

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01224/2014 with MA No. 628/2015

HYDERABAD, this the 16th day of October, 2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

P.Amarnath S/o Narayana, Aged 37 years,
Occ : Grameena Dak Sevak Branch Post Master,
Presently working as Officiating Postman in
Madanapalle Head Post Office,
O/o The Assistant Superintendent of Post Offices,
Madanapalle Sub-division, Madanapalle-517 325.

...Applicant

(By Advocate : Mr.KRKV Prasad)

Vs.

- 1.Union of India rep by
The Director General, Dept of Posts,
New Delhi-110 001.
2. The Chief Postmaster General,
A.P.Circle, Abids, Hyderabad-500 001.
3. The Post Master General,
Kurnool Region, Kurnool-518 002.
4. The Senior Superintendent of Post Offices,
Chittoor Division, Chittoor-517 001.
5. The Senior Superintendent of Post Offices,
Hyderabad City Division, Hyderabad-500 001.
6. The Senior Superintendent of Post Offices,
Secunderabad Division, Hyderabad-500 080.
7. The Superintendent of Post Offices,
Nizamabad Division, Nizamabad.
8. The Superintendent of Post Offices,
Anakapalle Division, Anakapalle.

9. D.Chandrasekhar, GDSMD, Bheemgal SO.

10.B.Rajeshwar Goud, GDSBPM, Jalalpur BO,
A/w Varni SO.



11.Ch.Karish Kumar, GDSBPM,
Arkatala BO, A/w. Nawabpet SO,
Now working as MTS,
Sithaphalmandi SO.

12. N.Srinivasa Rao, BPM, Y.B.Agraharam BO,
Nathavaram SO.

13.P.Narayana Rao, GDSBPM,
Annaram BO, A/w Narsipatnam HO.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed in regard to selection of the applicant as postman in the respondents organisation.

3. Brief facts of the case are that the applicant who belongs to the OBC community has been appointed as Grameen Dak Sewak (GDS) in the respondents organisation and is presently officiating in the post of Postman. Applicant appeared in the common examination held by the respondents for selection to the post of Postman/ Mail Guard against common notification issued on 30.10.2013 for all the vacancies notified in the division of the Postal circle and got 64%. Results were announced on 20.12.2013 and subsequent appointments were made without preparing inter se seniority is the claim of the applicants. As there were no OBC vacancies in the parent division applicant sought selection for the vacancies in the neighbouring division. Candidates who got less marks than him in divisions like Nizamabad, Secunderabad and Ankapalli were selected. On knowing about the selection of less meritorious cases applicant represented. Respondents have issued hall tickets for the exam to be held against the subsequent notification dated 17.7.2014 without considering him for the unfilled vacancies of 2013 notification. Aggrieved over his non selection, OA has been filed.

4. The contentions of the applicant are that when a common examination for a common notification was conducted, not appointing the

applicant on interse merit at circle level is illegal. Not filling vacancies in Hyderabad city division though applicant got more marks than several candidates shows that the rules framed are incorrect. Candidates who scored less than the applicant were selected in Secunderabad, Nizamabad and Anakapalli divisions. Applicant represented but the representation remained unanswered. Respondents issued another notification in 2014 without appointing him for the unfilled vacancies of 2013. Being meritorious the applicant should have been considered for unfilled vacancies of OC and OBC in the divisions of the circle rather than confining to the divisions in the region.



5. Respondents in the reply statement state that the applicant appeared in the Postman/Mail Guard examination for 2013 year vacancies against notification dated 30.10.2013, wherein it was indicated that GDS from divisions where vacancies are not available can appear and that they would be considered for vacancies of the neighbouring divisions. Out of the total vacancies to be filled up, 50% are to be filled up from the GDS cadre through LDCE and the rest 50% from MTS grade. Accordingly vacancies declared for filling up in Kurnool region were 24 MTS and 15 GDS vacancies. Applicant who is from OBC community belonging to Chittoor division appeared in the examination held on 15.12.2013 and got 64%. In Chittoor division the vacancies declared under 50% GDS quota were 1 OC and 1 SC vacancy. Thus, there were no OBC vacancies to be filled up. The vacancies were filled up by candidates from the respective community based on merit. Para (1) (iii) of the DG letter dated 7.4.1989 states that, if vacancies are not filled up in a division then candidates from other



