

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA****O.A. 050/00070/2016 with MA 257/2017****Reserved on- 29.08.2017.****Date of pronouncement 19.09.2017****CORAM**

Hon'ble Shri A.K. Upadhyay, Member [A]
 Hon'ble Shri J.V. Bhairavia, Member [J]

Punendra Chauhan S/o Sri Nand Kishore Singh, Resident of Village- Jagdishpur, P.O.- + P.S. Jandaha, District- Vaishali, at present residing C/o Sri Rajeshwar Chaudhary, Mohalla-S.K. -79, P.O.- Lohiyanagar, P.S. Patrakarnagar, Patna -20

.....Applicant

By Advocate : Shri M.M.Jha

Versus

1. The Union of India through the Secretary, Department of Posts, India, New Delhi.
2. The The Chief Postmaster General, Bihar Circle, Patna-1.
3. The Senior Superintendent of Post Offices, Saran Division, Chapra.

.....Respondents

By Advocate: Shri Arvind Kumar @ Montu

O R D E R

Jayesh V. Bhairavia, M [J]: This is a second round of litigation. The applicant has filed this O.A against the order dated 28.05.2015 passed by the Senior Superintendent of Post Offices, Saran Division, Chapra by which the appointment of the applicant to the post of Postal Assistant Cadre in Saran Division, Chapra under Direct recruitment quota for vacancies year 2011 and 2012 has been denied. As such, applicant prays for the following relief(s) in terms on para 8 of this O.A.:-

"[8.i] That your Lordship may graciously be pleased to set aside the order dated 28.05.2015 issued by Sr. Superintendent of Post Offices, Saran Division, Chapra.

[8.ii] The Hon'ble Court may further be pleased to direct the respondents to issue the appointment letter.

[8.iii] That the Hon'ble Court may further be pleased to direct the respondents to calculate his seniority in his cadre from issuing the Letter about the services of the petitioner has kept in abeyance.

[8.iv] That the respondents be directed to pay available compensation from government for the delay and for non-disposing of

his representation as without having any fault on the part of petitioner, he has forced for financial infrengency, mental agony and depression"

2. M.A. 257/2017, praying for early hearing of the O.A, is allowed.

Accordingly, M.A stands disposed.

3. The brief facts of the case, as submitted by the applicant, are as below :-

[i] Pursuant to a notification and advertisement R&E-51/PA/SA/DR/2011 & 2012 dated 11.08.2012 for filling up vacancies for the various posts including Postal Assistant and Sorting Assistant, issued by respondent no.2, the applicant had applied for the post of Postal Assistant in Saran Division .

[ii] Vide letter dated 18.12.2013, the applicant was directed to appear on 27.12.2013 with all original certificates and documents for verification. The applicant appeared and submitted his certificates to the office of Superintendent of Post Offices, Saran. Annexure A/3 refers.

[iii] The applicant vide letter dated 27.12.2013 (Annexure A/4) , was informed by the respondent no.3 that the order of the applicant for his provisional selection for appointment to the post of Postal Assistant cadre in Saran Division, Chapra under Direct recruitment quota for the vacancy year 2011 & 2012 is kept in abeyance due to certain technical and administrative reason. (Annexure A/4)

Thereafter, the applicant visited the office of Sr. Superintendent of Post Office, Saran Division, Chapra whereby he was informed by the office of the respondents that the certificate of 'Upshashtri' (Intermediate) examination possess by the applicant is not valid as the Institute is not recognized. Thereafter, the applicant obtained a list of recognized institution under UGC and submitted it before the respondent department but they did not replied on it. Thereafter applicant had given representation to the Chief Post Master General, Bihar Circle for issuance of his appointment letter. Copy of

representations dated 14.3.2014 and 21.4.2014. Annexure A/5 and A/5A refer.

[iv] Being aggrieved, the applicant filed O.A 360/2014 before the Central Administrative Tribunal, Patna Bench, Patna which was decided by oral order dated 25.03.2015 which are as under :-

"4. In view of the above, we direct the competent authorities to take final decision in this regard as per their own letter dated 27.12.2013 within a period of four weeks from the date of receipt/communication of a copy of this order by passing a reasoned and speaking order.

Accordingly, OA is disposed of without expressing any opinion on the merit of the case with no order as to costs.

[v] The applicant had submitted a representation alongwith the copy of order dated 25.03.2015 to the Sr. Superintendent of Post Office, Saran Division Chapra and the Chief Post Master General Bihar Circle on 01.04.2015 which elicited no response.

