

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 19th day of April, 2011

Original Application No.395/2010

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Abhimanyu Singh
s/o Shri Sajjan Singh
r/o Nasirda, VPO Nasirda (Tonk),
presently selected as
Gramin Dak Sewak/
Dak Vitrak/Dak Wahak,
Lawa SO Diggi District Jaipur

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India
through the Secretary
to the Govt. of India,
Department of Post,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Superintendent Post Offices
Tonk Dn.,
Tonk.
4. Inspector Post Offices,
Sub Dn, Malpura (Tonk)

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

The respondents invited applications for the post of Gramin Dak Sewak (GDS) in Lawa Post Office. Pursuant to the advertisement issued, the applicant submitted application form for the post of GDS and was selected for the post of GDS, Lawa Post Office vide order dated 20.7.2010 (Ann.A/2). The applicant also submitted requisite certificates and fulfilled all the required formalities for appointment on the said post. But surprisingly, the respondents cancelled the selection/appointment order of the applicant vide order dated 2.8.2010 (Ann.A/1) and the same was served on the applicant on 16.8.2010. Therefore, this OA has been filed by the applicant for redressal of his grievance.

2. The short controversy involved in this OA is that the selection which has been cancelled by the respondents is on the ground that as per marksheets of Secondary School Examination the applicant is having 70.72 % marks whereas Shri Ramesh Chand Khinchi is having 80.67% marks in the Secondary School Examination, thus, considering higher percentage of marks obtained by Shri Ramesh Chand Khinchi, he was given appointment. Further submitted that this controversy has been dealt with by the CAT Benches and the High Court, as such, Ministry of Communication, Department of Posts reviewed the procedure of the appointment for the posts of



GDS and vide letter dated 17.9.2003, issued necessary instructions in respect of selections to various categories of GDS. In the letter dated 17.9.2003, it has been specifically mentioned that in view of the decision of the Postal Service Board the sole criteria for selection to the post of all categories of GDS's will be merit.

3. The learned counsel appearing for the applicant drawn our attention towards method of recruitment regarding ED Delivery Agents, ED Stamp Vendors and all other categories of EDA wherein educational qualification for the above posts has been mentioned as VIII standard and it has been provided that preference may be given to the candidates with Matriculation qualification and no weightage should be given for any qualification higher than Matriculation and the candidate should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. The categories such as ED Messengers should also have enough working knowledge of English. Thus, as per the method of recruitment as provided in GDS (Conduct and Employment) Rules, the minimum qualification is VIII standard and preference will be given to the candidate with Matriculation but no wieghtage will be given for any qualification higher than Matriculation. In the instant case, both the candidates are Matriculate, but in VIII standard, the applicant has obtained higher percentage of marks in comparison to Shri Ramesh Chand Khinchi. As per the method of recruitment, preference is to be given to the candidate having Matriculation and it is not disputed that the applicant is also Matriculate and the respondents have made

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basis of percentage obtained in Matriculation for appointment on the said post. Therefore, at the first instance, the respondents have rightly appointed the applicant but later on the appointment has been cancelled. Hon'ble Apex Court dealt with the present controversy in the case of Surindra Singh vs. Union of India and ors., reported in (2007) 11 SCC 599. We have carefully scanned the judgment of the Apex Court wherein in Para 9, 15 and 16 the Hon'ble Apex Court observed as under:-

"9. We have perused the impugned order of the High Court. The High Court, without going into the merit of the case, dismissed the writ petition in limine, merely on the ground that it had already disposed of similar matter being CWP No.11812-CAT of 2000 on 4.9.2000, wherein similar kind of order recorded by CAT was challenged. The observation of CAT extracted by the High Court in the order of CWP No.11812-CAT of 2000 reads as under:-

"5. We have been taking a view that preference clause can be operated by any department where they find that other things are equal amongst two candidates who are found most meritorious, may be having equal marks in the middle standard. When other things are equal amongst such candidates, resort can be taken to the preference clause and that is the only situation where it can be operated and enforced."

....

15. These guidelines/norms/instructions clearly stipulate that if the candidates, who have passed matriculation examination are available for selection to the posts of EDDA, the selection should be made by the Selection Committee on the basis of the marks obtained by the candidates in preferential qualification (i.e. matriculation) and in the absence of matriculation candidates, the selection has to be made on the basis of essential qualification viz. 8th standard. It appears that CAT as well as the High Court, both have lost sight of the object and import of the guidelines/norms/instructions dated 21.7.1998 (sic 21.11.1997) laid down by a competent authority. CAT is not competent to lay down criteria for the selection and appointment to the post of EDDA. It is the prerogative and authority of the employer to lay down suitable service conditions to the respective posts.



16. In our view, in service jurisprudence the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities, which are entrusted to the candidates after their selection to a particular post. All the more, it is important for efficient and effective administration. The basic object of prescribing a minimum qualification is to put a cut-off level for a particular job in accordance with the minimum competency required for the performance of that job. The object of prescribing preferential qualification is to select the best amongst the better candidates who possess more competence than the others. Sub-clause (iv) of Clause 2 puts a limit with respect to preferential qualification by way of a clear stipulation that no preference should be given to the qualification above matriculation. Hence the preferential qualification was considered to be more effect and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question."

4. We have given thoughtful consideration to the observations made by the Hon'ble Apex Court as the Hon'ble Apex Court has clearly indicated that the object of prescribing the preferential qualification is to select the best amongst better candidates who possess more competence than others. Sub clause (iv) or Clause 2 puts a limit with respect to preferential qualification by way of a clear stipulation that no preference should be given to the qualification above matriculation. Hence the preferential qualification was considered to be more effective and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question. Now applying the ratio as laid down to the instance case, as observed hereinabove, both the candidates possess qualification of 8th standard as well as Matriculation. In case of the applicant, he secured more marks in 8th standard in comparison to Shri Ramesh Chand Khinchi but in the



case of Shri Ramesh Chand Khinchi he obtained more percentage of marks in Secondary School Examination in comparison to the applicant. Now the question arises if preference is to be given to the applicant as he has also qualified Matriculation and have more marks in the 8th than Shri Khinchi. As per the intention in the method of recruitment the applicant is rightly selected but Shri Khinchi has secured higher percentage in comparison to the applicant in Matriculation, therefore, candidature of the applicant was cancelled and while giving appoint on the said post, the respondents examined all other factual aspects as pointed out by the applicant. As per the advertisement dated 2.6.2010 (Ann.R/2) the eligibility criteria has been laid down. In condition No.2 educational qualification has been laid down as 8th pass and preference is to be given to the Matriculate and as per condition No.4 after selection and before appointment one should have residential house within the operational area of the post office.

5. It appears that neither the respondents while appointing the applicant have examined each and every aspect nor at the time of cancellation of the appointment of the applicant whether Shri Ramesh Chand Khinchi is made eligible to be given appointment on the post of GDS and latest instruction issued vide letter dated 17.9.2003 (Ann.R/9) have not been incorporated in the advertisement and appointment issued by the respondents which are being now relied upon by the respondents for the purpose of canceling the appointment made.



6. Therefore, we deem it proper to quash and set-aside Ann.A/1 dated 2.8.2010 and direct the respondents to consider the case of the applicant strictly in accordance with method of recruitment in view of the law laid down by the Hon'ble Apex Court and in view of conditions laid down vide Ann.R/2 and pass fresh order thereafter.

7. With these observations, the OA stands disposed of with no order as to costs.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/