divisions of the region can be considered. Further DG letter dated 26.7.1999 reiterated that unfilled vacancies to be filled up by successful candidates from divisions within the region. As per recruitment rules 2012 unfilled vacancies are to be offered to neighbouring divisions. There were no unfilled vacancies in Kurnool Region against 2013 notification for GDS quota and hence the applicant was not selected. Applicant represented on 12.8.2014 for selection against vacancies in Nizamabad and Anakapalli divisions on merit basis. He was informed on 9.10.2014 that he cannot be considered for unfilled vacancies of other regions and that in Kurnool region there were no vacancies available to consider his request. Recruitment rules were amended in 2012 and therefore the OA is barred by limitation in terms of delay in filing the OA. It is true that a common exam was conducted through a common notification but the vacancies were notified division wise under each region. Selection was based on division wise merit. No candidate with lesser merit was selected in neighbouring divisions. The question of inter se merit does not arise since selection is based on merit at the division level. Secunderabad, Anakapalli, Nizambad, Hyderabad city divisions do not come under Kurnool region. Another notification dated 17.7.2014 was issued to fill up posts through open notification and one GDS LDCE vacancy of 2011 of Tirupati division in PH quota was thrown open to open market.

Applicant filed a rejoinder contending that there is a vacancy available in Tirupati division for the year 2013, which is a neighbouring division to Chittoor Division, and one Mr. A. Bhaskar has been favoured by selecting him in 2011, who is involved in a CBI case. His selection has



been set aside by the Tribunal in OA 917/2013. Mr. Bhaskar has tendered resignation to the post of GDS and hence allowing him to appear for the 2013 examination and keeping his name in the sealed cover is irregular. Mr. Bhaskar filed OA 186/2014 for declaration of his result but the OA was dismissed. Hence for the 2011 vacancy against which Mr. Bhaskar was considered the applicant can be considered. Neighbouring division would mean any division in the circle as stated at note-2 of para 6 of the notification. When GDS appearing for Mail Guard post could be considered for vacancies of other divisions then why not GDS appearing for Postman vacancies. This will enable meritorious candidate in the circle to be selected. Representation made on 10.1.2014 was not answered and hence limitation clause is not attracted. Applicant is the meritorious candidate in OBC category. As the PH quota vacancy of 2011 was included in 2014 vacancies it implies that circle office has conducted the exam and hence circle merit has to be considered. Circle head has planned and finalized the common notification and conducted the common exam. Therefore, the regional head has no role. After the OA has been filed, the respondents have issued notification dated 15.9.2015 at regional level affirming the fact that the earlier notification was at the circle level and inter se merit has to be considered.

Respondents filed an additional reply wherein they explain that Sri A. Bhaskar, who belongs to the OBC community secured 139.5 marks in the examination held on 6.3.2011 and was selected as postman in OC category by DPC dated 25.6.2011. There was no CBI case against him at that time. However, Sri B.Bhaskar approached the Tribunal in OA

917/2013 seeking cancellation of the appointment of Sri A. Bhaskar on the ground that the latter was involved in a CBI case registered on 3.4.2013 and considering this fact the Tribunal ordered the interim suspension of the selection of Sri A.Bhaskar on 19.7.2013 which was complied on 21.8.2013 by reverting Sri A.Bhaskar to the post of GDS. Later, Sri A.Bhaskar approached the CBI court and sought pardon on the ground that he will make full and true disclosure of the circumstances of the case. Pardon was granted on 5.8.2013. Thereafter, Sri A.Bhaskar was provisionally permitted to appear in the Postman exam held for the year 2013 and the result has been kept in a sealed cover pending instructions from DOPT. Aggrieved, Sri A. Bhaskar, filed OA 186/2014 which was dismissed as criminal case was pending against him and the Tribunal order is under challenge before the Hon'ble High Court in WP no 27739/2015. Instructions and clarifications are sought from circle office the later being a circle administrative unit.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about selection of the applicant as Postman in 2013 Postman examination against 50% GDS quota. Applicant is a GDS from Chittoor Postal Division of Kurnool Postal region, belonging to the OBC community. In Chittoor division there were 2 vacancies with communal break up of 1 OC and 1 SC vacancy to be filled up. As the applicant belongs to OBC though there were no OBC vacancies in his parent Chittoor division, he was allowed to appear in the exam in order to consider him for vacancies in other divisions of the region. This is permitted as per DG letters dated 7.4.1989 and 26.7.1999. Also, recruitment

rules of 2012 allow GDS to be considered for unfilled GDS vacancies in neighbouring divisions. The region concerned in this case is Kurnool Postal region. The applicant got 64 % and as there were no unfilled vacancies in the divisions under Kurnool Postal region, the applicant was not selected.



