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Central Administrative Tribunal
Principal Bench, New Delhi

Reqn. Nos.

Date: 30.3.1990.

1. OA-1639/89
2. OA-1648/89

1. Shri Sri Kishan Applicant

Versus

Senior Supdt. of Post Respondent
Offices, Southern Divn.,
New Delhi

2. Shri Dinesh Kumar Applicant
Sharma

Versus

Senior Supdt. of Post Respondents
Offices, Delhi East
Divn. & Another

For the Applicants Shri Sant Lal, and
Shri Pradeep Kumar,
Counsel for Applicants
in 1 and 2.

For the Respondents Shri M.L. Verma, Counsel
in case No.1
Smt. Raj Kumari Chopra,
Counsel in case No.2.

CORAM Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed
to see the judgement? *yes*
2. To be referred to the Reporter or not? *no*

(Judgement of the Bench delivered by
Hon'ble Shri P.K. Kartha, V.C.)

The applicant in OA-1639/89 has worked as an
Extra Departmental Chowkidar, Badarpur Post Office,
New Delhi, while the applicant in OA-1648/89 has
worked as Extra Departmental Packer in Maujpur Post
Office, Delhi. As the points to be decided in these
cases are identical and the facts similar, it is
proposed to deal with them in a common judgement.

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2. The applicant in OA-1639/89 was appointed as Extra Departmental Chowkidar as a substitute w.e.f. 1.4.1984 vice Shri Brahm Singh who had been continuously absent. He was transferred from the post of Extra Departmental Chowkidar and posted as Extra Departmental Delivery Agent/Extra Departmental Runner in Gurukul Indraprastha Post Office, New Delhi, vide order dated 11.12.1987 and he joined as such on 12.12.1987. He has rendered more than 4 years' continuous service as an extra departmental employee.

3. The respondents held departmental examinations/ tests for recruitment of Postmen on 16.7.1987 and to Group 'D' cadre on 23.7.1987, respectively. Though the applicant submitted his application to appear in the said examinations, he was not given the permission to appear. He has prayed that the respondents be directed to hold a supplementary test and give him an opportunity to take the test, and that he be considered for regular absorption in Group 'D' cadre, according to his seniority with consequential reliefs.

4. Applicant No.2 was appointed as Extra Departmental Packer w.e.f. 4.7.1985 as a substitute vice Sarjeet Singh, who was absent w.e.f. 12.6.1985. He had continuously worked on the said post for more than 4 years. A departmental examination for appointment to the Cadre of Postmen and Group 'D' staff ^{was} held in December, 1988. ^{had} ^{in that examination} Although ^{he} applied, he was not allowed to appear. He sent a representation on 6.12.1988 which did not yield any result. He has alleged that another employee, one Shri Jagpal Singh, who was also similarly placed, was allowed to appear at the examination held in 1988.

5. The respondents held departmental examination for recruitment to the Postman Cadre on 16.7.1989 and Group 'D' Cadre on 23.7.1989. He again applied for appearing at these examinations and was again not allowed to do so.

6. The respondents have contended in their counter-affidavit filed in OA-1639/89 that there is no rule which permits any substitute for taking the examination and that the substitutes are not regular Extra Departmental employees. They have not controverted the statement of the applicant that he has worked continuously as a substitute since 1.4.1984.

7. The respondents in their counter-affidavit filed in OA-1648/89, have raised similar contentions as in OA-1639/89 above.

8. We have carefully gone through the records of the cases and have heard the learned counsel for both the parties.

9. According to DGP&T letters No.47-5/79/SPB-I dated 20th March, 1979, and 7th April, 1980, "the Extra Departmental Agents who have put in three years of service as E.D. Agents and are below 42 years of age (47 years for SC/ST) are also allowed to appear in the Literacy Test". It is further provided that "at present E.D. Agents with more than three years of E.D. service and who are below 42 years of age (47 for SC/STs) are eligible to appear in examination for appointment to the Cadre of Postmen and Village Postmen."

10. When the respondents decided to hold Literacy Test for Group 'D' staff in June, 1989, they notified

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that "All E.D. employees who have completed three years of continuous service as E.D.A. excluding of periods of absence like leave and other authorised absence on 1.7.1989 and are below the age of 42 years, are eligible to take the test." (Vide Annexures A-1 and A-2 to OA-1639/89, pages 7,10 of the paper-book).

11. The granting of leave to Extra Departmental Agents and appointment of substitutes is regulated by the D.G.P. & T.'s instructions contained in their letter No.43/38/72-PEN dated 24th April, 1972, according to which, if an E.D. Agent remains on leave for more than 180 days at a stretch, he shall cease to be an E.D. Agent. During leave, every E.D. Agent should arrange for his work being carried on by a substitute who should be a person approved by the authority competent to sanction leave to him.

12. In view of the aforesaid instructions issued by the respondents, we are of the opinion that the substitutes who have worked continuously for more than three years - as in the case of the applicants before us - are eligible to appear in the departmental Literacy Tests conducted by the respondents. In case they qualify in the Tests, they would also be entitled to be appointed in the Postmen Cadre or in the Group 'D' Cadre. The action of the respondents in not allowing them to appear in the Literacy Tests on the ground that they were substitutes, is, therefore, not legally sustainable.

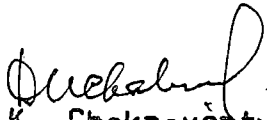
13. In the light of the above, we order and direct as follows:-

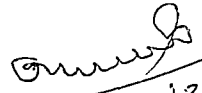
- (i) The respondents are directed to hold a supplementary Literacy Test for recruitment to the Cadre of Postmen and Group 'D' Cadre from Extra Departmental Agents and

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give opportunity to the applicants in
OA-1639/89 and OA-1648/89 to take the
Tests.

- (ii) In case the applicants qualify at the
supplementary Tests, they should be
considered for appointment as Postmen/
Group 'D' employees. They should be
considered for regular absorption in
Group 'D' Cadre, according to their seniority.
- (iii) The respondents shall comply with the above
directions within a period of three months
from the date of communication of this order.
- (iv) The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member
30/3/90


30/3/90
(P.K. Kartha)
Vice-Chairman (Judl.)