

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**



**OA/21/293/2018 &
MA Nos.229/2020 & 596/2018 in OA.293/2018**

**Reserved on : 05.08.2020
Pronounced on : 12.08.2020**

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

K. Madhuri, W/o. D. Ravinder,
Aged about 37 years,
Occ: Gramin Dak Sevak Stamp Vendor,
O/o. Sub Post Office, Parishram Bhavan,
Basheer Bagh, Hyderabad.

... Applicant

(By Advocate: Mr. B. Pavan Kumar)

Vs.

1. The Union of India rep. by its Secretary, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi-1.
2. The Chief Postmaster General, Telangana Circle, Abids, Hyderabad-1.
3. The Postmaster General, Hyderabad City Region, Hyderabad – 1.
4. The Sr. Superintendent of Post Offices, Hyderabad City Division, Hyderabad – 1.
5. G. Kiran Babu, Gramin Dak Sevak Mail Carrier /Packer, Lingampally Sub Post Office, Hyderabad.

... Respondents

(By Advocates: Mr. K. Venkateswarlu Addl. CGSC
Mr. A.B.L.N. Pavan Kumar for R-5)

O R D E R**(as per Hon'ble Mr.B.V. Sudhakar, Admn. Member)**

2. The OA is filed challenging the action of the respondents in rejecting the applicant's case for consideration to the post of Postman for the year 2017-18 under 50% quota among GDS and selecting the 5th respondent, vide letter dated 14.2.2018.
3. Brief facts are that the applicant, who was born on 3.4.1980, joined the respondents organisation as GDS on 10.5.2011. Responding to the notification issued by the respondents dated 18.12.2017 for filling up posts of Postman/Mail Guard for the year 2017-18 under 50% quota among GDS, applicant applied and qualified in the exam held on 4.2.2018. Marks obtained by the applicant and that of the 5th respondent were 43 each. Keeping in view the equal marks scored by the applicant and the 5th respondent, respondents selected the 5th respondent by taking the date of entry in the GDS cadre as the basis for selection and consequently, the 5th respondent being senior, was selected. Applicant claims that the date of birth should be criteria but not seniority or length of service, to select candidates as per recruitment rules and she being older to the 5th respondent, it was she, who was eligible to be appointed. Applicant has also raised some doubts about the key to the answers for the questions set, which were rejected by the respondents. Aggrieved that her selection was rejected violating the rules on the subject, the OA has been filed.
4. The contentions of the applicant are that the examination held is for direct recruitment to Postman/Mailman cadre from GDS. Rejecting the representation



of the applicant to revise the key to the answers is unfair. As per Rules, when the marks scored are equal in case of direct recruitment then it is older of the two candidates who has to be selected, which the respondents failed to follow.

Rajasthan Postal Circle from the respondents' organisation has followed this rule.

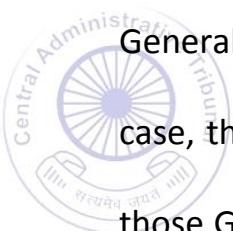
Similarly Director General of Quality Assurance has adopted this norm as per letter dated 11.1.2017. Therefore for reasons stated the selection of the 5th respondent is invalid.

When the case came up for admission, the Tribunal has granted interim stay on 4.4.2018 by ordering as under :

"2. Learned counsel appearing for the applicant brought to our notice the Rules and also the judgment of the Ernakulam Bench of CAT in OA No. 218 of 2011 wherein it is held that, if more than one candidate obtain equal marks, the older should be selected to the post. Having regard to the said position, there shall be interim suspension of the impugned order for a period of four weeks. "

Ld. counsel for the applicant has also submitted the judgment of the Hon'ble Ernakulam Bench of this Tribunal in OA 218/2011 in support of the contentions made which has been taken on record.

5. Respondents state in their reply statement that the 5th respondent joined as GDS on 9.9.2010 and the applicant joined the same cadre on 10.5.2011. Both got 43 marks each in the exam held. However, in the common gradation list, the 5th respondent is listed at Sl. No.72 and applicant at Sl. No. 74. Therefore, the 5th respondent being senior was selected as per Dept. of Posts letter dated 8.11.1995 (Annexure R-3) where in it is stated that if two candidates get equal marks, then the senior among the two, based on date of entry or length of service



has to be selected. The selection made by the Rajasthan Postal Circle/ Director General Quality Assurance was for outsiders and not for GDS staff. In the instant case, the exam is a Limited Departmental Competitive Exam, which was held for those GDS who had 5 years experience as well for MTS and as per Dept. of Posts Ir. dated 8.11.1995 only the senior qualifies to be selected when 2 candidates score equal marks. As per Recruitment Rules (Annexure R-5) and notification dated 18.12.2017 (Annexure R-1), the Limited Departmental Competitive Exam (LDCE) is conducted for 50% vacancies by Direct recruitment on the basis of competitive exam limited to GDS staff of the recruiting division and that, it is not from outsider quota. The applicant being a GDS and not an outsider, she was allowed to write the exam otherwise she would not have been. The exam and evaluation of papers was done as per rules. Hence, based on the above, the respondents prayed to dismiss the OA.

