

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Applications No 749 of 2004

Indore, this the *19th* day of *August*, *2005*

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Kamta Nath Patel S/o Jagdish Prasad,
Aged about 31 years, occupation Postman,
Postal Service, (Village Postal Service)
Branch Kirodimal Nagar District
Raipur (CG).

Applicant

(By Advocate – Shri Sunil Sahu)

VERSUS

1. The Union of India,
Through the Secretary Department
Of Post and Telegraph, New Delhi.
2. The Chief Post Master General,
Chhattisgarh Parimandal Raipur (CG),
3. The Director, Postal Services Chhattisgarh
Region, Raipur (CG).
4. Superintendent,
Post Office, Raigarh,
Division Raigarh.

Respondents

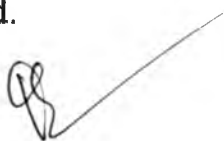
(By Advocate – Shri S.P. Singh on behalf of Shri P. Shankaran)

ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought
the following main reliefs :-

- “1) That the impugned order dated 22.7.2004 Annexure-A-5
may kindly be quashed.




2) That the applicant may kindly be allow to continue on his post of Postman in Rural Postal Service in Branch Kirodimal Nagar.

2. The brief facts of the case are that the applicant submitted an application for the post of Postman in village Postal Service, which was advertised by the respondents. He was appointed vide order dated 9.9.2002 (Annexure-A-2). Thereafter the respondents have issued a show cause notice dated 23.3.2004 (Annexure-A-3) to the applicant and he submitted a reply Annexure-A-4 to the show cause notice. According to the applicant, he has never concealed any facts or misrepresented to the respondents. However, they issued the impugned order dated 22.7.2004 by which the appointment of the applicant has been cancelled without holding any enquiry. The action of the respondents is totally illegal and unjustified. Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. The learned counsel for the applicant argued that the applicant was duly appointed by the respondents vide order dated 9.9.2002 (Annexure-A-2) and during his whole service period there was no complaint against him. Neither he has concealed any facts nor misrepresented to the respondents. However, the respondents have issued a show cause notice to him on 23.3.2004 and thereafter the respondents have cancelled the appointment of the applicant without considering the representation of the applicant on the ground that the applicant has not secured more marks in matriculation. The services of the applicant cannot be terminated because the applicant has not misrepresented to the respondents and there was no complaint against the applicant regarding his conduct and integrity during whole service period and he has also not given any false information to the respondents. The action of the respondents is totally illegal and not sustainable in the eyes of law. Hence, the OA deserves to be allowed.



5. In reply, the learned counsel for the respondents argued that as per departmental instructions/rules on the subject, the selection was to be made on the basis of the marks obtained in the matriculation examination amongst the candidates, fulfilling all other conditions as mentioned in the notification. The applicant was selected by the then Supdt. Of Post Offices ignoring the criteria fixed by the Department, thereby committing an irregularity in selecting and appointing a candidate who was not on the top of the merit list. Thus the appointment was illegal being contrary to the instructions rules on the subject. The whole selection came for review before the competent authority who noticed that Shri Kamta Patel, son of Shri Anujram Patel was the candidate who scored highest percentage of marks in basic qualification of matriculation and not the applicant. Accordingly the respondents have issued the show cause notice Annexure-A-3 and the applicant has submitted his representation Annexure-A-4. After considering the records and representation of the applicant, the competent authority came to the conclusion that the applicant is not first candidate in the merit list and he ought to have not been appointed in place of first meritorious candidate Shri Kamta Patel. Hence, the appointment of the applicant has been cancelled.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the issue involved in the present OA is whether the appointment of the applicant can be cancelled on the basis of less marks obtained in the matriculation examination, as another person who has got higher marks than the applicant in the matriculation examination. We also find that the issue involved in the present case had already been considered and decided by this Bench in the case of **Ram Kumar Gupta Vs. Union of India and Ors.**, 2003 (3) ATJ 128. The relevant paragraph is reproduced as under :-

“10. We have considered the rival submissions and the law position on the subject. As far as the facts of the case are concerned, there is hardly any quarrel on the facts of this case.



It is admitted position of the case that the applicant Ram Kumar Gupta has got 58.61% of marks in the High School Examination and applicant Har Narayan Ahirwar has got 73.53% marks. The position of the law as regards of the making of the selection is also settled and the selection is primarily to be based on the marks obtained in the matriculation examination for the post of EDBPM and this position of law is already settled by various Benches of the Tribunal and does not remain res integra. We only refer to one of the recent judgments is Suman Singh Vs. The Chief Post Master General, Lucknow & Ors. 2000(3) ATJ 124. Relevant from the same is reproduced as under :-

“4. The method of recruitment as laid down in section IV of the Service Rules for Postal E.D. Staff prescribes matriculation as the educational qualification and further provides that no weightage need be given to any qualification higher than the matriculation. Further it is provided that the selection of EDBPM is to be based on the marks obtained in the matriculation or equivalent examination. Thereafter certain other conditions are to be satisfied before an EDBPM takes over the charge, such as income and ownership of property and the residence in the village where the post office is situated. The method of recruitment as prescribed in the service rules for the postal ED staff provided as under :-

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

5. Thus according to the provisions contained in section IV-Method of recruitment, the person who takes over the charge as EDBPM or as EDSPM must be one who has an adequate means of livelihood and the person selected for the post of EDBPM?EDSPM must be able to offer space to serve as agency premises for postal operation. Thus the requirement is that the candidate who is first in merit and has the highest percentage of marks in the matriculation examination has to be selected for the post of EDBPM?EDSPM and on such selection he has to be offered the appointment. Thereafter he has to satisfy the other conditions relating to accommodation and residence...”



Keeping in view the aforesaid proposition of law, the action for the respondents in revising the order of appointment of the applicant Ram Kumar Gupta is in order since he has not secured the highest marks and as per the rules in force stated above, and applicant Har Narayan Ahirwar in OA 398/03 who secured the Highest Marks was required to be selected."

We further find that in the present case also the appointment of the applicant has been cancelled on the ground that the applicant has scored 53% of marks in the matriculation examination while one Shri Kamta Patel S/o Shri Anjuram Patel had scored 58% of marks in the matriculation. Thus the aforesaid decision is fully applicable in the present case as well. The decision so passed in the aforesaid case, hence shall be mutatis mutandis applicable to the present case also.

7. In view of the above, the OA is bereft of merits. Accordingly, the same is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice chairman

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पत्तिलिपि अर्थात् दिनांक :-
(1) सचिव, उच्च न्यायालय कायदा एकेडमी, जबलपुर
(2) आवेदक श्री/श्रीमती/श्री.....के काउंसल
(3) प्रत्यक्षी श्री/श्रीमती/श्री.....के काउंसल
(4) राज्यपाल, राज्यपाल, जबलपुर, जबलपुर
सूचना एवं आवश्यक कार्रवाई हेतु
उपे रजिस्ट्रार

Wishumi Sahu BSB
D. Shankaran BSB

Fileed.
ms
30/8/05