

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00148/2015

HYDERABAD, this the 10th day of March, 2021

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



1. Mesu Sudhakar S/o Lingaiah,
 Aged about 34 years, working as GDS/Mail Carrier,
 Choppadandi S.O., Karimnagar Division,
 Karimnagar Dt.
2. Satharla Sugunakar S/o Hanmaiah,
 Aged about 40 years, working as GDS/Mail Deliverer,
 Karimnagar Division, Karimnagar Dt.
3. Md.Ghouse S/o Md.Osman,
 Aged about 43 years, working as GDS/ Mail Deliverer,
 Head Post Office, Karimnagar Division, Karimnagar.
4. Vilasagar Manohan S/o Rajaiah,
 Aged about 37 years, working as GDS/Packer,
 Head Post Office, Karimnagar,
 Karimnagar Division.
5. Gunda Satyanarayana S/o Shivaram,
 Aged about 45 years, working as GDS/Delivery Agent,
 Thotapalli S.O.,
 Karimnagar Division, Karimnagar District.
6. B.Srikanth S/o Bhoomaiah,
 Aged about 25 years, working as GDS/Branch Postmaster,
 Gouravelli B.O a/w Husnabad S.O.
 Karimnagar Division, Karimnagar Dt.
7. Thudi Anil S/o Komariah,
 Aged about 27 years, working as GDS/Branch Postmaster,
 Gharsakurthy, Karimnagar Division, Karimnagar.
8. Jadi Nagabhushanam S/o Poshalu,
 Aged about 36 years, working as GDS/MD,
 Gharsakurthy B.O, Karimnagar Division, Karimnagar Dt.
9. Devi Venkatesham S/o Poshaiah,
 Aged about 30 years, working as GDS/Mail Carrier,
 Parveda B.O. a/w Husnabad,
 Karimnagar Division, Karimnagar District.

10. Pallpuri Sridhara Chary S/o Rama Chary,
Aged about 38 years, working as GDS/Mail Deliverer,
Head Post Office, Karimnagar,
Karimnagar Division, Karimnagar District.

11. Sundragiri Srinivas S/o Saheb,
Aged about 34 years, working as GDS/Mail Deliverer,
Head Post Offices, Karimnagar,
Karimnagar Division, Karimnagar Dt.Applicants



(By Advocate : Mr. S. Ramakrishna Rao)

Vs.

1. The Union of India rep. by
The Director General, Posts,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi.

2. The Chief Postmaster General,
A.P.Circle, Hyderabad – 500 001.

3. The Postmaster General,
Hyderabad Region, Hyderabad.

4. The Superintendent of Post Offices,
Karimnagar Division, Karimnagar District.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 for a direction to fill the vacancies of MTS from among GDS under Direct Recruitment quota based on their seniority and not to fill up the posts under Direct Recruitment from Open market.



3. Brief facts of the case are that the applicants are Grameen Dak Sewaks. They are eligible to be promoted as Postman/Mail Guard and Group D posts. Of the Postman vacancies, 50% are meant for Group D cadre employees and the rest 50% are to be filled by Grameen Dak Sewak. Half of the 50% reserved for the GDS are to be filled up on seniority basis by those who have rendered a minimum of 5 years service in the GDS cadre. On 30.1.1995 the Postal Directorate circulated a letter instructing that the Group D vacancies are to be filled up by GDS purely on seniority basis by those who have rendered a minimum of 5 years service as GDS. Many Group D /Postman vacancies arose in 2001, 2002 & 2003 and representations were made to fill up the posts because Senior GDS would get age barred if not filled early. As per letter 31.3.1994 of the Postal Directorate, DPC has to be held in the beginning of the year and completed by the March and where selections have been completed such cases have to be sent to RO/CO. In case posts exists beyond 3 years and if a decision has to be taken to continue them, they have to be filled up. Further, new Recruitment Rules for filling up MTS vacancies have been notified on 20.12.2020 wherein 25% of the MTS vacancies in administrative offices

are to be filled on the basis of selection cum seniority, failing which by casual labour satisfying certain conditions and the remaining 75% by direct recruitment. In regard to Sub-ordinate Offices, 50% of vacancies by GDS on the basis of selection cum seniority, 25% by LDCE and the rest 25% by casual labour with temporary status. An action plan was devised to fill up the posts on 27.1.2011. Later, the respondents issued a notification on 31.7.2012 to fill up MTS vacancies through departmental promotion and direct recruitment. Representations have been submitted to R-2 to stop direct recruitment to MTS from the open market. Aggrieved over the same, OA has been filed.

4. The contentions of the applicants are that the respondents have diverted a portion of the vacancies earmarked for GDS for direct recruitment to MTS cadre from the open market. Respondents have not taken action to conduct DPC in time to promote the senior most GDS. The action plan to fill up the promotional vacancies has not been implemented. Instead of notifying vacancies of 2010, 2011 and 2012 for GDS, they have been earmarked for direct recruitment through open market. Recruitment from the open market has to be resorted only if the departmental candidates are not available. Applicants contended that the circular dated 31.7.2012 introducing direct recruitment from the Open market for filling up MTS posts has to be set aside.

5. Respondents in the reply statement state that as per the letter dated 31.7.2012 the MTS vacancies created due to the 6th Pay Commission

recommendation, are to be filled up 50% from GDS and the other 50% from the open market. In the said circular, it is nowhere said that the percentage of posts to be filled up by GDS has been curtailed. The Postman and Mail Guard vacancies are being filled up by 3 modes namely through LDCE from MTS, direct recruitment from GDS cadre and direct recruitment from the open market. The 2001, 2002 and 2003 vacancies were filled up and that those eligible as per seniority have been promoted in different years. DPCs were conducted on a timely basis. The vacancies for the year 2010, 2011 & 2012 have been filled up as per RR.