6. The 5th respondent has filed MA 596/2018 and MA 229/2020 for vacation of the stay wherein he has submitted that the judgment of the Ernakulam Bench in OA 218/2011 dtd. 23.1.2012 relied upon by the applicant holding that the older candidate has to be selected while considering selection amongst 2 candidates who scored equal marks, is per incurium, since the earlier order of the very same Bench dated 25.10.2011 in OA No.1050 of 2010 in Sasi NS v SSPOs, Aluva Dn & Ors, has held that seniority should be the basis for selection amongst candidates with equal marks as under, was not considered:

" 8. The undisputed fact is that the applicant and the 6th respondent secured equal marks in the examination held to fill up the vacancies in the post of Postman cadre in the direct recruitment GDS merit quota in the year 2010. Under such circumstances, the respondents are expected to follow the guidelines issued by the Department of Personnel

and Training in their letter No. 6-6/93/Estt (D) dated 18.05.1993, which was circulated by the DG (Posts) in his letter No. 5-10/93/DE dated 08.11.1995. The relevant instructions of the DOPT, to be followed by the Central Government Departments is extracted below:-



'SELECTION' :- If two or more candidates got clubbed due to obtaining of equal marks against last vacancy to be filled on the basis of the competitive exam, selection of senior-most of such candidates in the merit shall be made based on their Inter-se-Seniority in the feeder post, if they belong to common seniority list, if not their length of regular service in the feeder post may be taken into account for this purpose.'

A perusal of the seniority list at R-1 shows that the applicant at Sl. No.546 has joined as a GDS on 01.03.2011 and his date of birth is 13.12.1974 while the 6th respondent is working as GDS from 22.10.1998 and his date of birth is 04.05.1968. Perhaps on receipt of a representation from the 6th respondent, the R-1 immediately rectified the mistake. It was a temporary appointment with a probation period of two years from the date of joining the post. As per the terms and conditions of the appointment, it could be terminated at any time. The applicant did not join the post at all. Therefore, we do not find anything arbitrary or illegal in the decision taken by the first respondent to cancel the appointment of the applicant and issue letter of appointment to the 6th respondent. It is settled law that only notified vacancies can be filled up. The nine vacancies notified for filling up the vacancies for the Postman in the year 2000 stand filled up. Hence, there is no provision to increase the number of vacancies especially since these vacancies have arisen after the conduct of the examination in 2010.

Therefore, the prayer of the applicant is not legally sustainable."

Besides, the 5th respondent asserts that the applicant has appeared in the subsequent exam held on 29.9.2019, got selected as Postwoman on 18.6.2020 and is working as such from 19.6.2020 onwards. Therefore, since the applicant is now working as Post woman, the OA filed by the applicant has become in fructuous.

7. Heard Sri B. Pavan Kumar, learned counsel for the applicant; Sri M. Venkanna, Ld Counsel, who was permitted to present the case on behalf of Sri ABLN Pavan Kumar, Ld. Counsel for the 5th respondent and Smt. K. Rajitha, learned Sr. CGSC representing Mr. K. Venkateswarlu, learned counsel for the official respondents.

8. I. Applicant as well as the 5th respondent qualified in the exam held on 4.2.2018 and got equal marks. Respondents selected the 5th respondent on the basis of Dept of Posts letter dated 8.11.1995 wherein it was stated as under:

" If two or more candidates got clubbed due to obtaining of equal marks against the last vacancy to be filled on the basis of Competitive Examination, selection of senior most of such candidates in the merit shall be made based on their Inter-se-seniority in the feeder post, if they belong to common seniority list, if not, their length of regular service in the feeder post may be taken into account for this purpose"

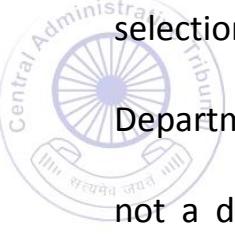
However, the Tribunal as an interim relief on 4.4.2018 ordered to keep the selection of the 5th respondent in abeyance till the OA is decided.

