

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 29th day of JULY 2005.

Original Application No. 1474 of 2001.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Pradeep Kumar Mishra, S/o Late K.N. Mishra,
R/o behind Mahila Degree College,
Uma Nagar, Deoria.

.....Applicant

By Adv: Sri A. Tripathi

V E R S U S

1. Union of India through its Secretary,
Department of Post, Ministry of Communication,
Dak Bhawan, Sansad Marg,
NEW DELHI.
2. The Chief Post Master General,
U.P. Circle,
LUCKNOW.
3. Post Master General,
Gorakhpur Region,
GORAKHPUR.
4. Senior Supdt. Of Post Offices,
Deoria Division,
DEORIA.
5. Senior Post Master,
Head Post Office,
DEORIA.

.....Respondents

By Adv: Sri S. Singh

O R D E R

By K.B.S. Rajan, JM

Following chronological sequence of events
would suffice to have a grip of the case:-
21-06-96 - Father of the applicant died.
07.01.1998- Applicant's applied for a compassionate
appointment.

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10.12.1998- Approval by the Circle Relaxation Committee

20.04.1999 - Offer of appointment as Postman to the applicant.

12.05.1999 - Applicants completes the training.

18.08.2001 - Applicant was confirmed in the grade of Postman.

09.10.2001 - Without any show cause notice order of confirmation cancelled.

2. By order dated 9-10-2001 the order of confirmation dated 18-08-2001 was cancelled which gave rise to a cause of action and the applicant has moved this O.A. praying for quashing of the said order dated 9-10-2001.

3. Respondents have contested the O.A. contending that in view of the fact the vacancy being as for S.T. only, a specific mention had been made in the very appointment order that the compassionate appointment was only on ad hoc basis till the regular incumbent of ST was available. It has also been contended that it is only the confirmation order of the applicant that has been cancelled, while the applicant continues to function on ad hoc basis.

4. Arguments were advanced and the documents perused and we have given our anxious consideration.

5. Admittedly the appointment offered to the applicant is on compassionate grounds. It is settled law that there can be no ad hoc appointment

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under the compassionate appointment scheme. As such, there is no question of the appointment being on ad hoc basis.

6. The vacancy was filled by appointing the applicant w.e.f. 20-04-1999 and the vacancy existed since 1993. Under the existing Rules, if the vacancy could not be filled up by appointment of ST candidate, de-reservation has to take place for throwing open the vacancy to the general candidate by following the procedure. This was not followed from 1996 and it was by 1999 that the applicant was appointed against the said vacancy. It would be curious to note that though the appointment was held to be on ad hoc basis, after two years, the applicant has been confirmed. The applicant on receipt of confirmation is well within his right to presume that necessary drill for de-reservation has been completed. Doctrine of indoor management comes into play here. We are informed during the course of arguments that even now, no ST candidate has been appointed.

7. By virtue of the fact that appointment on compassionate grounds shall be against regular vacancy and that the applicant was not only appointed but also confirmed, by such action of the respondents, the applicant has crystallized his right to stick to the post of post man till he gets his promotion as Postal Assistant. By another O.A.

62

the applicant has claimed his promotion as Postal Assistant on the basis of his experience as Post man. Once he becomes Postal Assistant, then this vacancy would be thrown open for S.T. candidate and there would therefore be no question of even imbalance in the ratio. As it is essential that there is no automatic de reservation, as held by the apex court in the case of **Harish Chandra Ram v. Mukh Ram Dubey, 1994 Supp (2) SCC 490, at page 492** wherein the Apex Court has held, The reserved candidates even if they are not available, it is settled law that unless dereservation is done the vacancy will not be thrown open to the general category, the respondent may consider to take up the matter with the appropriate authorities to have the dereservation formalities completed. As stated earlier, such a de-reservation would be only for a short span and once the vacancy again arises, the same could well be reserved for S.T. , of course, by following the post based roster system.

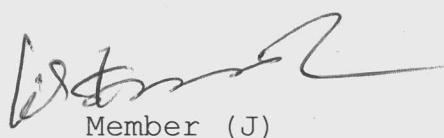
8. In the alternative, the respondents should create a supernumerary post of postman for the period from the date of appointment of the applicant as postman till his further promotion as Postal Assistant.

9. The OA is therefore, allowed. Order dated 09-10-2001 is quashed and set aside. The respondents are directed to either create a supernumerary post

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to accommodate the applicant as Post man since the date of his first appointment or else they may take up the case with the appropriate authorities for de reservation of the post of Postman w.e.f. the date of confirmation of the applicant herein. Meanwhile, if the applicant is entitled to further promotion, the same should also be considered.

10 Under these circumstances no order as to cost.



Member (J)



Member (A)

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