

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 26<sup>th</sup> DAY OF SEPTEMBER, 2003

Original Application No. 250 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI, V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Mahabir Prasad, son of  
Shri Hari prasad Sharma, Extra  
Departmental Stamp Vendor  
Aligarh Muslim University Post  
office, Aligarh.

.. Applicant

(By Adv: Shri K.C.Sinha)

Versus

1. Director General (D.E.)  
Department of Posts,  
New Delhi.
2. Post Master General,  
Agra Region, Agra.
3. Senior Supdt. of Post  
Japan House, Aligarh
4. Senior Post Master,  
Head Post office, Aligarh
5. Inspector of Post Offices,  
North Sub Division, Aligarh
6. Union of India through  
Secretary, Ministry of Telecommunication  
New Delhi.
7. Shri Gopal, Post Man Head  
Post office, Aligarh.
8. Bal; Krishna, E.D.M.P.  
Sub post office Biswah, distt. Aligarh
9. Prakash Chandra Sharma,  
Postman, head post office  
Aligarh.

.. Respondents

(By Adv: Ms.Sadhna Srivastava)

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O R D E R (Reserved)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has challenged the order dated 18.11.1995 communicated to the applicant by order dated 8.12.1995, 8.1.1996 and 15.1.1996 and further order dated 15.3.1996. He has further prayed for a direction to the respondents to treat the applicant as Post Man on the basis of the *on basis of written examination* selection of the applicant held on 16.7.1995 and to pay him salary and other consequential benefits.

The facts giving rise to this application are that applicant was appointed as Extra Departmental Stamp Vendor w.e.f. 6.6.1979. He continued to serve as Extra Departmental Stamp Vendor in Aligarh Muslim University Post office, Aligarh. Respondents issued a notification dated 10.3.1995 for conducting *an* examination for selecting candidates for being appointed as Postman. The vacancies in the cadre were notified on 28.3.1995(Annexure 2). This notification provided that there are 11 vacancies. 50% of the vacancies were to be filled from departmental candidates and 50% from outsiders(E.D.employees). Thus, four posts for general candidates and two posts for S.C. candidates, total 6 posts were allocated for departmental candidates. Whereas, in outsider quota 3 posts were allocated for being filled on the basis of the seniority and two posts were allocated for being filled on the basis of merit. The final allocation of posts categorywise was as under:

For General candidates : 6 posts

For S.C.candidates : 4 posts

For S.T. candidates : 1 post

Written test was to be held on 23.4.1995 but it was postponed and ultimately it was held on 16.7.1995. Lists of successful candidates was declared on

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22.11.1995(Annexure 3). In this panel there was a note appended that selected candidates mentioned at sl.nos 8,9 and 10 have secured equal marks hence their seniority shall be determined subsequently according to rules. Total 13 candidates were selected. By order dated 14.12.1995 all the 13 candidates were allocated place of posting. They were sent for training for the period 26.12.1995 to 4.1.1996. After completion of the training they were issued posting letters on 4.1.1996(Annexure 7). Applicant was appointed at Aligarh head post office. The other two candidates who had secured equal marks were Bal Krishna shown at sl.no.8 in the select list and Prakash Chandra Sharma shown at sl.no.10. The applicant joined on 5.1.1996 as Postman. Applicant was served with a show cause notice dated 15.1.1996(Annexure 11) as to why his name may not be expunged from the panel of selected candidates. The applicant was required to give his explanation within ten days. Applicant submitted his representation on 5.2.1996. However, explanation was not accepted and by order dated 15.3.1996(C.A-II) name of the applicant was expunged from the panel of selected candidates and appointment was also cancelled, aggrieved by which applicant filed this OA.

Respondents have filed counter reply and have submitted that the applicant is not entitled for relief. The circular dated 7.4.1966 was amended and amended provisions were applied to all examinations of 1993 and onwards. Under the amended provision in case of equal marks secured by the candidates, <sup>the</sup> <sup>seniormost</sup> among them in feeding cadre was to be selected and <sup>in</sup> this view Prakash Chandra Sharma was senior and hence he has been given appointment.

Counsel for applicant, however, submitted that the amendment was made in the circular letter dated 7.4.1966 by letter dated 8.11.1995. The vacancies were of 1994, hence the amended provisions will not apply. The selection had already commenced hence the amended provisions will not be applicable. The counsel for the applicant has placed reliance on the <sup>u</sup>~~following~~ judgment of Hon'ble Supreme court <sup>u</sup>~~and cases of~~ <sup>u</sup>~~High Court~~:

- i) State of Rajasthan Vs. R.Dayal & Others,  
1997 Supreme Court Cases (L&S) 1631
- ii) Chairman, Railway Board and Ors Vs. C.R.Rangadamaiah & Ors.  
1997 Supreme Court Cases ( L & S ) 1527
- iii) B.L.Gupta and Others Vs.M.C.D.,  
1998 Supreme Court Cases (L&S) 532
- (iv) Harish Chand Vs. Joint Director of Education & Ors  
(2000 (3) E.S.C 2060 (All.)
- (v) S.C.Kohli & Anr. Vs. M.C.D. & Anr.  
2002 (1) All India Services Law Journal 420

The learned counsel for the respondents, on the other hand, submitted that the Director General Posts and Telegraph letter No.27-24/65 dated 7.4.1966 was amended by letter dated 8.9.1994. By letter dated 8.11.1995 the respondents were only reminded of the amendment already made. It was effective from 1993 and onward and the selection of the applicant was by mistake which has been rightly rectified by the impugned orders and applicant is not entitled for any relief. Reliance has been placed on judgment of:

P.Mahendran & Others Vs. State of Karnataka & Others  
1990 Supreme Court Cases (L&S) 163

We have carefully considered the submissions of the counsel for the parties. There is no factual dispute in the present case. The question for determination is whether the D.G.P.&T letter No.27-24/65/NCG dated 7.4.1966 as amended subsequently will apply in the

<sup>^</sup> ~~selection~~ present or not. Applicant was selected on the basis of the unamended provision which provided as under:-

'If two or more candidates are bracketed for the last position in the merit list as determined by the number of vacancies to be filled on the basis of the ..... or selection, all such bracketed candidates will be deemed to have been increased if necessary, in relaxation of the general rule that number of vacancies once announced should not be increased."

