

Surinder Singh vs Union Of India & Ors on 30 March, 2007

Author: Lokeshwar Singh Pant

Bench: A. K. Mathur, Lokeshwar Singh Pant

CASE NO.:

Appeal (civil) 143 of 2001

PETITIONER:

Surinder Singh

RESPONDENT:

Union of India & Ors

DATE OF JUDGMENT: 30/03/2007

BENCH:

A. K. Mathur & Lokeshwar Singh Pant

JUDGMENT:

J U D G M E N T Lokeshwar Singh Pant, J.

The present appeal is filed against the judgment and order dated 27.09.2000 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.13280- CAT/2000. By the said order, the High Court confirmed the order recorded by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short "the CAT") in O.A. No. 171 HR/2000.

Briefly stated the facts giving rise to the filing of this appeal are thus:

The Government of India, Ministry of Communications, Department of Posts, respondent No. 1 herein, vide Circular dated 12.03.1993 revised the educational qualifications for recruitment to various posts including the post of Extra Departmental Delivery Agent (for short "EDDA"). As per the said Circular, the minimum educational qualification for the post of EDDA, etc. should be 8th standard pass and preference has to be given to the candidates with Matriculation qualification. However, no preference should be given for any qualification higher than Matriculation. According to the appellant, the Directorate of Post Offices issued a letter No.19-17/97-ED & Trg. dated 21.11.1997 to the Chief Post Master General (CPMG), HR Circle Ambala, whereby the Department had decided that the merit of candidates for selection of EDDAs should be prepared on the basis of the marks obtained in preferential qualification (i.e. Matriculation) if such candidates are available, otherwise on the basis of the essential qualification, viz. 8th standard. The Assistant Superintendent of Post Offices, North Sub- Division, Kurukshetra-respondent No.3 herein, in compliance to the letter of Superintendent

of Post Offices, Kurukshetra Dn. 136118 dated 30.07.1998 notified one post of EDDA to the Employment Exchange in May 1999. In response thereto, the Employment Exchange forwarded the names of some candidates including the names of the appellant and Dharam Pal, respondent No.4 herein. The vacancy was also notified through public advertisement. In all, 20 candidates applied for the post.

The case of the appellant is that he qualified his Matriculation examination from the Board of School Education, Haryana, in the year 1987 by securing 503 marks out of 900 (i.e. 55.8%). The appellant also qualified Senior Secondary Examination in the year 1991 from the Board of School Education, Haryana. It is stated that respondent No.4 had secured 41% marks in the Matriculation examination. In view of the Guidelines/Norms/Instructions issued by respondent No.1, the merit of the candidates for the post of EDDA has been prepared on the basis of marks obtained in the preferential qualifications, viz. Matriculation, and the Selection Committee selected and appointed the appellant against the post of EDDA on the basis of merit. Respondent No.4 challenged the appointment of the appellant herein before the CAT, Chandigarh Bench, Chandigarh, inter alia on the ground that as per the Circular, the minimum qualification was 8th standard and as he has secured more marks in 8th standard than the appellant, the appellant could not have been selected on the basis of preferential qualification for the post in question. The appellant and the Department contested the claim of respondent No.4 before the CAT in their separate counter affidavits. The CAT quashed the appointment of the appellant to the post of EDDA vide order dated 24.08.2000 and directed the respondent-Department to hold a fresh selection in accordance with law.

Aggrieved by the order of the CAT, the appellant filed the writ petition before the High Court of Punjab and Haryana at Chandigarh, inter alia, on the grounds that while considering the matter the entire approach of the CAT was wholly erroneous in law and not sustainable. According to the appellant, the CAT has ignored the latest Guidelines/Norms/ Guidelines/Norms/Instructions issued by CPMG, Haryana, Ambala, a copy whereof was placed on the file of the CAT, whereby the Competent Authority decided to consider the selection of the candidates to the post of EDDA on the merits of preferential qualification, viz. Matriculation. Further, the contention of the appellant before the CAT was that respondent No.4 had no locus standi to challenge the selection and appointment of the appellant on the basis of the marks obtained by him in 8th standard examination in comparison to the marks of the appellant, because if the marks secured in 8th standard by the candidates were to be taken into consideration by the Selection Committee, respondent No.4 could not have been selected as there were other candidates, who had secured more marks than respondent No.4 in the minimum qualifying examination. The appellant submitted before the High Court that the CAT has gone beyond its jurisdiction by making an attempt to reframe and recast the Guidelines/Norms/Instructions framed by respondent No. 1 in prescribing reasonable and appropriate qualifications for a particular post and in the matters of making the appointment to the same.

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 04.09.2000, wherein similar kind of order recorded by the CAT was challenged. The observation of the 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 only situation where it can be operated and enforced."

The High Court based upon the above extracted observation has held:

"Without calling upon the other side, we are of the view that where the Tribunal has used the words that circular dated November 27, 1997, was being struck down, it was in the sense that the way the petitioners had interpreted the circular it was not well founded and the interpretation of the circular should be as given in para 5 of the judgment of the Tribunal, which has already been quoted above. We, as a matter of abundant caution, hold that the circular dated November 27, 1997, will not stand quashed but the petitioners will implement the same in the manner as interpreted by the Tribunal in para 5 of the judgment which has already been quoted above."

