

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA No. 2160/90

DATE OF DECISION 25.10.1991.

Shri Raj Kumar Sharma	-	Applicant.
Shri Sant Lal	-	Advocate for the Applicant.
Versus		
Union of India & Others	-	Respondents.
Shri P.P. Khurana	-	Advocate for the Respondents.

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(OF THE BENCH DELIVERED BY SHRI B.N. DHOUNDIYAL, HON'BLE MEMBER(A))

This OA has been filed by Shri Raj Kumar Sharma under Section 19 of the Administrative Tribunal Act, 1985, against the order issued by the Senior Postmaster, Sarojni Nagar Head Post Office, New Delhi (Respondent No.3) on 23.5.1987, deleting his name from the list of candidates approved for appointment in Group 'D' cadre.

2. The applicant was engaged as Casual Labourer on daily wages in Sarojni Nagar Head Post Office, New Delhi w.e.f. 19.5.1983. He appeared in the examination for recruitment of Group 'D' employees along with others on 11.1.87 and was declared successful. His name appeared at serial No.10 of the list of successful candidates. He was found medically fit and also furnished the prescribed premium for surety for regular appointment. He joined his duties as letter box peon in Group 'D' cadre in Sarojni Nagar Head Post Office, New Delhi on 6.2.1987. However, the Sr. Post Master, Sarojni Nagar, issued an order on 23.5.1987 whereby he appointed nine employees who had been declared successful in the departmental examination held on 11.1.87

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as Group 'D' officials. The name of the applicant was omitted from this list. He submitted representations on 20.5.87, 2.12.89, 17.2.90 and 9.10.90 but no decision was communicated to him. Meanwhile, the Tribunal allowed the application of one Girdhari Lal (OA No.611/88) vide Judgement dated 29.5.90, in which it was held that he would be entitled for appointment to Gr. 'D' posts when other employees who qualified the examination were appointed. The applicant claiming that he is similarly situated has prayed for the following reliefs:

- (1) To direct the respondents to implement their orders dated 22.1.87 and 6-2-87 by which the applicant was declared successful in the Recruitment test held on 11.1.87 and was allowed to join as letter box peon in Group 'D' cadre;
- (2) To grant similar benefit of the Judgement in the case of Girdhari Lal (OA-611/88) dated 29.5.90 and
- (3) To grant the consequential benefits of pay fixation, arrears and seniority etc;

3. The respondents have admitted that the applicant was engaged as Casual Labourer on daily wage basis and that he appeared in the examination for group 'D' posts held on 11.1.87 and was declared successful. They have contended that the number of vacancies reserved for Scheduled Caste candidates was not calculated properly due to a clerical mistake and hence the list had to be revised on 19.5.87. No appointment letter had been issued to the applicant and he was rightly being paid as daily rated casual labourer. He did not make any representation for a period of more than 2 years and his letter dated 20.5.87 cannot be treated as representation because it simply requested for a copy of the results of the examination. According to them, the application is therefore time barred.

4. We have gone through the records of the case and have heard the learned counsel for both parties. Admittedly, the applicant had passed the examination of recruitment of Group 'D' officials

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held on 11.1.87 and completed the pre-appointment formalities and was given an order which states as follows:-

"Sub: Appointment of Shri Raj Kumar Sharma as Group 'D'

Shri Raj Kumar Sharma S/o Shri Shankar Lal Sharma, an approved candidate for appointment as Class IV who has been found Medically fit and is security furnished is directed to reported to you to work as Letter Box Peon. He may be taken on duty and usual charge report be sent to all concerned."

5. This clearly shows that a regular appointment was given to him and he formally took charge of the new post on 6.2.87. It has been held that where financial loss to the applicant is of recurring nature his claim cannot be barred by limitation. (P.K. Datta Choudhury Vs. U.O.I. & Ots. (1991(1) ATJ 584). The Supreme Court has also confirmed the view taken by this Tribunal that where the claims of the applicant are identical to those of the successful petitioners in another case, they should not be denied any relief because of delay and laches (Lt. Governor of Delhi and Others Vs. Constable Dharampal and Others (VOL.2 (1990) ATLT(SC) 382). This Tribunal has already considered the case of a similarly situated colleague of the applicant in OA.611/88 decided on 29.5.90 (Girdhari Lal Vs. U.O.I.).

6. Following the ratio of these Judgements, we hold that the applicant having successfully passed the examination for recruitment of Grade 'D' employees held on 11.1.87, having completed all the formalities and having given a charge report on 6.2.87, became a temporary Group 'D' employee. The fact that there was a clerical error in calculating the posts to be reserved for Scheduled Tribe candidates will not affect his right to regular appointment from 20.5.87, when the other employees, who passed the said examination, were appointed on temporary basis in Group 'D' posts.

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7. In the conspectus of the facts and circumstances of the case, the application is allowed and disposed of with the following directions:

- (a) The applicant must be deemed to have continued in service as a temporary Group 'D' employee since ^{6th} 20.5.87. He would be entitled to the arrears of pay and allowances in the prescribed scale of pay of Group 'D' cadre w.e.f. 20.5.87 and his seniority as well as pay would be reckoned from that date.
- (b) The respondents shall comply with the above directions within a period of one month from the date of communication of this order.

8. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
Member (A) 25/10/81

P.K. Kartha
25/10/81
(P.K. KARTHA)
Vice-Chairman (J)