[vi] Thereafter the applicant preferred to file a contempt petition 70 of 2015 before this Tribunal on 07.05.2015. During the pendency of the said petition the respondents, on 28.05.2015, had passed order on his pending representation on ground of which the contempt petition, was dropped on 07.01.2016 stating that the substantial compliance has been done.

[vii] The I/c for applicant submitted that the applicant possess the requisite educational qualification of passing of intermediate examination with more than 60% marks with english subject and though the applicant was selected, the respondents has denied the appointment on the ground that the educational qualification of "Upshastri" examination (Intermediate) cannot be accepted as there is no provision in the rules i.e the Department of Posts (Postal Assistant/Sorting Assistant) (Group 'C' non-Gazetted) , recruitment rules 2011 to consider equivalent educational qualification.

In sum and substance, the applicant submits that there has been miscarriage of justice due to incorrect action on the part of respondents and wrongfully denied the employment to the applicant though the applicant possess the requisite educational qualification which is recognised to be equivalent and also for the purpose of public employment as per the Government of India Order; hence reliefs prayed for in para 8 of this OA.

4. The respondents, through their written statement, have submitted as below :-

(i) The respondents has denied the all the contentions and submission of the applicant and stated that the applicant does not have requisite educational qualification as per the conditions stipulated in the advertisement as well as provisions of the Department of Post (Postal Assistant and Sorting Assistant) (Group 'C' non Gazetted) Recruitment Rules 2011. The educational qualification stipulated in the said rules for the post are reproduced are as under:-

Schedule

(1) Name of the Post : (Postal Assistant and Sorting Assistant)

Educational Qualifications:

(I) 10 + 2 standard or 12th class pass with at least 60% marks and above, from any recognised 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 Schedule Caste/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.

(ii) The respondents further contended that as per the provision of rule 2011 the respondent no.2 has issued public notice for filling of vacancies of Postal Assistant/Sorting Assistant and Postal Assistant Mail Motor Service on 11.08.2012, the applicant initially as per the

provisions of the rules after declaration of successful candidates, the office of respondent authority/recruitment authority has to verify the correctness of all the educational qualifications certificates possessed by the successful candidates and accordingly, on 27.12.2013 the applicant was also called for verification of his educational credentials. The applicant had submitted his marks sheets and certificates, Admit Card of "Upshastri" (Intermediate")Exam of year 2011 passed from Kamleshwar Singh Darbhanga Sanskrit University alongwith Mark sheet and certificates with matriculation exam passed from Bihar School Examination Board, Patna as well as original certificate of typing knowledge.

It was found during the scrutiny of the certificates of educational qualification of the applicant that the present applicant is possess the "Upshastri" (Intermediate) certificate and mark sheet which is not in accordance with the eligibility conditions of education qualification prescribed under the rules therefore the provisional selection of the applicant in the cadre of Postal Assistant has been decided to keep in abeyance by communication dated 27.12.2007 (Annexure A/4, page 26 of O.A refers).

(iii) The applicant further contended that thereafter the decision on the acceptance of applicant's educational qualification was pending with the department and during that time the applicant had approached this Tribunal by way of filing O.A 360/2014 and this Hon'ble Tribunal vide order dated 25th March 2015 issued the direction to the competent authority to take final decision within a period of four weeks from the date of receipt of communication of the copy of the order to pass reasoned and speaking order. In compliance to it, the competent authority has its final decision dated 28.05.2015 and came to the conclusion that the applicant has failed to satisfied required educational qualification for the post therefore his selection for the post of postal assistant is decided to be cancelled with immediate

effect. The said decision dated 28.05.2015 is in consonance with the rules and reasons stated in the said order cannot be said arbitrary or against the provisions of rules and therefore the applicant is not entitled for any relief.

(iii) The respondents further contended that the respondent authorities vide its communication dated 18.12.2013 addressed to the applicant called for verification of original certificates and documents on 27.12.2013 in the Divisional Office, Chapra and in the said letter it was specifically informed to the applicant more particularly by way of para 3 of the said letter that in case, later on it is found that any of the successful candidate was not eligible to take the examination under the existing rules/instructions on the subject for any other reasons or in case any mistake is found later on with regard to announcement of the result of any candidate for any reason whatsoever, his/ her name will be deleted from the successful candidate, as the case may be. And in para 4 of the said letter it was intimated that the result announced will also be subject to any change in the list of successful candidate due to future verification of relevant documents or any reason in accordance with the existing rules/instructions.

