

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH  
JAIPUR

Date of decision: 29.01.2004

OA No.243/2003

Bhanwar Singh Gurjar s/o Shri Pokarmal Gurjar r/o Village Seti, Post Budana, Tehsil and District Jhunjhunu (Rajasthan).

.. Applicant

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications, New Delhi.
2. Post Master General, Rajasthan Western Region, Jodhpur.
3. The Superintendent of Post Offices, Jhunjhunu Postal Division, Jhunjhunu.
4. Shri Pankaj Kumar s/o Shri Ummmed Singh, r/o Village and Post Pratap Pura, via Jhunjhunu and working as Gramin Dak Sevak Branch Post Master, Descoosar, Distt. Jhunjhunu.

.. Respondents

Mr.M.S.Gurjar, Counsel for the applicant

CORAM:

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

Hon'ble Mr.A.K.Phandari, Member (Administrative)

ORDER (ORAL)

The applicant has originally filed an OA in this Tribunal against letter dated 22.6.02 whereby one Shri Pankaj Kumar was appointed as Extra Departmental Branch

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Post Master (EDBPM) in preference to the applicant. The said OA was registered as OA No.410/2002. After hearing the learned counsel for the applicant at admission stage, this Tribunal disposed of the said OA without going into the merits of the case with directions to the respondents to dispose of the representation of the applicant within six weeks from the date of receipt of the representation and inform the applicant promptly. Consequently, the respondents have passed a fresh order dated 7.11.2002 (Ann.A6) whereby the applicant was informed that he has neither submitted certificate to the effect that the applicant is in possession of a place for the post office nor declaration attached that the space will be provided in the postal village by the applicant. Such declaration was mandatory in view of condition No.6 of the advertisement and it was to be attached with the application for the post of EDBPM, Desusar. The applicant has also challenged the order dated 22.6.2002. In relief, the applicant has prayed for quashing the order dated 22.6.2002 (Ann.A2) whereby respondent No.4 was appointed as EDBPM and also order dated 7.11.2002 (Ann.A6) whereby the representation of the applicant made pursuant to the order passed by this Tribunal in earlier OA, was rejected. The applicant has further prayed that the respondents may be directed to treat the applicant as selected candidate for the said post and case of the applicant be considered for appointment.

2. Notice of this application was given to the official respondents as well as respondent No.4. The official respondents have filed reply. The respondent No.4 despite of service has not put in appearance.

2.1 In the reply filed by the official respondents, it has been submitted that in response to the advertisement, 13 applications were received for the post of EDBPM, Desusar till the last date i.e. 4.2.2002. The Employment Exchange and District Soldier Board have not sponsored any name till the last date. In the meanwhile, the Employment Exchange sponsored names of two candidates which were not entertained by the department as the names were received after the lapse of 45 days from the last date of receipt of the applications. The name of the applicant was not sponsored by the Employment Exchange. The applicant has submitted his application for appointment to the Post of EDBPM directly. After completing all the formalities and the departmental process, one Shri Pankaj Kumar was selected for the post of EDBPM, Desusar vide Superintendent of Post Offices, Jhunjhunu memo dated 14.6.2002. It is further stated in the reply that though the selection is done on the basis of merit of matric examination but to become eligible for the post of EDBPM, the applicant should fulfill the condition mentioned in the advertisement dated 2.1.2002. As per condition No.6, the applicant should submit a certificate to the effect that the applicant is in possession of a place for the post office or a declaration should be attached with the application that the place will be provided in the post village by the applicant. The applicant, Bhanwar Singh Gurjar, was not a resident of post village Desusar. He is the resident of village Soti, Post Budana. Therefore, a declaration as per condition No.6 was mandatory and it was to be attached with the application for the post of EDBPM. The applicant has not fulfilled this condition and he has not attached any

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declaration with his application for the post of EDBPM. Hence, his name was not considered for the said post and as such was not selected. It is further stated that respondent No.4 has obtained 51.09% marks in the Martic examination instead of 47% marks as submitted by the applicant.

3. We have heard the learned counsel for the parties and gone through the material placed on record.

3.1 The fact that selection to the post of EDBPM is to be made on the basis of merit of matric examination has not been disputed by the respondents. It cannot also be disputed that the applicant has obtained more marks in matriculation examination than respondent No.4. As per the certificate attached by the applicant as Ann.A1, he has obtained 52 % marks in the matriculation examination whereas the respondent No.4 has obtained 51% marks (more precisely 51.09% marks) as per the admission made in the reply. Thus, as per the criteria laid down by the respondents, which stipulates that selection has to be done on the basis of merit of matric examination, the respondent No.4 could not have been selected ignoring the claim of the applicant. The reason given for non-selection of the applicant is that he has not attached with the application, certificate to the effect that the applicant is in possession of place for the post office/declaration that the place will be provided for the post office in the post village by the applicant, as such he was not eligible for the post in question.

