

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No. 2140 of 1992

## Versus

Union of India & Others . . . . . Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Ms. Usha Savara, Member (A)

( By Hon'ble Mr. Justice U.C. Srivastava, VC)

The applicant was appointed as Mailman on daily wages in the year 1982 and he continued to work as such on 3.9.1988 whereafter his services were terminated on the plea of over age recruitment vide order dated 5.9.1988. The applicant filed an application before this tribunal, which was disposed of alongwith other cases. The application of the applicant was allowed and order dated 1.9.1988 and 5.9.1988 whereby the services of the applicant were terminated, was quashed with a direction that the respondents to reinstate him in service forthwith and <sup>that</sup> he would also be entitled to all consequential benefits including full back wages. <sup>This meant</sup> Meaning ~~that~~ <sup>thereby</sup>, the applicant continued to remain in service and there was no break in service, the directions were given in the connected cases in which the respondents are directed to consider the applicants for regular absorption in group 'D' cadre from due date according to their seniority on the basis of literacy test for recruitment of Group 'D' staff held in 1988. <sup>and that</sup> the result of the test should also be published forthwith. <sup>It was also directed that</sup> They must be considered to have put in service for a period of 240 days for this purpose. The respondents are further directed to treat them within the age limit prescribed for the purpose of regularisation as they were

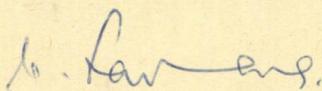
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within the prescribed age limit at the time of their initial engagement. In pursuance of the directions referred to above the respondent no. 2 published the result of the literacy test held on 9.10.1988 and declared the applicant successful in the said test vide order dated 28.2.1990. Notwithstanding the judgement of the tribunal referred to above, the S.R.O. Hissar issued a order of appointment of the applicant in group 'D' cadre as Mailman w.e.f. 6.3.1990. The applicant was not regularised on the basis of length of service and the literacy in 1988. The S.R.O. Hissar has issued an order for confirmation of the applicant in group 'D' cadre w.e.f. 6.3.1992. The applicant/making the representation against the same has approached the tribunal and pointed out that he fulfills the eligibility conditions to take the departmental examination for promotion to the cadre of Time Scale clerks and shorting assistant, yet he has been deprived of the same.

2. The respondents justified their action, though certain facts have been admitted by them. According to the respondents, that in view of the direction given by the tribunal that the seniority of the applicant has already been fixed on the basis of literacy test, held on 9.10.1988 i.e. from 11.11.1983 instead of 6.3.1990 by Sub Record Officer, RMS 'D' Division, Hissar, but the orders for confirmation of the applicant were issued keeping in view the satisfactory probation period of work and conduct of two years as required under the department rules, hence the confirmation orders were issued correctly as required under the rules after ~~waiting~~ <sup>watching</sup> the work and conduct of the official for two years, and as the applicant was not a permanent or quasi permanent employee and on 11.8.91 he was not allowed to appear in the examination for the higher post. These facts

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make it clear that the due seniority was given to the applicant w.e.f. 1.11.1983 and he was continuing in service the period of two years, the probationary period was deemed to have expired in the 1990 and the year 1990 was not the starting point. The respondents have committed an error and rather and tried to by pass the order, passed by the tribunal in such a sophisticated manner, which they could not have done. The applicant having completed the period of probation in the year 1990. He was entitled to all the benefits including the appearance in the examination for the higher post. Accordingly, this application is allowed and the order by which the applicant has been confirmed w.e.f. 29.1.1992 is quashed. It is directed that the applicant will be entitled to all the consequential benefits and in case, he has appeared in the examination in pursuance of the order passed by the tribunal, the result of the same shall also be declared and he shall be given the benefits of the same. With these observations, the application is disposed of. No order as to the costs.



Member (A)



Vice-Chairman

Dated: 23.12.1992

(RKA)