is that his case should be considered in the light of the provisions made in the DG, P&T letter dated 18th May, 1979 and circular dated 30th December, 1999 as was done in the case of Kailash Chand Sharma (supra). We find considerable force in the submission made by the learned counsel for the applicant. It will be useful to extract para 10 and 11 of the said judgement which thus reads:-

> "10. The learned counsel appearing on behalf of the applicant has placed before us the provisions made in D.G.P.& T.'s letter dated 18th May, 1979 and circular dated 30th December, 1999 in regard

to the provisional appointment of ED Agents. We have perused the same and find that the aforesaid instructions, inter alia, deal with the question of finding alternative employment for the ED Agents who may have continued as a provisional ED Agents for more than 3 years. The applicant in the present OAs was appointed on 8.10.1997. From 1.6.1999 he was continued under the stay orders passed by this Tribunal and is supposed to be working as provisional EDBPM, even at present. Thus for one reason or the other, he has succeeded in completing more than 3 years as provisional EDBPM and, therefore, technically speaking he is liable to be considered for alternative employment in accordance with the aforesaid circular instructions. The relevant provision made in the said instructions reads as under:-

"Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than 3 years' continuous approved service. In such cases, their names should be included in the waiting list of ED Agents discharged from service, prescribed in D.G.P.& T. letter No. 43-4/77-Pen., dated 23.2.1979"

Since the learned counsel for the applicant has made earnest submissions in this regard, we have after some consideration thought it proper to provide by this order that the applicant will

be considered for alternative employment in accordance with the aforesaid provisions.

11. In the background of the detailed discussions contained in the preceding pragraphs, we find absolutely no force in any of the pleas advanced on behalf of the applicant and accordingly we are not able to pursuade ourselves to grant any relief sought by the applicant. On the question of providing alternative employment, we are, however, inclined to direct the respondents to consider the matter in terms of the observations made by us in paragraph No.10. Having said this, we proceed to dismiss both the OAs with no order as to costs. The ad-interim order in question will stand vacated."

5.5 In the light of the decision rendered by the Coordinate Bench of this Tribunal in the case of Kailash Chand Sharma (supra), the relevant portion of which has been extracted above, we are of the view that similar order is required to be passed in the instant case. Accordingly, the respondents are directed to consider the case of the applicant for alternative employment in the light of the instructions as reproduced above (para 10 of the judgement in Kailash Chand Sharma's case). Accordingly, the OA is disposed of with the aforesaid directions with no order as to costs. The ad-interim ~~direction~~ stay granted on 16.3.01 and continued till date shall stand vacated. No order is required on MA Nos.361/02 and 8/2004, which shall stand disposed of in view of the findings given hereinabove.

(A.K.BHANDARI)
Member (A)

(M.L.CHAUHAN)
Member (J)