On the basis of above, it was contended that the entire selection is subject to future verification of relevant documents and in the present case it was found that on verification of relevant document of the applicant the certificate of intermediate examination which cannot be allowed to equate with the required educational qualification as per the provision of rules and therefore also the applicant does not have any vested right for the appointment. The statutory rule does not stipulate any condition to consider the equivalent educational qualification with respect to requirement of 10 + 2 standard or 12th class pass certificate. In the notification of the vacancy of the post there is no provision/condition stipulates to consider equivalent educational qualification with respect to educational qualification required in (clause -i) of the said notification/advertisement more

particularly requirement of certificate of 10+2 or 12th pass examination. The respondents relied upon the statutory rules and the contention stated in the written statement as well as supplementary written statement and opposed the O.A.

5. In response to the said contention of the respondents, the applicant has filed rejoinder to the written statement and has reiterated his earlier submissions and additionally, I/c for applicant orally further contented that the applicant has passed the Intermediate "Upashastri" examination from the recognised University and the said educational qualification of the applicant has been recognised by the Government of India, Ministry of Personnel, Public Grievances and Pension Department by its O.M. No. 14021/3/97-Estt.(D), dated 04.5.1998 and the GOI had decided to recognise the 'Upshastri" examination as equivalent to intermediate education qualification for the purpose of employment. The applicant has passed the said Intermediate examination with English subject with more than 60% marks therefore, the applicant fulfil the condition of requisite education qualification and is required to be considered for appointment to the post of Postal Assistant.

It was further argued that the respondents had issued the guidelines alongwith the application form and according to it is one of the condition/guideline wherein it is directed that the candidate has to indicate the equivalent examination marks as per the mark sheet to be filled up in the box of the application form upto the two decimal points, therefore also it is evident that the respondents has allow the educational qualification acquired of the equivalent examination of recognised university hence; it is not proper on the part of respondents to deny the appointment to the applicant on the ground of non-equivalence educational qualification.

6. Heard the parties and considered their submissions/arguments and perused the documents.

7. In the present case, the controversy required to be adjudicated by this Tribunal for the limited purpose i.e whether the equivalent educational qualification

possessed by the applicant fulfil the requirement of the conditions stipulated in the advertisement published by the respondents for filling up the vacancy for the post of Postal Assistant/Sorting Assistant.

It is appropriate to take notice of the law laid down by the Hon'ble Apex Court in the case of Prakash Chand Meena and others Vs State of Rajasthan and others (reported in 2015 (8) SCC 484; the Hon'ble Apex Court held as under :-

"In the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules Or government order exiting on or before the imitation of recruitment process"

8. In the present case, the record reveals that the applicant has passed the Intermediate "Upashastri" examination from Kameshwar Singh, Darbhanga Sanskrit Vishwavidyalaya, Darbhanga (Bihar), the said University is duly recognised University by the U.G.C. (University Grant Commission) and the "Upashastri" examination of the said University has been declared equivalent to the Intermediate examination and valid for public employment by the Government of India, Ministry of Personnel, Public Grievances and Pension Department by its O.M. No. 14021/3/97-Estt.(D), dated 04.5.1998.

In view of above stated facts of the present case which is not contraverted by the respondent and also considering the law laid down by the Hon'ble Apex Court in the case of Prakash Chandra Meena Vs State of Rajasthan and others (supra), the decision of the respondents dated 28.05.2015 impugned herein is not sustainable in eye of law. It is not proper on the part of respondent Postal Department to act contrary to the GOI directions. The "Upashastri" examination of the K.S.D. Sanskrit Vishwavidyalaya, Darbhanga, has been recognised by the Government of India long back in the year 1998 and till date it is in existence . Admittedly, the order of reorganization of GOI is prior to publication of advertisement (before the initiation of recruitment process in the present case) issued by the respondent for the filling up vacancies for the post of Postal Assistant and Sorting Assistant, therefore, the reasons stated in the impugned order for denial of the appointment to the applicant on the ground that the rules 2011 of the Postal Department does not have any provision to consider equivalent educational qualification for the purpose of fulfilment of requisite conditions, the said reason of

the respondent authority is totally contradictory to the GOI order/O.M. The impugned order passed by the respondents is erroneous.

In conclusion, we set aside the impugned order dated 28.5.2015 and direct the Chief Postmaster General, Bihar Circle, Patna and Senior Superintendent of Post Offices, Saran Division, Chapra (Bihar) to consider the candidature of the applicant for selection and appointment to the post of Postal Assistant in view of aforesaid discussion and take appropriate decision within four weeks from the date of receipt/communication of this order. Accordingly, the O.A is allowed with no order as to costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

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