

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2304/93

(9)

New Delhi, this the 19th day of July, 1999

HON'BLE SHRI S.R. ADIGE, VICE-CHAIRMAN (A)
HON'BLE SHRI P.C. KANNAN, MEMBER (J)

Hari Kishan son of Sh. Subhash Chand,
r/o village and post office Chhawla,
New Delhi.

.....Applicant

(By Advocate: Shri Sant Lal)

vs.

1. Union of India through,
The Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan,
New Delhi.
2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi.
3. The Senior Superintendent of Post Offices,
New Delhi West Division,
Narain Industrial Estate,
New Delhi.

.....Respondents

(By Advocate: Shri R.P. Aggarwal)

O R D E R

By Hon'ble Shri P.C. Kannan, Member (J)

1. We have heard Shri Sant Lal, counsel for the applicant and Shri R.P. Aggarwal, counsel for the respondents.
2. The applicant, who worked as Extra Departmental Branch Post Master from 17.2.1984 to 31.1.1987 as a regular incumbent, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for a declaration that he is in continuous service counting from 17.2.1984 condoning the break in service of Extra

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Departmental Branch Postmaster due to being declared surplus in accordance with the standing instructions of the respondents and for a direction to the respondents to grant temporary status and regularise the applicant in Group "D" cadre.

3. The facts of the case in brief are that the applicant was appointed as Extra Departmental Branch Postmaster (Mobile P.O.) attached to Baro Sarai, E.D.B.O., New Delhi - 110 071 from 17.2.1984 as a regular incumbent. The said post was abolished w.e.f. 1.2.1987 and the applicant was rendered surplus. After repeated requests for any alternative appointment on E.D. post, he was posted as Part Time Chowkidar in Mayapuri Post Office w.e.f. 12.4.1988. The applicant submits that he is eligible to be appointed as E.D. Agent against any vacant post. In this connection, he has quoted D.G.P.&T's letter dated 19.8.1978, 8.8.1953, 12.4.1965 (Annexure A-3). In terms of the above instructions, E.D. Agents are required to be given alternative employment against available extra departmental post if they are suitable and willing. Such persons may be offered the vacancies that may arise in the vicinity or in the neighbourhood of the place of his residence and his name should be kept in the waiting list. In terms of Annexure A-4 (extracts of D.G.P.&T's letters dated 23.2.1979 and 6.4.1989) surplus staff, who are interested in alternative employment, may be absorbed in comparable E.D. post and for this purpose, waiting list may be prepared on sub divisional basis and alternative post should be offered on the basis of the seniority. The circular also provides for condonation of break in service of E.D. Agents due to being declared surplus. The

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validity of waiting list under the letter dated 23.2.1979 was one year. However, by letter dated 6.4.1989 it is provided that if alternative post could not be offered to the unabsorbed EDAs within a period of one year, the Post Master General may extend the period for getting unabsorbed EDAs in waiting list for a further period not exceeding one year at a time.

4. The applicant was allowed to take departmental examination held in December, 1988 for promotion to the cadre of Postman. The applicant could not succeed in the said examination. The applicant, however, was not allowed to take the departmental examination held in the subsequent years. The applicant also stated that Shri Sh. Virender Kumar and Shri Mauji Ram were appointed as E.D. Packer in 1989 ignoring the rightful claim of the applicant. The applicant further stated that he being a Part-time Chowkidar should be given the benefits available to casual labourers engged by the respondents. ~~Respondents~~ ~~admitted~~ The respondents in their reply admitted that the applicant was not considered while making fresh appointments as E.D. Packers in the year 1989. It is stated that the waiting list panel in which the applicant's name was included expired in 1988.

5. Mr. Sant Lal, counsel for applicant submitted that under the instructions issued by the respondents, the life of the waiting list panel could be extended and the respondents ought to have allowed the applicant to write the examination to the cadre of Postman.

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6. Mr. Aggarwal, counsel for the respondents submitted that in terms of the circular dated 23.2.1979 the waiting list panel was to be kept for one year and after the expiry of that period it lapsed. Only under the 1989 circular the Post Masters General were empowered to extend the period for keeping the unabsorbed E.D.As in the waiting list.

7. We have examined the matter and considered the submissions of the counsel on either side. According to the D.G.P.&T's letters dated 20.3.1979 and 7.4.1989, Extra Departmental Agents who have put in three years of service as E.D.Aagents and are below 42 years of age, are to be allowed to appear in the literacy test. Such Agents are also allowed to appear in the examination for appointment to the cadre of Postman and village Postman. The applicant being eligible for appearing in such examination, was allowed to appear in the examination held in December, 1988. However, the applicant was not allowed to appear in the examination in the subsequent years. As the applicant was included in the panel of unabsorbed EDAs upto December, 1988 and allowed to appear in the departmental examination, the respondents could have extended life of the wait listed panel for one year in terms of the DGP&T letter dated 6.4.1989. There was no reason to deny him the opportunity to appear in the examination held in subsequent years. Since the examinations for subsequent years have already been held and follow up action is over, we do not intend to unsettle the settled matter.

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8. Mr. Sant Lal also referred to the judgement of the Hon'ble Suprement Court in G.Govinda Rajulu vs. Andhra Pradesh State Construction Corporation Limited & Anr. reported in 1986 (Supp) SCC 651. In this case, services of the applicant were terminated on account of closure of the Corporation. The Hon'ble Supreme Court, however, directed the State Government that the petitioner shall be continued in service on the same terms and conditions either in the Government Department or in the Government Corporations. In our view, this judgement has no application to the facts of the case in hand. The applicant also submitted that he should be allowed to claim the benefits under the Scheme framed for regularisation of casual labourers. As the applicant is an Extra Departmental Agent (DA) and is governed by the EDA Conduct & Service Rules, he cannot be regarded as a casual labour.

9. In view of the facts and circumstances, we order and direct that the applicant should be allowed to take the departmental examination for promotion to the cadre of Postman, in accordance with the instructions of the respondents, to be held in future. If the applicant stands qualified in the said examination he should be appointed to Group-^{1B} post in accordance with instructions of the respondents. Till the applicant is regularly appointed he will continue in the present post of Chowkidar.

10. The O.A. is disposed of with the above directions. There shall be no order as to costs.

Draaway
(P.C.KANNAN)
Member (J)
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Adige
(S.R. ADIGE)
Vice-Chairman (A)