

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD THIS THE 4th DAY OF Apr., 2006

ORIGINAL APPLICATION NO.1257 OF 2004

HON'BLE MR. K. B. S. RAJAN, MEMBER-J

Rustam Khan,
Son of Sri Badal Khan,
Resident of Village & Post-Pailani,
District-Banda.

.Applicant

By Applicant: Shri R.S. Yadav

Versus

1. Union of India,
through the Secretary,
Ministry of Post Telecom,
New Delhi.
2. The Director General of Post Offices
Sanchar Bhawan,
New Delhi.
3. The Post Master General,
Kanpur Region, Kanpur.
4. The Superintendent of Post Office,
Banda Division, Banda.

. Respondents

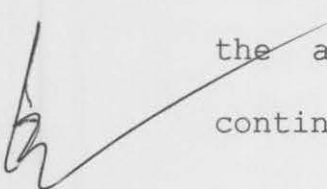
By Advocate: Shri S. Singh

O R D E R

The applicant was appointed as Extra Departmental Agent w.e.f. 18.11.1979. The departmental examination for promotion to Group 'D'/Postman was held on 27.11.1983. The applicant was approved for promotion according to his seniority and was allotted to Rath L.D.S. The applicant had joined the post of Postman on the basis of said allocation and was allowed Regular Pay

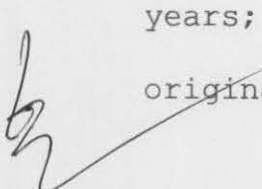
scale but applicant was denied duty for no reason and was being given duty only against the Leave vacancy in different spells. The applicant had worked in Hamirpur from 21.2.1984 to 6.3.1985 in different spells in the vacancy of postman cadre. The juniors to the applicant were given the appointment in Group D/Cadre but name of the applicant who appears at serial No.18 mentioned in the seniority list was declared surplus. The applicant sent representation for his Regular Employment. Applicant approached this Tribunal for issuing suitable direction to the respondent to reinstate the applicant in service as postman with all consequential benefits.

2. This Tribunal vide order dated 6.10.1994 directed the respondent authorities to review the case of the applicant and consider his regular appointment on the post of Postman Group w.e.f. date when juniors to him, if any covered by the same allocation order of respondent no.4 directed that the pay of applicant may be regulated notionally w.e.f. that date, from time to time till he actually assumes the charge of the post of Regular Group D/Postman. In the light of the Judgment by the Tribunal dated 06.10.1994 Deputy Divisional Inspector Post vide memo dated 07.12.1994 appointed the applicant in Group D. The applicant has continuously worked from 07.12.1994 in Group D till



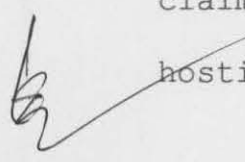
the date of Retirement but respondents had, neither given appointment to the applicant from the date when juniors to the applicant were given appointment. The applicant retired from his service w.e.f.31.01.2003 after attaining the age of superannuation but till date respondents are not giving the pensionary benefits to the applicant.

3. The contention of the respondents is that the applicant, an EDDA, was promoted in Group 'D' cadre vide order dated 29.11.1983 and was allotted the Rath LSG Unit but due to no availability of regular vacancy in Group 'D' cadre, he was allowed to officiate as Postman at Hamirpur H.P.O in leave vacancy w.e.f. 21.02.1984 to 31.03.1985. However, he could not be absorbed in the said cadre; aggrieved the applicant filed O.A. No.192/1993 before this Tribunal which was decided on 06.10.1994 and in pursuance of the order he was given regular appointment in Group 'D' cadre w.e.f. 10.12.1994. The applicant continued to work on the said post up to 31.01.2003. On superannuation, the applicant was not found eligible for grant of pension as the service rendered by the applicant with the department w.e.f. 21.02.1984 to 31.03.1985 and from 10.12.1994 to 31.01.2003 was reckoned as 9 years 3 months and 3 days, which is being less than 10 years; aggrieved the applicant filed another original application No.699/2004 which was disposed



of vide order dated 9.7.2004 directing the respondents to consider and decide the representation of the applicant. In compliance of the order dated 9.7.2004 the representation of the applicant has been decided and the decision was communicated vide letter dated 16.8.2004 against which the present original application has been filed. The applicant has been paid other post retrial benefits vide order dated 10.07.2003. No candidates of other category candidate junior to the applicant have been given promotion before the applicant.

4. Arguments were heard and the documents perused. Admittedly, the applicant was through in the test for promotion to the post of Postman and he was to be accommodated if vacancies existed. As no regular vacancy was available, to the extent possible, the respondents had certainly accommodated the applicant in leave vacancy. But the grievance of the applicant is that while his seniority is 18 as per the list dated 29-11-1983 vide Annexure A-2, those with seniority No. 21, 22 and 25 were promoted. The explanation for this from the side of the respondents is that those who were promoted were from reserved category and within their quota, they were promoted and as such, the applicant cannot claim any parity with him or contend that there was hostile discrimination. The applicant had been paid



all the benefits other than pension as he did not have the requisite period of service to earn pension. The stand of the respondents appears justified. For, notwithstanding the fact that the applicant was senior to those who were promoted from among the very list, these belong to a different class and according to the respondents, none from the general category, who was junior to the applicant was promoted. As such, the grievance of the applicant cannot be redressed with the ambit of the extant rules and regulations. He cannot compare the promotion of the reserved candidates, when he belonged to the general category and no general category candidate junior to the applicant was promoted. The applicant has relied upon the judgment in the case of *R. Krishnaswamy vs. Union of India 2003 (2) ATJ 650*. That does not assist the case of the applicant as that was a case where junior from the same category was promoted, to the exclusion of the senior. Such is not the case here.

5. In view of the above, the applicant could not make out a case. Hence, the OA is rejected but with no cost.



Member (J)

/ns/