As the candidates mentioned at sl.nos 8,9 & 10 had secured equal marks , all the three were selected but the letter dated 7.4.1966 was amended in view of the D.G.P.&T order No.6-6/93/Estt.(D) dated 18.5.1993. This amendment was communicated by letter dated 8.9.1994 to all the Postmaster General, All Senior Supdt. of Post Offices, Supdt. of Post Offices, Chief Post Master Lucknow, Principal PTTC, Saharanpur and all S.R.s and S.S.R.Ms on 8.9.1994. Copy of the letter dated 8.9.1994 has been filed as (Annexure 2 to the supplementary affidavit). It clearly provided that the copies are being provided for information, guidance and necessary action. By subsequent letter dated 8.11.1995. The above legal position was only reiterated which is clear from the contents of the letter dated 8.11.1995 which are being reproduced below:-

"Copt of Asstt.Dir.Gen.(DE) Department of Post, New Delhi letter No.5-10/93/DE dtd.8.11.1995 and further circulated vide PMG,Agra endorsement No.Rectt/2-R/Genl/90 dated 06/8.12.1995.

Sub: Competitive Exam.Candidates obtaining equal selection and determination of Inter-se-merit.

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Sir,

I am directed to invite your attention of this office letter of even no. dated 8.9.94 on the subject mentioned above and to state that Para 2 of erstwhile DG P&T letter No. 27-24/65/NCG dt. 7.4.66 may be deleted and submitted by the following para in its place.

'Selections:- If two or more candidates get clubbed due to obtaining of equal marks against last vacancy to be filled on the basis of the competitive exam., selection of seniormost 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.'

Above amendment issues in the light of Deptt. of Personnel & Training Uo No.6-6/93 Estt.(D) dated 18.5.1993 and will apply to all exams held by the Deptt. of posts in the year 1993 and onwards.

The above instruction may please be brought to the notice of all concerned.

Sd/

Asstt. Dir. Gen. (DE)

In the letter there is a specific reference of letter dated 8.9.1994 mentioned above. From the aforesaid two letters it is clear that the DG P&T letter dated 7.4.1966 was already amended w.e.f. the year 1993. There is no dispute that the 11 vacancies which were notified by notification dated <sup>10.3.1995</sup> were of 1994. Thus, the amended direction ~~Was applicable to such a situation~~ was

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applicable, which had already come in effect from the year 1993. As the amendment was given effect to all selections in 1993 and onwards, it is difficult to accept that the provision will not apply to the present selection which commenced on the basis of the notification issued on 10.3.1995. Hon'ble Supreme court in case of 'P.Mahendran and Ors Vs State of Karnataka (Supra) held that:

' Every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective."

In the present case, there is no doubt about the language used that the provisions were made applicable from 1993 onward and they applied to present selection also.

Counsel for the applicant has relied on cases which are distinguishable on facts and does not help applicant in the present case. In case of 'State of Rajasthan Vs. R.Dayal & Ors (Supra), the rules contained in Rajasthan Service of Engineers(Building and Roads Branch) Rules, 1954 were amended w.e.f. 24.7.1995. hon'ble Supreme court directed to apply the amended rules with regard to the vacancies which arose after amendment. In the present case, respondents have applied amended rules to the vacancies which had occurred in 1994. Thus, the action taken by respondents is in consonance with the judgment of Hon'ble Supreme Court. In case of 'P.Mahendran & Ors Vs. State of Karnataka & Ors(Supra),

rules regarding qualification for appointment were amended during continuance of the process of selection. The facts in the present case are entirely different.

In case of 'Chairman, Railway Board and Ors. Vs. C.R.Rangadhamaiyah & Ors(Supra) the Constitution Bench of Hon'ble Supreme Court has held that rights already accrued cannot be taken away by retrospective amendment of the Statutory Rules. In the case before Hon'ble Supreme Court the amendment adversely affected pension of employees who already stood retired. The Hon'ble Supreme Court disapproved the amendment. In the present case there is no question of affecting any accrued right. Legal position is well settled that mere selection in the test does not give right to appointment. It is subject to the rules applicable. In fact, the applicant was given appointment ignoring the legal position applicable at the time of selection, the applicant cannot claim any benefit.

In case of 'B.L.Gupta & Anr. Vs.M.C.D(Supra) Hon'ble Supreme Court held that vacancies which arose prior to the amendment should have been filled up according to unamended rules. In the present case, the vacancy arose after amendment in 1994. The amendment had come in force from 1993. Similarly, the other cases are <sup>also</sup> distinguishable on facts and does not help applicant in the present case, the applicant is not entitled for any relief.

For the reasons stated above, the OA is dismissed being devoid of merit. No order as to costs.

*Dhawal*  
MEMBER(A)

*R*  
VICE CHAIRMAN

Dated: 26th September, 2003