

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No. 226/2019 with
M.A. No. 677/2019**

Reserved on : 10.01.2020
Pronounced on: 28.01.2020

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Manish Kumar Gautam son of Shri Ramesh Chand Gautam, aged about 33 years, resident of Village & Post Mandawari, Tehsil Lalsot, District Dausa and presently working as Postal Assistant, Phagi Sub Post Office, under Superintendent of Post Offices, Jaipur (MFL) Division, Shastri Nagar, Jaipur – 302016.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, Sansad Marg, Delhi-110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur – 302007.
3. Superintendent of Post Offices, Jaipur (MFL) Division, Shastri Nagar, Jaipur – 302016.

...Respondents.

(By Advocate: Shri Anand Sharma)

ORDER

Per: A.Mukhopadhaya, Member (A):

The brief facts of this Original Application, (OA), are that the applicant, who was initially appointed in the respondent department of Posts as Gramin Dak Sevak,

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(GDS), on 18.06.2007, was thereafter appointed as Multi-Tasking Staff, (MTS), with the department on 02.02.2013; (Annexure A/4). Thereafter, when the respondents issued a notification for filling up posts of Postal Assistant, (PA)/Sorting Assistant, (SA), from Postman/Mail Guard, Despatch Riders and MTS for the years 2016-17, 2017-18 and 2018 on 29.10.2018, (Annexure A/7), the applicant applied for the same and after qualifying the limited departmental competitive examination, (LDCE), and undergoing training satisfactorily joined duties as PA; (Annexure A/2 dated 02.03.2019 and Annexure A/11 dated 07.03.2019 refer). The applicant states that his selection for the post of PA was in the unreserved, (UR), category against the vacancies for the year 2016-17, as evidenced by Annexure A/2. He avers that despite regular selection and appointment, as aforementioned, this appointment was cancelled by way of a corrigendum dated 16.04.2019, (Annexure A/1 – impugned order), just over one month after he had joined duties as PA on the ground that he was **“not eligible for the post of Postal Assistant vacancy in the year of 2016-17, as he has not completed minimum 05 years of service in the year of 2016-17”** and he was reverted to his earlier post of MTS.

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2. Aggrieved by the aforesaid action of the respondents, the applicant has approached this Tribunal seeking the following relief:-

(i) That respondents be directed to hold good appointment of the applicant to the post of Postal Assistant vide memo dated 02/03/2019 (Annexure A/2) treating him as eligible and to allow him to work as Postal Assistant at Phagi Sub Post Office with due benefits by quashing memo dated 16/04/2019 (Annexure A/1) with all consequential benefits.

(ii) That respondents be further directed to act in the case of applicant as acted in the case of other surplus qualified candidates those obtained less marks than that of applicant and appointment of the applicant be hold good with all consequential benefits.

(iii) The respondents be further directed to prepare revised merit list at circle level i.e. whole of Rajasthan instead of division wise and modify the appointment orders as per combined merit list.

(iv) Any other order/direction or relief which is deemed just and proper under the facts and circumstances of this case be granted in favour of the applicant.

(v) That the costs of this application be awarded.

Interim relief:

"The respondents be directed to allow the applicant to hold the post of Postal Assistant at Phagi Sub Post Office by staying operation of memo dated 16/04/2019 (Annexure A/1) in the interest of justice."

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3. The Tribunal in its order dated 23.04.2019 directed as follows:

“As an interim measure, operation of the impugned order dated 16.04.2019 (Annexure A/1) shall remain stayed...”

4. The applicant avers that vide the impugned order his appointment as PA was cancelled and he was reverted to lower post of MTS without being given a hearing or any opportunity to represent against the same and this is against the principles of natural justice; [para 5(c) of OA refers)]. He states that he was rightly selected against the vacancies of 2016-17, [para 5(d) of OA refers], as vacancies for that year remained unfilled till they were filled by the examination held on 09.12.2018 for the same pursuance of the notification dated 29.10.2018; (Annexure A/7). He contends that since the respondents have admitted in an RTI reply to one Shri Ashish Kumar Sharma that only three candidates had been selected as PA in Jaipur Mfl. Division, (relevant Division for the applicant), against a total of 8 vacancies available in the UR category; (list annexed with Annexure A/7 refers). Thus 5 posts in the UR category remained unfilled from the year 2016-17 and he is entitled for appointment against these vacancies, [para 5(e) of OA refers], because the respondents are making appointments of **“surplus qualified candidates”**, (SQC), of one division

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in other divisions. He points out that where he obtained 118 marks other candidates shown as SQC in Part-II of the result, (Annexure A/10), with less marks, were allowed appointments in other divisions. As such therefore, the denial of appointment to him by the respondents is unjust and illegal and should be set aside.

