

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ALLAHABAD THIS THE 22<sup>nd</sup> DAY OF May 2006

ORIGINAL APPLICATION NO.1676 OF 2004

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

Gorelal Sep-F 8375296  
2 CB.P.O. C/o 99 A.P.O.  
R/o Gram -Meergaon Post-Sikandra,  
District-Kanpur Dehat.

. . . . .Applicant

By Applicant: Shri A. Vijay

Versus

1. Union of India,  
through Secretary,  
Ministry of Communication,  
Department of Post,  
New Delhi.
2. Chief Post Master General U.p. Circle,  
Lucknow.
3. Post Master General, Kanpur region Kanpur.
4. A.D. Postal Services (Recruitment),  
Department of Post U.P. Lucknow.
5. Superintendent of Post, Kanpur (M) Division,  
Kanpur.
6. Sub-Divisional Inspector, Rura Sib-Division,  
Kanpur (M) Department of Post, Kanpur-209303.
7. Commandant (P&T) Administrative Cell,  
A.P.S. Centre C/o 56 A.P.O.


. . . . . Respondents

By Advocate: Shri S. Singh


O R D E RBY K.B.S. RAJAN, MEMBER-J

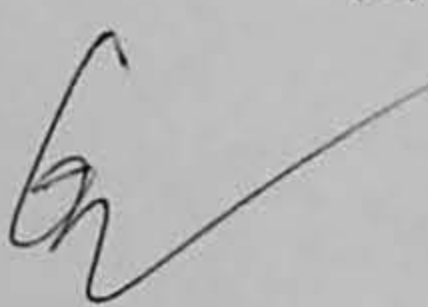
Aspiration for career progression is a positive act of any serving individual and the instant case is one such example. However, when the Rules stipulate certain conditions, unless such conditions are fulfilled, the individual cannot participate in the competitive examinations. Rules provide for Group D employee to compete for higher post of Group C in the postal department. The question is whether the applicant falls within the said Group D category or not. The applicant says "yes" and the Respondents, "No". The issue involved is as to who is right.


2. Now the brief facts as contained in the OA:-

- (a) The applicant was initially appointed on the post of Extra Departmental Branch Post Master (in short EDBPM) on 14.11.1994. On 13.1.1998 vide circular some individual from EDA's below 37 years of age were permitted to be considered for deputation to the Army Postal Service.
- (b) The applicant applied for the Army Postal Service and he was found medically fit for APS Service.
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- (c) On 27.11.1998, the applicant was promoted on Group -D thereafter was relieved to join at APS on 30.11.1998.
- (d) The applicant was discharging the duty of Pacher i.e. Group 'D' Post under the Army Postal Services and was provided all departmental facilities as are provided to Group 'D' employees.
- (e) The applicant sought repatriation. It was communicated that permanent promotion to Group 'D' shall be made very soon in the light of assurance, vide letter dated 23.09.1999 Sub-Divisional Inspector Postal Sub-Divisional Rura Kanpur wrote office letter seeking direction to issue permanent Group 'D' promotion to applicant.
- (f) The applicant was issued Office Memo dated 09.05.2000 by which it was certified that the applicant, now on field services, would have officiated as Group 'D' in Rura Sub-Division (Civil Wing) from 01.02.1999 to onwards continuously but proceeding on deputation to field service.
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- (g) After the issuance of the memo dated 09.05.2000 w.e.f. year 2000 till date, office of the Director of Accounts (Postal) Nagpur deducted the amount of Annual General Provident fund from the applicant's salary as of permanent Group 'D' employee.
- (h) The applicant on 21.01.2002 submitted an application form to appear in Lower Grade Officials Examination scheduled to be held in the year 2002 on the ground that the applicant has already completed two years of service after his permanent promotion as Group 'D' w.e.f. 01.02.1999.
- (i) The applicant was not permitted to appear in the exam thereafter applicant sent several representation to the authority concerned stating therein grievance in detail.
- (j) The applicant vide letter dated 23.04.2002 was informed that P & T Adm. Cell has intimated that the applicant is not eligible to appear in L.G.Os exam.
- (k) The applicant being aggrieved by the action of respondent filed, O.A. No. 1045 of 2002.
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- (l) On 16.07.2004 the Court was pleased to dispose of the aforesaid case with certain observation direction the applicant to make a representation to the competent authority for grant of the status of permanent Group 'D' employee.
- (m) On 11.08.2004 applicant has made fresh representation.
- (n) The respondent No. 2 without complying with the observation made by Court and without application of mind, rejected the applicant's representation on 17.11.2004.
- (o) The applicant had taken specific plea in his representation that similarly situated, persons who had been issued same momo of officiating Group 'D' status, had been permitted to appear is the L.G.O. exam and no such objection was taken for example of the case of Ch. V. Ramna was issued memo on 19.08.1997 and he had been permitted to appear in the exam. The case of Shri Arun Kumar is also similar to the applicant, he was issued officiating memo on 20.01.1984 and was permitted to appear in the L.G.O. exam which is against the Article 14 of Constitution of India.
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3. The contention of the respondents are as under:-

a. The applicant was appointed on the post of Extra Departmental Branch Post Master, Miragon Branch Post Office on 14.11.1994, had applied for enrolment as Volunteer for Army Postal Services on 26.12.1997 and submitted the declaration as under:-

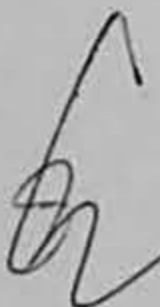
i. I will not seek repatriation to the civil before my appointment to Group 'D' cadre on my turn.

ii. In case of reversion to civil for any unforeseen reasons before my turn for appointment for Group 'D' comes. I am ready to be accommodated in any post of EDA, if the present post B.P.M. is not available. If no post of EDA would be available in my recruiting unit, I will wait for appointment as much without claiming remuneration till a vacancy arises.

iii. I fully understand that after my promotion to Group 'D' Cadre in Civil. I will be entitled for the service benefits as per with his next junior in the Civil.