II. Any recruitment/ promotion has to be in accordance with the relevant recruitment rules framed. The respondents have framed the Dept. of Posts (Postman and Mail Guard) Recruitment Rules 2010 on 16.12.2010. Clause 11 and 12 of the Recruitment Rules deal with the Method of recruitment as to whether it is by promotion, direct recruitment, deputation or by absorption. Later, on 28.6.2012 the Rules were amended in regard to certain provisions and were titled as Dept. of Posts (Postman and Mail Guard) Recruitment (Amendment) Rules 2012. Clause 2 (ii) (B) of the Amended Rules reads as under:

*"for clauses (c) and (d), the following clause shall be substituted, namely:-
(b) 50% by direct recruitment on the basis of Competitive Examination Limited to Gramin Dak Sevaks* of the recruiting Division who have worked for at least five years in that capacity as on the 1st day of January of the year to which the vacancy (ies) belong, failing which from amongst Gramin Dak Sevaks of the neighbouring Division/ Unit on the basis of the said Examination, failing which by direct recruitment from open market*

** Gramin Dak Sevaks are holders of Civil Posts but they are outside the regular Civil Service due to which their appointment will be by direct recruitment."*

As seen from the recruitment rule referred to, which is statutory in nature, the Grameen Dak Sewak (GDS) appointment as Postman/Mailguard shall be treated



as direct recruitment. Thus, the stand taken by the respondents that the selection to the post of Postman/Mail Guard exam is based on Limited Departmental Exam meant for MTS and GDS with 5 years experience and that is not a direct recruitment exam does not hold good. The emphasis laid by the respondents that the promotion from GDS to Postman is a departmental promotion is not in consonance with the above recruitment rule nor the clauses 11 and 12 of the said rules. The clauses 11 and 12 of the recruitment rules have been interpreted elaborately by the Hon'ble Apex Court in Y. Najithamol v. Soumya S.D. case which is in favour of the applicant and is dealt with in the succeeding paras. Thus, the instructions issued by the Dept. of Posts vide letter dated 8.11.1995 would not be applicable to the case of the applicant. Besides, the recruitment rule makes it explicit that the GDS is outside the regular civil service.

III. Interestingly, the respondents have taken all the care in terming the Grameen Dak Sewaks in the initial years as Extra Departmental Agents to make it explicit that they are not departmental employees. To earn the tag of a departmental employee, the GDS has to be absorbed on a regular basis as such. Promotions have been designed only for departmental employees. Therefore, GDS cannot be treated as promoted to Postmen cadre. They can be treated as only appointed as Postmen. It is common knowledge that GDS when appointed as Postman, their services as GDS are terminated and thereby become eligible for ex-gratia gratuity. Naturally, if the recruitment of GDS as Postman is treated as a promotion, the question of termination will not arise. This resolves the dispute

comprehensively. The only conclusion that can be drawn is that the recruitment of GDS as Postman cannot be, thus, treated as one of promotion.

Further, the promotion is to the post of Postman which belongs to Group C cadre. The promotion to the said cadre will be only from the feeder cadre, which is the Group D cadre. Evidently, GDS is not a Group D post, and members of GDS are merely extra-departmental agents/GDS. This is an undeniable fact. Therefore, based on this logic too, it cannot be termed that elevation of the GDS as Postman through a departmental exam can be termed as promotion.

Besides, promotion to a post, can be granted when the promotional post and the post being promoted from are a part of the same class of service. Gramin Dak Sevak is a civil post, but is not a part of the regular service of the Postal Department. This is a critical aspect which has been overlooked by the respondents.

True to speak, the language of Column 11(1) itself makes it obvious that the extra-departmental agents being appointed under Column 11(1) cannot be called as promotees. The use of the words 'failing which' makes it clear that there is a distinction between those candidates who are being selected by way of promotion, and the candidates who are extra-departmental agents/GDS and have cleared the departmental examination, and that the latter will be considered for appointment only if there are no eligible candidates under the former category. It therefore requires no further elaboration that the appointment of GDS to the

post of Postman can only be said to be by way of direct recruitment and not promotion.



IV. The recruitment rules referred to above fell for consideration by the Hon'ble Supreme Court in *Y. Najithamol v. Soumya S.D.*, (2016) 9 SCC 352 : 2016 SCC OnLine SC 811, wherein it was held as under:

"10. Column 11 of the Recruitment Rules which is at the heart of the controversy in the present case, reads as under:

"11. Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods.—

(1) 50% by promotion, failing which by extra-departmental agents on the basis of their merit in the departmental examination.

(2) 50% by extra-departmental agents of the recruiting division of unit, in the following manner, namely—

(i) 25% of vacancies of Postman shall be filled up from amongst extra-departmental agents with a minimum of 5 years of service on the basis of their seniority, failing which by the extra-departmental agents on the basis of departmental examination.