5. In reply, the respondents have averred, [para 5 (a) of reply to OA refers], that the vacancies on offer in the LDCE in question were for the periods between 01.04.2016 to 31.03.2017 (2016-17), 01.04.2017 to 31.03.2018 (2017-18) and 01.04.2018 to 31.12.2018 (2018). As the examination was held on 09.12.2018, accordingly the cut-off dates (crucial dates) for determining eligibility to compete, (paras 2 and 3 of the notification dated 29.10.2018 Annexure A/7 refer), were kept as 01.04.2016, 01.04.2017 and 01.04.2018 for the vacancies of 2016-17, 2017-18 and 2018 respectively. The respondents point out that by his own averment with regard to the facts of the case the applicant, who was appointed as MTS in February 2013, completed his regular service of five years on 04.02.2018 which *in turn* made him eligible for consideration against the 2018 vacancies only; [paras 4 (i) and 4 (viii) of reply to OA refer). The respondents aver that the applicant was however wrongly promoted against the vacancies for 2016-

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17 despite being ineligible for the same since he had not completed five years of service by the crucial date of 01.04.2016. This error, on being detected, was corrected, (para 3 of reply to OA refers), and the applicant was relieved from the post of PA vide the impugned corrigendum dated 16.04.2019, (Annexure A/1), and directed to join his original post of MTS as there was no vacancy of PA in the UR category available in his division, (Jaipur Mfl Division), for the year 2018 as evidenced by the list attached to the notification dated 29.10.2018; (Annexure A/7).

6. As regards the question of not offering appointment to the applicant as an SQC, the respondents point out, (Annexure R/2 – letter No.60-127/85-SPB-I on the subject of **“absorption of surplus candidates”** refers), that such excess passed candidates, i.e. SQCs, were considered **“as per merit for vacancies of the departmental quota of that year remaining unfilled in other divisions in the Circle”**. It is clarified in this letter that the merit list for this would be drawn up **“strictly in accordance with the marks obtained in the examination”**. The respondents aver that for the year 2018, the minimum cut off marks for such SQC appointments in the UR category was 142, as would be clear from a perusal of the results of the examination at Annexure A/10, [para 4 (viii) of reply to OA

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refers], and hence the applicant, who had admittedly secured only 118 marks, could not be considered as an SQC for appointment against the 2018 vacancies. Accordingly, they state that the OA is without merit and be dismissed.

7. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Opposing counsels reiterated the points made in the OA and the reply to the same respectively.

8. In this case, a plain reading of the notification pertaining to the LDCE in question, (Annexure A/7), makes it clear that the applicant was eligible for consideration only against the vacancies of PA/SA for the year 2018. Since it also emerges from the year-wise list of vacancies attached to the notification at Annexure A/7 that there were no vacancies of PA/SA available in his division of Jaipur Mfl for the year 2018 in which the applicant became eligible for the same, therefore, it follows that the applicant's appointment could only have been made as an SQC against the vacancies of 2018. Here, while the respondents, relying on the instructions of the department as conveyed vide Annexure R/2 read with the results of the examination at Annexure A/10 have convincingly shown, the applicant was required to get at least 142 marks for qualifying for appointment as an

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SQC against the vacancies of the year 2018. Since it is not disputed that he obtained only 118 marks, not appointing him as PA/SA does appear to be justified and correct. The only question which remains is whether the applicant should have been given a hearing before reverting him vide impugned order dated 16.04.2019; (Annexure A/1). Here, it is noticed that while undoubtedly the applicant was not given a hearing prior to his reversion by way of a corrigendum, it cannot be said in view of the foregoing analysis that this affected any legal rights accruing to him adversely as it is manifestly obvious from the record itself, as provided by the applicant, that he was never eligible to be considered against the vacancies for the year 2016-17. Further, from a plain reading of Annexure R/2, it becomes clear that the unfilled vacancies of that year were not to be carried over to subsequent years. As such therefore, it transpires that no material substantive rights of the applicant were violated by the corrigendum issued on 16.04.2019; (Annexure A/1). Not only this, since the applicant came to this forum soon after the issue of the impugned corrigendum/order and obtained a stay on the operation of the same within a week of its being passed, (on 23.04.2019), on this ground also, it cannot be said that he has been subjected to any adverse consequences on account of the impugned order of 16.04.2019, (Annexure A/1),

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having been passed without giving him an opportunity of hearing. On the contrary, the applicant has enjoyed the fruits of an interim order staying the impugned corrigendum till the present adjudication of the matter after being afforded full opportunity to represent his case.

9. In view of the foregoing, the OA being found devoid of merit and substance is dismissed.

10. There shall be no order on costs.

11. Since the OA itself has been dismissed, therefore nothing survives in MA No.677/2019 seeking vacation of the interim order of 23.04.2019 and the same stands disposed of accordingly.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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