- b. The applicant joined his duty as Group 'D' at Rura on 30.11.1998 forenoon and was relieved on 30.1.1998.
- c. The applicant had applied to appear in LGO examination held in the year 2002. He was not permitted to appear in LGO examination as per Departmental rules by the Army Postal Services authorities.
- d. In compliance of the order of this Tribunal the representation of the applicant has been considered by the competent authority, rejected as per the departmental rules.
- e. The applicant was proceeded on deputation to Army Postal Services w.e.f. 30.11.1998 after giving technical promotion of Group 'D' and since then the applicant is working on the said post as there is no post of EDA (GDS). It is the letter which has been enclosed by the applicant is not connected with his promotion to Group 'D'.
- f. Arun Kumar and C.H.V. Ramanana were never allowed to appear in the LGO examination as it is very clear from the letter received from the






Army Postal Services, C/o 56 APO dated  
14.03.2005.

4. Arguments were heard and the documents perused. The applicant was functioning as EDBPM at the time he switched over to APS on deputation and he was at that time accorded the technical status of Group D. This itself goes to show that the applicant was not actually a group D employee but was granted the status on a technical basis, as, for deputation in APS, a person should hold a Group D post. Had the applicant been not granted such a category, he would not have been taken on deputation in APS.

5. The applicant, before moving on deputation had given an undertaking as extracted in the preceding paragraph. This would also confirm that the applicant was even prepared to take over as EDDA in the event of his repatriation before he was actually accorded the Group D Post.

6. Thus, it is evident that the applicant was not holding the post of Group D Category either at the time he was sent on deputation or at the time when he was repatriated. The certificate issued to the effect that but for his deputation, he would have continued as Group D employee means only with regard to the technical group D and not regular.





7. Be that as it may. In case identically situated persons had been permitted to sit for the exam, there is no reason as to why the applicant should be singled out. Such permission to one or two, if, was by mistake, the same cannot be permitted to be perpetuated. The applicant cannot be a beneficiary of such mistake. However, the respondents both in their counter and supplementary counter completely denied the two individuals referred to in para 4.17 having been permitted to sit for the examination. And, there is no reason to disbelieve it, for, as held in *Kasturi Lal Lakshmi Reddy v. State of J & K, (1980) 4 SCC 1* :

*"one basic principle which must guide the court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest."*


8. Notwithstanding the above, what is to be seen is whether deduction towards GP Fund was confined only when the applicant was in the APS or it continued. If it continued, then the applicant has a right to believe that he has been categorized as a regular Group D person. If so, the department should permit him to sit for the exam as well. If for any reason, say by mistake, the department had been continuing the GP Fund deduction even after repatriation from APS, at least from the time the OA

has been filed, the mistake could have been rectified. If the mistake had not been rectified, then it amounts to a conscious decision to continue deduction which in turn presumes that the applicant is a regular Group D employee. This portion has to be verified.

9. Thus, the position would be - In case the respondents are still deducting from the emoluments of the applicant the GP Fund subscription, the applicant is deemed to have been treated as a regular Group D employee (by way of a legal fiction) and subject to fulfillment of other attendant conditions, he is eligible to sit for the examination. This is on the basis of the extension of legal fiction as held in the case of East End Dwellings Co. Ltd. v. Finsbury Borough Council (1951) 2 All ER 587, when Lord Asquith observed: (All ER p. 599 B-D)

*"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

10. Instead, if the subscriptions are not being deducted after his repatriation or thereafter (at

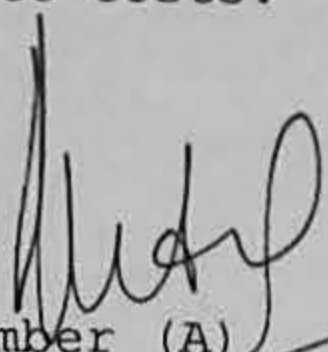




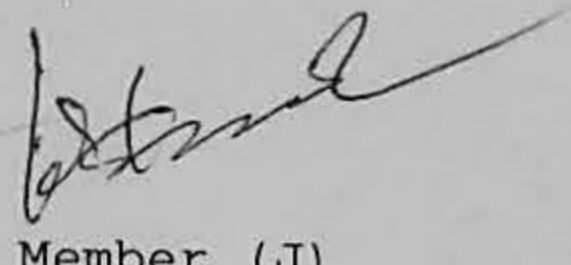
the time of filing of the counter), then the applicant is not entitled to the relief he claims.

11. The application, is therefore, disposed of, with the direction to the respondents to permit the applicant in the event of his P.F. being deducted even now and reject his claim in case no subscription is deducted.

12. Under the above circumstances, there shall be no order as to costs.



Member (A)



Member (J)

/pc/