6. No representation for the applicants. Since the case belongs to 2015 and as it has come up for hearing on several occasions, the case was taken up for adjudication. Heard the respondents counsel and perused the pleadings on record.

7. I. The relief sought by the applicants is as under:

“(a) to call for records pertaining to filling up of the vacancies for the posts of MTS (Multi-Tasking Staff) from Direct Recruitment from Open Market for GDS cadre officials, when the Recruitment of GDS Officials for MTS posts is already under Direct Recruitment quota and now diverting the posts meant for GDS cadre to fill the existing vacancies from Open market under the very same Direct Recruitment, creating only the Direct Recruitment process of vacancies depriving the GDS officials under their earmarked quota, as is evident from the Notifications dated 31.07.2012 and declare the same as arbitrary, illegal, unwarranted, misconceived, and in violation of Articles 14 and 16 of the Constitution of India.

(b) to direct the respondents to consider to fill the vacancies of MTS (Multi-Tasking Staff) from among Gramin Dak Sevaks under the quota of Direct Recruitment considering the seniority of the GDS officials as per the guidelines and Rules prevailing and direct the Respondents not to invoke the mode of filling the vacancies under “Direct Recruitment from Open Market”, when the filling the posts from GDS cadre is already under the same mode of Direct Recruitment quota, being the GDS cadre is a feeder cadre to MTS, depriving the GDS cadre for promotion to the cadre of MTS, when the number of GDS officials who have been working for decades are available for absorption to the said cadre; with all the consequential benefits;”



II. The issue is in regard to filling up the posts of MTS from the open market. Applicants claim that by resorting to open market to the MTS vacancies, the promotional opportunities of the GDS would be reduced. However, respondents have made it clear that the percentage of vacancies to be filled up by the GDS has not been changed. The facts stated in the reply statement, which we have gone through, support this contention. The RRs are elaborate and provide for a clear percentage of the GDS employees to be promoted to the next higher posts. It is not that this cadre has been ignored. Respondents have to balance the needs of the organisation with those of the employees. It cannot be one-sided. Just because the senior GDS are not getting promotion, respondents should not go in for open market recruitment for the MTS cadre, is not a reasoned argument, since the GDS have channels open to compete through LDCE for selection to posts of Postman/Mail Guard and even to the post of Postal Assistant. Therefore, it cannot be said that their promotional opportunities have been constricted. As seen from the specific details with names presented in the reply statement in regard to the GDS employees selected on the basis of seniority, through DPC and promoted to the next higher posts, the contention of the applicants that the DPC did not meet is incorrect. The 2010, 2011 and 2012 have been notified and details of the selection have been given in detail in the reply statement, which is in accordance with the prevailing RRs. Respondents have to act as per RRs and not in a manner as is wished by the applicants. Decisions are to be based on rules and not otherwise. The contention of the applicants that since many of the senior GDS are not getting promotion, respondents should not throw open the MTS vacancies to the open market is not logical. The MTS cadre was created as per the

recommendations of the 6th CPC and therefore, new RRs came into vogue and the MTS cadre has been brought under Group C cadre, in view of the additional responsibilities ushered in. The recruitment to the MTS cadre is a policy matter and the Tribunal has very little scope to interfere in policy matters as laid down by the Hon'ble Uttarakhand High Court in **Prakash Chandra vs State Of Uttarakhand And Others** on 10 October, 2019 in Writ Petition (S/B) No. 467 of 2019 by relying on many Hon'ble Supreme Court judgments, as under:



11. It is not within the domain of the Court to legislate. The Courts interpret the law, and have the jurisdiction to declare the law unconstitutional. But, the courts are not to plunge into policy making by adding something to the policy by issuing a writ of mandamus. (Census Commissioner and Ors. v. R. Krishnamurthy: (2015) 2 SCC 796 and Mangalam Organics Ltd. vs. Union of India: (2017) 7 SCC 221). A writ of Mandamus cannot be issued to the Legislature to enact a particular law, or to the Rule making authority to make rules in a particular manner or even to the Government to frame a policy. (Supreme Court Employees' Welfare Association v. Union of India: AIR 1990 SC 334; State of J&K v. A.R. Zakki & others: AIR 1992 SCC 1546; State of Andhra Pradesh v. T. Gopalakrishna Murthi and Ors: AIR 1976 SC 123; Mangalam Organics Ltd. vs. Union of India: (2017) 7 SCC 221 and Narinder Chand Hem Raj v. Lt. Governor, Administrator, Union Territory Himachal Pradesh: AIR 1971 SC 2399; Dhananjay Verma vs. State of Uttarakhand & others: Full Bench judgment in Writ Petition (S/B) No.45 of 2014 dated 21.05.2019). Since increase in the upper age limit from 35 to 42 years can only be made by an amendment to the 2007 Rules, which power is legislative in character, the relief which the petitioner seeks, for a mandamus to enhance the upper age limit from 35 to 42 years, cannot be granted.

III. There is no malafide that can be attributed to the policy of filling up of 50% the MTS vacancies by direct recruitment from the open market. In fact, as the name suggests, the personnel of this cadre have to perform multi tasks and therefore, selection through open competition would enable the respondents to select the meritorious. This would, in fact, induct fresh blood into the organization and is a favorable factor for the growth of the organisation. Therefore, the relief sought to eliminate

induction through direct recruitment from the open market to the MTS cadre is not as per law.

IV. Therefore, we do not find any merit in the OA and hence, is dismissed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/