3.2 The question which requires our consideration is whether it is necessary for a candidate applying for the post of EDBPM to submit a proof of property alongwith his

application. To us, the matter is no longer *res-integra* and the matter stands concluded by the Full Bench decision in the case of H.Lakshmana and Ors. vs. The Superintendent of Post Offices, Bellary and Ors., 2003 (1) ATJ 277 and also subsequent Full Bench decision in the case of Rana Ram vs. Union of India, 2004 (1) ATJ (in which one of us Mr. M.L.Chauhan, Hon'ble Member (J) was one of the member). In the case of Rana Ram (supra) the following 3 questions have been drawn by the Bench:-

"(i) Whether it is necessary for the candidates applying for the post of EDBPM to submit the proof of income/property alongwith their applications?

(ii) Whether the proof of income/property qualification may be supplied by the candidates upto the date of interview?

(iii) Whether selections are to be made on the basis of marks obtained in the Matriculation examination and thereafter the person selected should be given time to submit the proof of income/property and in case he/she fails to submit the same within the stipulated date, whether the procedure should be repeated for the next best candidate and so on?"

So far as question number (i) and (ii) posed by the Jodhpur Bench of the Tribunal, it was held that same stand answered by the decision rendered in the case of H.Lakshamana (supra) whereby the Full bench in para 15, 16 and 17 has given the following findings:-

"15. We have already reproduced above, the extracts of the instructions on the subject with respect to the income and ownership of the

property. It has clearly been provided that a person who takes over the agency must be one who had adequate means of livelihood. The plain language clearly shows that adequate means have to be looked into of the person who has taken over the agency. It is, therefore, not to precede to taking over of the work or a civil post. The department may be within its rights to frame the relevant rules and instructions to provide for adequate means of livelihood to ensure the rights of the Government after the agency is given but no discrimination could be made before the civil post is so awarded to any person.

16. Equality of opportunity and equal treatment for similarly placed persons is the hallmark of our Constitution. Article 14 and 16 of the Constitution specially bar discrimination between the similarly situated persons. There is no discrimination that is permitted in this regard between the persons having adequate means or person not having adequate means. Any such attempt would be violative of Articles 14 and 16 of the Constitution. This fact had not been disputed at the Bar.

17. However, it was contended that the rights of the Government have also to be taken care of in this regard. We have already referred to above and at the risk of repetition, we take liberty of mentioning that such rights can be taken care of after the civil post is awarded on its merits. Care can be taken in this regard afterwards and necessary instructions or rules can be framed as

already referred to above. In case the selected candidate is not in a position to furnish enough security or some reasonable condition that may be imposed, he will not be given the said civil post but he cannot be discriminated at the initial stage. Equality of opportunity cannot be casualty in this regard. The State on that count, therefore, cannot be discriminated.

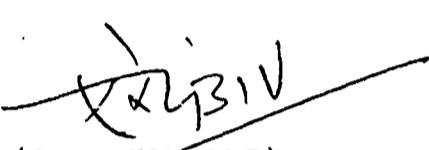
Thereafter it was further held "possessing of adequate means of livelihood in terms of Circular dated 6.12.1993 of the department is neither an absolute condition nor a preferential condition requiring to be considered for the abovesaid post."

Regarding question No.10) it was held that the selection had to be made on the basis of other qualifications minus the qualification pertaining to immovable property. Thereafter the person selected can be given reasonable time to submit proof as per rules on the subject and in case he failed to submit the same within reasonable time, the offer can be given to the next eligible candidate.

3.3 In view of decision rendered by the Full Bench in the case of H.Lakshamana as well as in the case of Rana Ram (supra), the present OA is allowed. The impugned letter dated 22.6.2002 (Ann.A2) whereby respondent No.4 was appointed as EDBPM in preference to the applicant and also letter dated 7.11.2002 (Ann.A6) whereby representation of the applicant was rejected, are hereby quashed and set-aside. The respondents are directed to consider the case of the applicant on the basis of marks obtained in matriculation examination and in case the

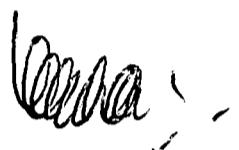
applicant is selected to the post of EDBPM, he be given opportunity to submit proof of property within a reasonable time in terms of decision rendered by the Full Bench as quoted above. Such an exercise shall be undertaken within two months.

4. The OA is accordingly disposed of with no order as to costs.



(A.K. BHANDARI)

Member (A)



(M.L. CHAUHAN)

Member (J)