

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2948/2014

New Delhi this the 25th day of April, 2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Mustaq Ahemed, 28 years
S/o Sh. ILL Khan,
R/o Type-II/9, Police Colony,
PS Kalyanpuri, Delhi-91.

.... Applicant

(through Sh. Akhilesh Arora, Advocate)

Versus

1. Union of India,
Ministry of Communication
and Information Technology
Electronics Niketan, 6, CGO
Complex, Lodhi Road,
New Delhi-110003.
2. Department of Posts, India
Through Chief Postmaster General
Postal Directorate, Dak Bhawan,
New Delhi-110016.

..... Respondents

(through Sh. R.K. Jain, Advocate)

ORDER (ORAL)

Mr. Shekhar Agarwal, Member (A)

Brief facts of the case are that the applicant applied for the post of Postal Assistant in response to an advertisement issued by the respondents on 11.08.2012. His grievance is that his candidature has been rejected by the respondents two years later vide impugned

order dated 22.07.2014 on the ground that the applicant does not possess the necessary educational qualifications for the post.

2. Learned counsel for the applicant submitted that this order has been passed at the stage when the applicant was about to be deputed for training after having cleared all stages of the selection process. He submitted that the respondents have been negligent in not rejecting applicant's candidature at the initial stage itself. Thus, they had raised the hopes of the applicant of being appointed. The cancellation of his candidature has now shocked the applicant.

3. In response, learned counsel for the respondents Sh. R.K. Jain submitted that the applicant was ineligible because he had passed class-12 examination in vocational stream. This he said was neither permissible according to the Recruitment Rules nor in the advertisement issued by the respondents. Thus, the applicant cannot be appointed since he does not possess the necessary qualification.

4. We have heard both sides and have perused the material placed on record. At page-17 of the paper-book, the advertisement issued by the respondents is available. Educational qualifications for the post are laid down in para-5 of the aforesaid advertisement, which reads as follows:-

Educational Qualification: (i) 10+2 Standard or 12th Class pass with at least 60% marks and above, from any recognized University/Board of School Education, Board of Secondary Education with English as a compulsory subject (excluding vocational streams) for OC candidates. 55% and above for Other Backward Classes and 45% and above for Scheduled Castes/Scheduled Tribes shall apply.

(ii) Should have studied local language of the State or Union Territory of the Postal Circle concerned or Hindi as a subject at least in Matriculation or equivalent."

4.1 A mere reading of the same would reveal that candidates who had passed Class-12 in vocational stream were excluded. It is not disputed that the applicant passed Class-12 in vocational stream. This being the situation the applicant should himself have been aware of the fact that he was ineligible for this post. He should, therefore, not have applied for this examination at all. Since he was ineligible for the post, his candidature can be cancelled at any stage. Even if he has secured appointment, such an appointment would have been nullity in the eyes of law.

4.2 We place reliance on the judgment of Apex Court in the case of **Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others**, (2008) 7 SCC 153 wherein in para-16 it has been observed as follows:-

"The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity."

4.3 We also place reliance on the judgment of Hon'ble Supreme Court in the case of **The District Collector & Chairman, Vizianagaram and Anr. Vs. M. Tripura Sundari Devi**, 1990(4)SLR 237 (SC), in para-6 of which it has been held as follows:-

“6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

5. We, therefore, find no merit in this OA and dismiss the same. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/