II. Applicant contends that he got more marks than those selected in Secunderabad, Nizamabad and Anakapalli divisions. Besides, applicant asserts that since the notification and the exam was common, the selection shall have to be based on interse merit at circle level. Agreed, but as per notification, the vacancies were declared division wise under a given region and selection was based on divisional merit. In order to ensure that vacancies do not remain unfilled, recruitment rules of 2012 provide for considering candidates against vacancies in neighbouring divisions and the DG orders of 1989 & 1999 cited supra, also permit consideration against vacancies in the divisions under a given region. In the instant case, applicant appeared from Chittoor division which comes under Kurnool region where there were no unfilled vacancies in the neighbouring divisions as well as in other divisions of the region to consider the case of the applicant. The divisions Nizamabad, Secunderabad, Hyderabad city and Anakapalli come under the jurisdiction of other regions and therefore he cannot be considered for vacancies in these divisions as per recruitment rules and as per DG order cited supra. Further, unfilled vacancies, after the entire exercise of selection is over, are carried over to the next recruitment year as per relevant rules. Therefore, the unfilled vacancies of Hyderabad city division have to be carried over to the next recruitment year and in

those vacancies the applicant cannot be accommodated since he does not belong to Hyderabad city region.

III. Another contention is that the 2nd respondent heading the circle has issued the common notification and conducted the common exam, therefore inter se merit at circle level has to be considered. In this regard it must be adduced that the appointing authority is the Divisional Head and hence selection is made based on divisional merit. In order to ensure uniformity, transparency and to contain malpractices the exam was monitored and conducted by the 2nd respondent. This improves the efficacy in the conduct of examination and therefore there were no contentions about any malpractices in the OA, which are often seen when cases of other organizations are adjudicated. Nevertheless, selection was as per recruitment rules based on divisional merit and DG orders referred to. A glimpse into the hierarchy of the postal organisation would reveal that each postal circle is more or less contiguous with the State headed by a Chief Post Master General. Each circle is divided into regions which are led by the Post Masters General and each regions has many divisions administered by the Divisional Heads. It is this Divisional Head, who is the recruiting authority for Postman and Mail Guard posts. Nowhere in the rules is it laid that a common exam and a common notification cannot be given by Circle Head. Applicant has also not cited any rule to this effect in any of his averments. On the contrary, respondents followed the recruitment rules and the executive instructions on the subject. Therefore, the contention that inter se merit at circle level has to be followed, is not maintainable. After, gaining adequate exposure in conducting examinations



to a large number of posts, the conduct of the exam it appears was slowly delegated to the regional authorities and not because the applicant filed the OA as claimed. Whether the common notification and common exam is conducted at the circle level or at regional level the vacancies are announced division wise and selection is based on merit at the divisional level because the divisional head is the appointing authority. Therefore, inter se merit at the circle level would not come into the picture at all.



IV. One another contention of the applicant is that in respect of Mail Guard vacancies, candidates are considered for the vacancies in the circle. The Mail Guard vacancies belong to Railway Mail Service (RMS) and the Postman to the Postal Divisions. The RMS divisions in the circle are Z, Y, V, AG, TP and Hyderabad sorting division. Their function is to sort and transmit mail by using Air, rail and road transport. Due to their work functionality they fall neighbourly to each other. Hence in respect of Mail Guard vacancies the RMS divisions are treated as neighbouring divisions to each other. Hence, the said provision for Mail Guard vacancies whereas such a scope does not arise for postman vacancies.

V. Now coming to the aspect of Tirupati division, it is a neighbouring division to Chittoor. The 2nd respondent is the circle head administrating the circle and it is his responsibility to ensure coordination between regions and divisions. As a coordinating function he monitors the filling up of the vacancies and permits the regions/divisions to act as per rules in regard to filling up of unfilled vacancies. As per recruitment rules the unfilled PH vacancy referred to in the OA was allowed to be filled up from the open market. Just because the 2nd respondent has granted

permission to do so does not entitle the applicant to aver for inter se merit at circle level to be taken as the yardstick. Recruitment of postman is a statutory function to be discharged by the Divisional Head and one of the responsibilities of the Circle Head is to ensure control and coordination of the activities of the Regions/divisions through executive instructions.



