

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 07.4.2004

OA 215/2003

Om Prakash Sain s/o Shri Gopal Lal r/o Village & Post Banskho, Tensil Bassi,
District Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Ministry of Communications, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Asstt. Supdt. of Post Offices, Dausa Sub Division, Dausa.
4. Supdt. of Post Offices, Jaipur Mfl. Division, Jaipur.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

HON'BLE MR.A.K.BHANDARI, ADM.MEMBER

For the Applicant

... NONE

For the Respondents

... Mr.N.C.Goyal

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 was filed to seek following relief :

"That the impugned order (Ann.A/1) be quashed and set aside and respondents be directed to appoint in any post of EDMC/EDDA/ED Packer and not the post of EDBPM. The action on the part of the respondents is violative of Articles 14 and 16 of the Constitution of India and principles of natural justice."

2. Notices to respondents for filing reply were issued on 29.5.2003 but learned counsel for the applicant, Shri K.L.Thawani, expired before the reply was filed by the respondents. Resultantly, Registry was directed to intimate this fact to the applicant to take decision regarding new counsel. In the meantime, learned counsel for respondents was also directed to file reply. Although reply by respondents was filed on 30.12.2003, nothing was heard from the applicant. As per note of Registry dated 6.1.2004, service to the applicant was complete. The case was then listed on 9.2.2004, 16.2.2004, 25.2.2004 and 7.4.2004 but no appearance was made by or on behalf of applicant. In the order-sheets of these dates even though opportunities



were given for filing rejoinder, the same has not been filed. Therefore, on request of learned counsel for the respondents on 7.4.2004 it was decided to dispose of the OA on merits on the basis of pleadings on record.

3. Facts of the case, as mentioned in the application, are that the applicant was appointed as Extra Departmental Packer in clear newly created vacancy after obtaining all relevant documents on provisional basis and he started working as ED Packer, Banskho, w.e.f. 30.12.96. Respondent No.3 then called nomination from Employment Exchange Jaipur to fill the same post on permanent basis but did not issue any notice for public information. When applicant came to know about this, he submitted application requesting that he should also be considered for the post alongwith other candidates. However, respondent No.3 directed Sub Post Master, Banskho, orally to relieve the applicant and has given charge to newly selected Shambhu Dayal. It is further averred that applicant is Higher Secondary pass and possesses all requisite qualifications. He belongs to OBC community and because he was appointed on provisional basis, he is entitled to preferential appointment. That in this matter he had filed an OA (No.117/97), which was decided on 3.5.2002, in which the Tribunal found his prayer reasonable. But since long time had passed after regular appointment of Shambhu Dayal, who was respondent No.5 in the earlier OA, he was not disturbed by the Tribunal and it was only directed that respondents shall consider the candidature of applicant in any other existing post. The applicant, therefore, submitted applications to respondents No.3 and 4 but they rejected the same. It is further averred that respondent No.3 has taken no action to appoint applicant although he has filled many posts under him during the period 1997 to 2003. Hence this OA.

4. In the grounds it is stated that applicant deserves to be given higher weightage because he holds higher educational qualification of Matriculation than the requisite minimum educational qualification of 8th Class pass, he belongs to OBC community should, therefore, be given first preference on the

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basis of 27% reservation, and that non-observance of law pertaining to reservation is violative of provisions of the Constitution of India. That respondents have not honoured the judgement of the Tribunal passed in OA 117/97 and that as per latest judgement of Supreme Court those not sponsored by Employment Exchange are also to be considered and as such not advertising the post was a mistake of the respondents.

5. The respondents have submitted an exhaustive reply. In the preliminary submissions it is conceded that applicant was appointed as ED Packer on provisional basis for three months and his services were terminated when regular appointment was made. This fact was intimated to the applicant vide letter dated 2.1.97 by respondent No.3. That as per the prescribed procedure names of suitable candidates were called from local Employment Exchange, who did not sponsor the name of the applicant, due to which he could not be considered during appointment process and Shri Shambhu Dayal, duly sponsored by Employment Exchange and who was also eligible in terms of other qualifications, was selected and appointed on the said post on 18.3.97. The facts regarding decision in OA 117/97 are not disputed and it is replied that an advertisement was issued on 11.3.2002 to fill up the vacant post of Gramin Dak Sevak Banch Post Master (GDS BPM, in short), the last date for receipt of applications of this being 10.4.2002. It was specifically mentioned in the advertisement that Income & Property Certificates by competent authority i.e. Tehsildar be attached with the application. This application was considered even though it was received late on 4.6.2002 and he did not enclose the required Income & Property Certificates. In all 24 applications were received including one of the applicant. In compliance of orders of the Tribunal dated 3.5.2002 candidature of applicant was considered even though his name was not sponsored by the Employment Exchange. The applicant is 10th Class pass and has secured 37.60% marks and he did not did not fulfil all the requisite qualifications for the said post and he was found to have the lowest percentage of marks in comparison to other 23 candidates. Therefore, he

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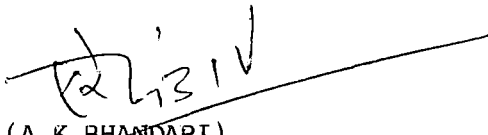
could not be appointed and other person namely Raj Kumar Sharma was given appointment as GDS BPM, Padasoli, who was fulfilling the requisite qualifications having scored 71.27% marks in 10th Class. The applicant was informed accordingly vide order dated 24.10.2002 (Ann.A/1).


6. The same facts have been elaborated in parawise reply in support of which Ann.R/1 to R/5 have been placed on record. From perusal of Ann.R/3 it is very clear that the applicant, whose name appears at S.No.24, has secured only 37.60% marks, whereas the selected candidate Shri Raj Kumar Sharma, whose name appears at S.No.2, had scored 71.27% marks in Matriculation Exam. and holds educational degree of B.A. Learned counsel for respondents has also relied upon decision of Nagpur Bench of the Tribunal in OA 805/98, ^(Annex R-5) Surajlal Demaji v. Union of India, in which it was decided that a person appointed only as a stop-gap arrangement on an ED post has no right for regular appointment.

7. After careful consideration of all facts it is found that the OA is bereft of merits. The appointment of the applicant was indeed provisional lasting for three months only, and it did not give him any claim to permanence, as has been decided in the case cited supra. It is seen that the respondents have fully complied with the directions of the Tribunal inasmuch as they entertained the applicant's candidature even though his name was not sponsored by the Employment Exchange and considered him as 24th candidate. In Ann.R/3, which is a comparative chart of all the candidates, a footnote has been inserted to the effect that applicant's candidature is being considered as per directions of the CAT, Jaipur Bench, even though his application was received after due date. It is also noted that his application was incomplete, but even then it was entertained. Respondent No.3 is however found fully justified in not selecting him because he obtained far less marks than the selected candidate. In the given circumstances, the respondents are justified in issuing impugned order dated 24.10.2002 (Ann.A/1).

/s/

8. In the result, the OA is dismissed with no order as to costs.


(A.K.BHANDARI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)