

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 877 of 2004

this the 22nd day of November 2005

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

Madhur Mathur, S/o. Shri Ganesh Prasad
Mathur, aged 29 years, R/o. Village and
Post Mangrol, Sabalgarh, District
Morena (MP). ... Applicant

(By Advocate - Shri S.G. Chitnis)

V e r s u s

1. The Union of India, through Secretary,
Ministry of Post & Telegraph, Sanchar
Bhawan, New Delhi.
2. Post Master General, Indore Region,
Indore, M.P.
3. Superintendent of Post Offices, Chambal
Division, Morena District, Morena, M.P.
4. Rajendra Prasad Sharma, Newly Appointed
as Branch Post Master, Mangrol,
Sabalgarh, District Morena, MP. ... Respondents

(By Advocate - Shri V.K. Sharma)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :

"(I) it is therefore most humbly prayed that the
order Annexure A/2, A/3 and appointment order dated
15.9.2003 of the respondent No. 4 may kindly be
quashed,

(II) that the respondent No. 1 to 3 may kindly be
directed to issue the order of the appointment in
favour of the applicant with back wages,

(III) that respondent No. 1 to 3 may kindly be
directed to pay salary for the period of 14.12.1999 to
15.9.2003."

2. The brief facts of the case are that the respondents
have issued advertisement dated 20.10.2000 for appointment to
the post of Extra Departmental Branch Post Master, Mangrol,
Tehsil Sabalgarh, District Morena. The applicant and the



respondent No. 4 applied for the said post. Holding of the own landed property and source of income was one of the important condition in the advertisement/notification. The applicant had all the requisite qualification and fulfilled all the conditions as per the advertisement. But the respondent No. 4 had no landed property and source of income. The applicant had his own landed property in the village. The Tehsildar has enquired the matter and submitted his report on 5.11.2003, wherein it was mentioned that the respondent No. 4 has no landed property and source of income. But even though the respondent No. 4 was appointed by order dated 15.9.2003. The applicant filed an Original Application No. 668/2003 challenging the appointment of the respondent No. 4. The Tribunal vide its order dated 5th December, 2003 has directed the respondents to appoint the candidate according to the merit for the post of EDBPM, Post Office Mangrol. The applicant submitted in the OA that he appointed as BPM, Mangrol on 14.12.1999. He worked upto 15.9.2003 without any break and his service record was also excellent. The respondents have not paid salary since 14.12.1999 to 15.9.2003 to the applicant. The respondents Nos. 1 to 3 have considered the documents submitted by the respondent No. 4 after the cut off date i.e. 20.1.2001, which was fixed by the advertisement Annexure A-5. The applicant filed a CCP No. 13/2004 for non-compliance of the order passed by the Tribunal in OA No. 668/2003. The Tribunal disposed of the said CCP with liberty to the applicant to file a fresh OA if he still feels aggrieved and so advised. Hence, the applicant has filed the present OA.

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

4. It is argued on behalf of the applicant that the



applicant was having his own landed property and source of income, which was one of the main condition as per the advertisement Annexure A-5 issued by the respondents. This condition was not fulfilled by the respondent No. 4. But the respondents Nos. 1 to 3 have considered the documents submitted by the respondent No. 4 after the cut off date of 20.1.2001, fixed in the advertisement Annexure A-5. On the OA filed by the applicant, the Tribunal directed the respondents to appoint the candidate according to the merit for the post of EDBPM, Post Office Mangrol. The applicant possessed the landed property and source of income but he was not considered for appointment. Hence, the action of the respondents is against the rules and law. The learned counsel for the applicant has relied upon the judgment passed by the Hon'ble Supreme Court in the case of Suman Verma Vs. Union of India & Ors., 2005 (1) ATJ 553. Hence, the applicant is entitled for the reliefs claimed by him.

5. It is argued on behalf of the respondents that the respondent No. 4 had no landed property in his name but had his own shop and income of Rs. 24,000/- per annum. He had filed a certificate of the Sarpanch Mangrol regarding his shop and monthly income. The Sarpanch has certified that the respondent No. 4 have his own shop of Kirana and is earning Rs. 2,000/- per month. He further certified that the applicant had only his parental property at his village. Thus it is incorrect to say that the respondent No. 4 has not submitted any proof of his property and earning. In view of the judgment of the Tribunal, the condition of having landed property has no relevance and not necessary and the Department has also deleted such condition by notification dated 17.9.2003. The applicant has obtained less marks in the required minimum qualification. He has only secured 45% marks, whereas the respondent No. 4 has secured 59%.

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marks. Hence, the respondent No. 4 has been selected on the basis of merit. Thus, the action of the respondents is perfectly legal and justified, and the OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that the applicant has not denied the fact that he has secured only 45% marks in the requisite minimum qualification, whereas the respondent No. 4 has secured 59% marks. Thus, the private respondent No. 4 has secured more marks than the applicant. We also find that the private respondent No. 4 has no landed property in his name but he is having his own shop and income of Rs. 24,000/- per annum is earned by him. This statement of the private respondent No. 4 is supported by the certificate of Sarpanch Mangrol. The argument of the applicant that the private respondent No. 4 has not produced any document regarding any immovable property and source of income with his application and has produced the said document after the cut off date, has no force because this condition of having immovable property was removed by OM dated 17.9.2003. We have perused the ruling cited by the applicant in the case of Suman Verma (supra). In this ruling the Hon'ble Supreme Court has held as under :

"16.....
The said direction is, therefore, not interfered with. CAT has also referred to para 2 of the Executive Order dated May 10, 1991, issued by Director General of Post, New Delhi, which reads thus :

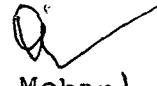
"The deciding factor for the selection of EDBPMs/EDSPMs should be the income and property and not the marks, has been examined threadbare but cannot be agreed to as this will introduce an element of competitiveness in the matter of possession of property and earning or income for determining the merit of candidates for appointment as ED agents. Proof of financial status is not only subject to manipulation but is also detrimental to merit. When the Constitution of India guaran-

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tees equal opportunity to all for their advancement, the reasonable course would be to offer ED employment to the person who secured maximum marks in the examination which made him eligible for the appointment, provided the candidate has the prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED allowance."

The Hon'ble Supreme Court also held that "it cannot be said that respondent No. 6 did not possess agricultural land before the last date of submission of application - Entry in Revenue Record is immaterial so far as the title or ownership of the land is concerned - CAT as well as High Court, ^{the} right in directing the authorities to appoint respondent No. 6 being more meritorious." In the present case also the private respondent No. 4 is apparently more meritorious than the applicant as he has secured 59% marks in the requisite minimum qualification, whereas the applicant has secured only 45% marks.

7. Considering all the facts and circumstances of the case, we are of the considered view that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.

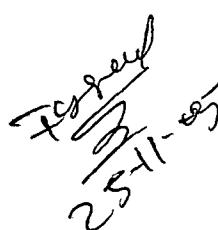

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

पृष्ठांकन सं. अ/व्या.
पर्वतीगढ़ी, गोपनीया, जबलपुर, दि.....
(1) सर्विज. अ/व्या. विजय चौधरी, जबलपुर
"SA" (2) अशोक चौधरी, विजय चौधरी, जबलपुर
(3) प्रद्युमन चौधरी, विजय चौधरी, जबलपुर
(4) विजयलता, विजय चौधरी, जबलपुर
सूचना एवं अदानाम कार्यालयी देखु

S. C. Chaturvedi
V. K. Sharma


उपराज्यकार्यालय


25/11/85