(ii) 25% from amongst extra-departmental agents on the basis of their merit in the departmental examination.

(3) If the vacancies remained unfilled by EDAs of the recruiting division, such vacancies may be so filled by EDAs of the postal division falling in the zone of Regional Director.

(4) If the vacancies remained unfilled by EDAs of the recruiting units such vacancies may be filled by EDAs of the postal divisions located at the same station. Vacancies remaining unfilled will be thrown upon to extra-departmental agents in the region.

(5) Any vacancy remaining unfilled shall be filled up by direct recruitment through the nominees of the employment exchange."

11. A careful reading of the above Column makes it clear that essentially two "pools" are envisaged from which appointments to the post of Postman can be made. One is the pool of those candidates who are being promoted, and the other is the pool of the extra-departmental agents who are appointed to the said post after passing a departmental examination. 50% of the candidates being appointed to the post of Postman are selected by way of promotion. The remaining 50% of the candidates are selected in two ways. 25% of the candidates are selected from amongst the extra-departmental agents on the basis of their seniority in service, and the other 25%

candidates are selected from the extra-departmental agents based on their merit in the departmental examination.



12. *Further, Column 12 of the Recruitment Rules reads as under:*

"12. In case of recruitment by promotion/deputation/transfer grade from which promotion/deputation/transfer to be made.—(1) Promotion from Group D officials who have put in three years of regular and satisfactory service as on the closing date for receipt of applications through a departmental examination.

- (2) Extra-departmental agents through a departmental examination.*
- (3) Direct recruitment through a departmental examination."*

13. *The post in the instant case, that of Postman is a Group C post. Thus, it is quite natural that "promotion" to the said post can happen only from the feeder post, which in the instant case, are the Group D posts. Admittedly, GDS is not a Group D post, and members of GDS are merely extra-departmental agents.*

14. *At this stage, it is also useful to refer to the decision of this Court in C.C. Padmanabhan v. Director of Public Instructions [C.C. Padmanabhan v. Director of Public Instructions, 1980 Supp SCC 668 : 1981 SCC (L&S) 439] , wherein it was held as under: (SCC p. 670, para 5)*

"5. ... This definition fully conforms to the meaning of "promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely—

- (i) that the new post is in a higher category of the same service or class of service;*
- (ii) the new post carries a higher grade in the same service or class."*

15. *Promotion to a post, thus, can only happen when the promotional post and the post being promoted from are a part of the same class of service. Gramin Dak Sevak is a civil post, but is not a part of the regular service of the Postal Department*

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16. *Further, a three-Judge Bench of this Court in Supt. of Post Offices v. P.K. Rajamma [Supt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC 94 : 1977 SCC (L&S) 374] held as under: (SCC p. 98, para 4)*

"4. It is thus clear that an extra-departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra-departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra Dutta case [State of Assam v. Kanak Chandra Dutta, AIR 1967 SC 884] are clearly satisfied in the case of the extra-departmental agents."

(emphasis supplied)

17. *A perusal of the above judgments of this Court make it clear that extra-*

departmental agents are not in the regular service of the Postal Department, though they hold a civil post. Thus, by no stretch of imagination can the post of GDS be envisaged to be a feeder post to Group C posts for promotion.



18. A Full Bench of the Ernakulam Bench of the Central Administrative Tribunal in M.A. Mohanan v. Supt. of Post Offices [M.A. Mohanan v. Supt. of Post Offices OA No. 807 of 1999, order dated 3-11-1999 (Tri)] , had the occasion to consider a similar question. The majority opinion of the Tribunal held as under:

"As the name itself indicates, EDAs are not departmental employees. They become departmental employees from the date of their regular absorption as such. And promotions are only for departmental employees. Therefore, EDAs cannot be treated as "promoted" as Postmen. They can be treated as only appointed as Postmen. It is further seen from instructions of Director General, Posts under Rule 4 of Swamy's publication referred to earlier that EDAs service are terminated on appointment as Postman and hence they become eligible for ex gratia gratuity. If the recruitment of EDAs as Postman is treated as a promotion, the question of termination will not arise. This also leads one to conclude that the recruitment of EDAs Postman cannot be treated as one of promotion.

Further, the Hon'ble Supreme Court in C.C. Padmanabhan v. Director of Public Instructions [C.C. Padmanabhan v. Director of Public Instructions, 1980 Supp SCC 668 : 1981 SCC (L&S) 439], observed that "Promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions, namely, that the new post is in higher category of the same service or class. Applying the above criteria appointment as Postman from EDA cannot be termed as promotion as the posts of Postman and EDA belong to two different services viz. "Regular Postal Service" and "Extra-Departmental Postal Service"."