Aggrieved by the order of the High Court, the appellant is before this Court.

Having heard the learned counsel for the parties and having examined in detail the material on record, we are of the view that the order of the High Court maintaining the order of the CAT is wrong and cannot be sustained.

We have perused the Guidelines/Norms/Instructions dated 24.03.1993 formulated by the Government of India, Ministry of Communications, Department of Posts, on the subject of revision of educational qualifications prescribed for recruitment to various categories of ED Agents. Sub-clause

(iv) of Clause 2 of those Guidelines/Norms/Instructions prescribes that the minimum educational qualifications for ED Delivery Agents, ED Stamp Vendors and other categories of ED should be 8th standard. Preference may be given to the candidates with Matriculation qualification. However, it is specified that no preference should be given for any qualification higher than Matriculation. It appears from the record that the Directorate, Post Offices, vide another Circular No.19-17/97-ED & Trg. dated 21.11.1997, has decided that the merit of candidates for selection to the post of EDDA should be on the basis of the marks obtained in preferential qualification (i.e. Matriculation) if such candidates are available, otherwise on the basis of the essential qualification, viz. 8th standard.

Copies of the latest Guidelines/Norms/Instructions issued by respondent No. 1 were signed by CPMG, HR Ambala respondent No. 2 herein who forwarded them to the Superintendent of Post Offices in his Division. Superintendent of Posts, Kurukshetra, Dn. 136118 circulated the Circular of respondent No. 1 to all recruiting units established in his Division for information and necessary action. Consequently, Assistant Superintendent of Post Offices, North Division, Kurukshetra respondent No. 3 herein issued requisition to the Employment Exchange for sponsoring the names of eligible candidates for filling up the post of EDDA. In addition, applications were invited from open market through public notice. In all, 20 candidates including the appellant and Dharampal respondent No. 4 herein appeared before the Selection Committee constituted for the selection to the post of EDDA. The Selection Committee had selected the appellant on the basis of the preferential qualification because he has, admittedly, secured 55.8% marks in comparison to respondent No. 4 who secured 41% marks in the Matriculation examination. It is not in dispute that the requisite minimum qualification for the post of EDDA has been prescribed as 8th standard. The selection of the appellant has been made by the Selection Committee strictly in accordance with the latest Guidelines/Norms/Instructions framed by the Department from time to time.

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 Matriculate candidates, the selection has to be made on the basis of essential qualification, viz. 8th standard. It appears that the CAT as well as the High Court, both have lost sight of the object and import of the Guidelines/Norms/Instructions dated 21.07.1998 laid down by a Competent Authority. The 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. 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 effective and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question.

Shri U.S. Puria, Assistant Director General (ED), Department of Posts, New Delhi, in his counter affidavit filed on behalf of respondent Nos. 1 and 2 has stated that Dharam Pal, respondent No. 4, was appointed provisionally as EDDA by the Area Sub-Divisional ASPOs with effect from 26.04.1997 on compassionate ground in place of his father Babu Ram who died on 26.04.1997 while working as EDDA, Tangore, B.O. in Kurukshetra. He stated that the appointment of respondent No. 4 was subject to the approval of Chief Post Master General, Haryana Circle, Ambala. Respondent

No. 4 worked as EDDA from 26.04.1997 to 31.03.1999. The Circle Selection Committee later on has found that two sons of the deceased Babu Ram were already in employment, therefore, the claim of respondent No. 4 for appointment to the post of EDDA on compassionate grounds was rejected. The charge of EDDA, Tangore B.O., Kurukshetra was handed over to Budh Singh, a regular ED employee of Kurukshetra Division, who was on deputation to Army Postal Service and discharged from the said service on 15.03.1999. Budh Singh joined service on 31.03.1999 when respondent No. 4 was relieved from the job. However, Budh Singh absented from the duty w.e.f. 1.4.1999. Departmental proceedings were initiated against Budh Singh as per the Rules. Finally, Budh Singh was removed from the service by the Competent Authority vide order dated 15.09.1999. In these circumstances, the post of EDDA was notified to the Employment Exchange and general public by the respondent-Department. The respondent Nos. 1 and 2 had justified the selection and appointment of the appellant on the basis of marks secured by him in Matriculation examination, which according to them is a preferential qualification, as per the Guidelines/Norms/Instructions prescribed by the Competent Authority.

In *Government of Andhra Pradesh v. P. Dilip Kumar and Anr.* [(1993) 2 SCC 310], this Court in paragraph 13 held as under:

"13. ... There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a catena of decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme."

Further, in paragraph 15 it is observed as under:

"15. ... It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration."

In view of the above-stated factual situation and settled position of law, the orders of the CAT as well as the High Court cannot be sustained.

For the above-said reasons, the appeal is, accordingly, allowed. The judgment and order dated 27.09.2000 of the High Court of Punjab and Haryana at Chandigarh in CWP Nos.13280-CAT/2000 confirming the order of the CAT, Chandigarh Bench, Chandigarh, in O.A. Nos.171 HR/2000 is quashed and set aside. Respondent Nos. 1 to 3 are directed to take necessary steps for facilitating the resumption of the duties of the appellant on the post of EDDA. In the facts and circumstances of the case, there shall be no order as to costs.