Allowing Tirupati division, under Kurnool Region to fill up the PH quota from the open market is one such executive instruction. Thereafter, filling up the PH post is a statutory function of the Tirupati Division Head. In regard to the selection of GDS Sri A. Bhaskar of Tirupati division, to the post of Postman in 2011 he was selected before the CBI case was registered on 3.4.2013 and in OA 917/2013, his selection was stayed by an interim order. The matter is still under adjudication by the Tribunal. Therefore, it cannot be said that the vacancy was available in 2013. Further, Sri A. Bhaskar was allowed to appear in the 2013 exam on a provisional basis based on the pardon order of the CBI Court on 5.8.2013. The result has been kept in a sealed cover and when the Tribunal refused relief of declaring the result in OA 186/2014, the matter has been challenged before the Hon'ble High Court in WP no 27739/2015 which is pending adjudication. Most importantly, the applicant has not impleaded Sri A.Bhaskar as a party and therefore the OA suffers from non joinder of necessary parties as well.

VI. Lastly, recruitment rules are applied to all the candidates who appeared in the examination held by the respondents over the years including 2011, 2013 and 2014 referred to by the applicant. It is not that they are discriminative as to forestall the selection of the applicant.



Thousands of candidates have been selected applying the norms referred to. The rules have stood the test of time. Therefore, the applicant submitting that the rules laid do not achieve the objective for which they have been framed is too sweeping and unreasonable. It is like a dancer who does not know how to dance, finds fault with the dance floor. The applicant for having failed to qualify cannot find fault with the examination system which gave employment to thousands and enabled many to get promoted. A candidate after participating in a selection process and failing to disqualify cannot question the selection process as laid down by the Hon'ble Apex Court in the case of ***Om Prakash Shukla v. Akhilesh Kumar Shukla*** reported in (1986) Supp SCC 285 as under :

when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner. Here, after being unsuccessful in the written test the petitioner has challenged the selection process and has only taken a calculated chance as has been held by the Supreme Court in Madan Lal's case reported in (1995) 3 SCC 486 and in such cases also Courts would not interfere.

The above judgment squarely applies to the case of the applicant. Applicant participated in the selection process and for not having succeeded is trying to find fault with the selection by raising issue like interse merit as circle level, selection in other divisions etc even though the notification and the recruitment rules were clear about the mode and method of selection.

VII. Besides, it is for the respondents to define as to what is a neighbouring division. They did so in accordance with the recruitment rules and as per DG instructions cited. Respondents cannot be questioned in this regard. It has to be construed as a cut off decision which is

unquestionable because the recruitment rules provide for the same. Respondents have also elaborated on the nomenclature of neighbouring division. We take support of the Hon'ble Supreme Court observation, as under, to assert as to what we did.



- a. *Supreme Court of India in Municipal Corporation Of Delhi vs Surrender Singh on 1 August, 2019 in Civil Appeal no. 5588 of 2010*

19. On noticing the manner of consideration made by the Division Bench, we are of the view that the Division Bench has exceeded the jurisdiction while exercising the power of judicial review in the matter of selection process by evolving its own criteria and substituting the same with the criteria adopted by recruiting agency. We are of the said view for the reason that the position of law is well established that the recruiting agency cannot be compelled to fill up all available posts even if the persons of the desired merit are not available. This Court in the case of [Ashwani Kumar Singh vs. U.P. Public Service Commission & Ors.](#) (2003) 11 SCC 584 relied upon by the learned counsel for the appellant had considered these aspects and held that it is not a rule of universal application that whenever vacancies exist persons who are in the merit list per force have to be appointed. It is held therein that if the employer fixes the cutoff position the same is not to be tinkered with unless it is totally irrational or tainted with malafides. It was further stated therein that the employer in its wisdom may consider the particular range of selection to be appropriate. The decision of the employer to appoint a particular number of candidates cannot be interfered with unless it is irrational or malafide.

Based on the above judgment the Tribunal cannot tinker with the norm of neighbouring division as formulated by the respondents. It is a decision of the respondents based on which several others have been selected and it cannot be changed to accommodate the interest of the applicant. Representation of the applicant dated 12.8.2014 was replied to on 9.10.2014 and before the later representations could be responded to the adjudication in the instant OA has commenced.

VIII. Therefore, to conclude, based on rules and law, the OA is devoid of merit, merits dismissal and hence, dismissed with no order as to costs. MA 628/2015 stands disposed.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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