(emphasis supplied)

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20. xxx It is nobody's case that the extra-departmental agents being appointed under Column 11(1) be called promotees. The language of Column 11(1) itself makes this crystal clear. The use of the words "failing which" makes it obvious that there is a distinction between those candidates who are being selected by way of promotion, and the candidates who are extra-departmental agents and have cleared the departmental examination, and that the latter will be considered for appointment only if there are no eligible candidates under the former category. Thus, the appointment of GDS to the post of Postman can only be said to be by way of direct recruitment and not promotion.

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22. The relevant Column of the Department of Posts (Postman and Mail Guard) Recruitment Rules, 2010, reads as under:

"11. (a)-(b) ***

(c) 25% by recruitment on the basis of competitive examination limited to Gramin Dak Sevaks[Gramin Dak Sevaks are holders of civil posts but they are outside the regular civil service due to which their appointment will be by direct recruitment.] of the recruiting division who have worked for at least five years in that capacity as on the 1st day of January of the year to which the vacancy(ies) belong failing which by direct recruitment;"

Even though the said Rules are not meant to apply retrospectively, and neither are we suggesting that they do, this makes the position of the Gramin Dak Sevaks crystal clear. Their appointment as Postman is only by way of direct recruitment and not by way of promotion.



The Hon'ble Apex Court has dealt with the issue under dispute at length covering the recruitment rules, the nature of GDS service, its importance and thereby set at rest the lingering doubt about appointment of GDS as Postman through a limited departmental exam as direct recruitment and not by way of promotion. Once it is settled that the appointment as postman of GDS is by way of direct recruitment through an exam as per various instructions of DOPT as submitted by the applicant at para 4 (ix) and not denied by the respondents, when 2 candidates score equal marks then the older one based on date of birth is given preference for appointment. The logic is that the younger one would have some more opportunities over the years to have a go at the selection. In the instant case, the applicant is older since she was born on 3.4.1980 and the 5th respondent on 6.5.1986, which has not been denied by the respondents and hence, she has to be selected in the exam held on 4.2.2018. Respondents erred in not doing so. They have over relied on the executive instruction issued on 8.11.1995 but not on the statutory recruitment rules referred to, which have primacy over the executive instruction cited. Legal principle laid down by the Hon'ble Apex as cited supra has unequivocally demolished the very foundation of the defence of the respondents.

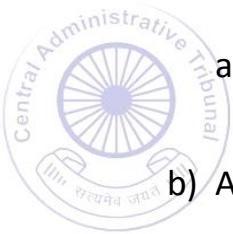
V. In regard to the doubts raised by the applicant in respect of the key for the questions set in the exam held on 4.2.2018, the question paper setter has confirmed that the key is correct as has been affirmed comprehensively with

details by the respondents. We agree with the respondents contention in this regard. The applicant raising doubts to somehow prove that she got a few marks more than the 5th respondent is difficult to appreciate. It appears to have been furthered more because of the anxiety to get selected rather than on facts or is her contention backed by rules.

VI. The 5th respondent referring to the judgment of the Hon'ble Ernakulam Bench in OA 1050/2010 dtd. 25.10.2011 would not come to his rescue in view of the Hon'ble Apex Court Judgment cited supra in 2016. One another averment made by the 5th respondent that the applicant was subsequently selected as Post woman in 2019 is no valid proposition since the applicant was lawfully entitled for the post of Post woman of 2017-18 vacancies by clearing the exam held on 4.2.2018 as well as in accordance with recruitment rules.

VII. Thus, as seen from the above, rules and law are in favour of the applicant. The OA succeeds and therefore, it is declared that the applicant is entitled for appointment to the post of Post Woman in preference to the 5th respondent for having passed the exam on 4.2.2018 against 2017-18 vacancies. Consequently, respondents are directed to consider as under:

- a) As the applicant was subsequently selected for the vacancies of 2018-19 and joined the post of post woman on 19.6.2020, benefit of notional seniority as applicable be granted to the applicant in the cadre of



Post Woman from the date of her passing the exam held on 4.2.2018 in accordance with relevant rules.

- b) Applicant shall not be eligible for any arrears of pay in view of (a) above.
- c) Other consequential benefits, if any, that arise in view of (a) above as per relevant rules shall be extended to the applicant.
- d) Time calendared to implement the judgment is 3 months from the date of receipt of this order.

With the above directions, the OA is allowed to the extent indicated. MAs stand disposed of. No orders as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER(JUDL.)

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