

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 493 of 2012

Reserved on 12.02.2018.

Pronounced on 15th February, 2018

Hon'ble Justice Mr. V.C. Gupta, Member – J

Hon'ble Mr. R. Ramanujam, Member - A

Smt. Suman, aged about 22 years, wife of Shri Sabhajeet, resident of village Mangalpur, post Bidhar, District – Ambedkar Nagar.

..... Applicant

By Advocate: None present.

VERSUS

1. Union of India through its Secretary Post and Telecommunication Department, New Delhi.
2. Post Master General, General Post Office, Lucknow.
3. Pravar Adhikshak, Dakghar, Faizabad Mandal, Faizabad.
4. Varisht Adhikshak, Dak Ghar, Faizabad.
5. Post Inspector, Akbarpur, Purvi Mandal, Akbarpur.
6. Post Master, Ram Nagar Post Office, District Ambedkar Nagar.
7. Branch Post Master, Bidhar, Distt. Ambedkar Nagar.
8. Shri Pawan Kumar, son of Sri Ram Achal, resident of village Issauri Nasirpur, Post Chjahauda, Thana Jahangirganj, District – Ambedkar Nagar.

..... Respondents

By Advocate: Sri T.B. Singh (R- 1 to 7)

O R D E R

Delivered by: Hon'ble Mr. R. Ramanujam, Member - A

The applicant has filed this O.A seeking the following reliefs:

(i) This Hon'ble Tribunal may kindly be pleased to quash the appointment letter/order of the Respondent No. 8 on the post of Sakha Dakghar 'Dak Wahak' after summoning the original from the Respondents.

(ii) This Hon'ble Tribunal may kindly be pleased to direct the Respondents No. 1 to 7 to appoint the applicant on the post of Sakha Dakghar 'Dak Wahak' in place of the Respondent No. 8.

(iii) This Hon'ble Tribunal may further kindly be pleased to any other suitable writ, order or direction that may be deemed just and proper in the circumstances of the case.

(iv) Allow the writ petition with cost in favour of the applicant.

2. The case of the applicant is that a post of Sakha Dakghar (Dak Wahak) was advertised on 15.12.2011 by the 4th respondent in Sakha Dakghar Lekha Karyalay, Ram Nagar, District Ambedkar Nagar. The post was reserved for SC/ST candidates. The last date of submission of the application was 14.01.2012. The applicant submitted her application for the post within the prescribed time limit on 12.01.2012. She was directed to be present on 06.02.2012 for verification of documents. After verification of her documents, she was found suitable for appointment for the said post. However, instead of the applicant, the 8th respondent was selected and appointed to the post.

3. The applicant obtained information under RTI Act from which she came to know that the 8th respondent had applied for the post only on 20.01.2012 which date was beyond the last date prescribed in the notification. As such, his application should not have been accepted. Further, the 8th respondent had submitted only seven copies of the application whereas the applicant had been

informed that eight copies should be submitted. It is also alleged that there was a discrepancy in the date of birth (DoB) of the 8th respondent between that recorded in the High School Certificate and the one in the mark sheet which was overlooked. The applicant accordingly prays for the appointment of the 8th respondent to the said post to be quashed and set aside as irregular and unreasonable and the same to be issued in favour of the applicant.

4. The respondents have contested the claim of the applicant. It is submitted on behalf of respondents No. 1 to 7 that as per DG(P&T) letter dated 04.09.1982, a requisition was sent to Employment Exchange, Ambedkar Nagar for nomination of suitable candidates for the said post. A list comprising four names of suitable candidates from District Employment Office, Ambedkar Nagar was received in the Office of SDI(East), Akbarpur on 12.01.2012 and those candidates were called upon to submit their applications up to 30.01.2012. After completion of the formalities and necessary verification, the 8th respondent was found most suitable on the basis of marks in 10th level examination. Accordingly, it is pleaded that there was no irregularity in the appointment of the 8th respondent.

5. The 8th respondent, Sri Pawan Kumar Singh, son of Ram Achal who had been appointed to the post has in his reply contended that the list of four names as requisitioned by the 4th respondent had been received from the employment exchange on 12.01.2012 itself prior to the last date and therefore, his candidature was rightly considered for the appointment on the post of Dak Wahak. As regards alleged discrepancy in DoB, it is submitted that the correct DoB is recorded in his High

School certificate. However, since High School mark sheet showed the wrong date of birth, he moved an application for correction of the DoB in the mark sheet. It is the DoB recorded in the certificate issued by the U.P Secondary Education Board that should be considered authentic. DoB erroneously recorded in the mark sheet could not be held against him. He accordingly, prays for dismissal of the O.A.

6. Written arguments on behalf of respondent No. 1 to 7 have been filed on the same lines. When the matter was taken up for final hearing, applicant remained unrepresented inspite of the warning already extended to the parties on 15.09.2017 that in case, adjournment is sought by either of the parties, the case shall proceed under rule 15 or 16 of CAT (Procedure) Rules, 1987 as the case may be.

7. We have considered the facts of the case. Admittedly, the 4th respondent had notified 14.01.2012 as the last date for receipt of the application as per annexure A-1 communication addressed to the District Employment Officer dated 15.12.2011. However, the said date appears to be for directly sending the application to Postal Superintendent, Akbarpur by registered / speed post. As far as nomination from the employment exchange is concerned, the list/application was required to be sent such that it would reach the office of the 5th respondent on or before 14.01.2012. It appears that employment exchange forwarded the list of names recommended by them before the last date even though the application form was obtained from the recommended candidates subsequently. According to the respondents, 30.01.2012 had been fixed as the last date for this purpose.

8. It is not in dispute that the selected candidate was higher on the merit list than the applicant. He also appears to have convinced the authorities of his eligibility for the post in terms of DoB as recorded in the U.P. Secondary Education Board certificate. As the communication sent to the District employment office on 15.12.2011 states that the list/application should be received before 14.01.2012 and not the list alongwith completed application, the fact that the application form was filled subsequently cannot be held against the 8th respondent.

9. It appears that the employment exchange would only recommend the names based on data available with them and leave it to the nominee and the employer to complete the requisite formalities. It is perhaps not the fault of the candidates that the employment exchange failed to obtain completed application forms from the nominees before recommending their names. As the communication to the District Employment Officer was not categorical that the nomination should be accompanied by completed applications in the prescribed proforma, we are unable to fault the respondents for granting time to the nominees to fill in the application form.

10. The applicant had participated in the selection process but was not selected based on his merit position. The respondents, quoting the order of this Tribunal in **O.A No. 289/2011, Deepak Kumar Vs UoI** dated 26.04.2012 have contended that the applicant had forfeited his right to assail the selection process after having participated in the same without any protest. The Hon'ble Apex Court in **Madras Institute of**

Development Studies and Another Vs K. Sivasubramaniyan and Ors, (2016) 1 SCC 454 had held that when a candidate consciously took part in a selection process, he subsequently could not turn around and question the very selection process. We are accordingly of the view that there is no merit in the contentions raised by the applicant. O.A is dismissed as misconceived. There shall be no order as to costs.

(R. Ramanujam)
Member (A)

(Justice V.C. Gupta)
Member (J)

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