

**Central Administrative Tribunal
Allahabad Bench, Allahabad**

**O.A. No.330/1014/2016
M.A. No.330/2774/2016**

Order reserved on : 26.08.2021
Order pronounced on : 14.09.2021

(Through Video Conferencing)

**Hon'ble Mr. Devendra Chaudhry, Member (A)
Hon'ble Mrs. Pratima K. Gupta, Member (J)**

Ashutosh Kumar Tripathi
Aged anpit 29 years,
S/o Late Sh Shankar Dutt Tripathi
R/o Village and Post Majhawa, District Mirzapur,
Presently posted as GDS BPM, MTS Office,
Laldiggi, TSO, Mirzapur.

.... Applicant

By Advocate: Shri B.N. Singh
Shri S.K. Dwivedi

Versus

1. Union of India
Through the Secretary,
Ministry of Communications,
Department of Posts,
Government of India,
Dak Bhawan, New Delhi.
2. Chief Post Master General,
UP Circle, Lucknow.
3. Post Master General, Allahabad Region,
Allahabad.
4. Superintendent of Post Offices,
Mirzapur Division, Mirzapur.

.... Respondents

(By Advocate: Shri Ram Kumar Verma)

ORDER**Hon'ble Mrs. Pratima K. Gupta, Member (J)**

The applicant has filed this Original Application seeking promotion to the post of Postman from MTS (Gr.D), in pursuance of result dated 21.01.2013 of Limited Departmental Competitive Examination (LDCE). Applicant has assailed the order dated 18.12.2013 whereby this selection has been cancelled for want of vacancy. Applicant has filed the present OA seeking the following reliefs:

- "(i) To issue an order or direction setting aside the letter dated 18.12.2013 issued by respondent No.3 (Annexure No.A-1 to Compilation-I).
- (ii) To issue an order or direction commanding and directing the respondents to give promotion to the applicant on the post of Postman in pursuance of result dated 21.01.2013 of Limited Departmental Competitive Examination for promotion to the cadre of Postman from MTS (Gr.D) and GDS Cadre for the year-2013 held on 20.01.2013.
- (iii) To grant all the consequential relief which the applicant is entitled for.
- (iv) To grant any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. Brief facts of the case are as follows:

2.1 The applicant was appointed as GDS in MTS Office Laldiggi Mirzapur. On 10.12.2012 a memorandum regarding LDCE for promotion to the post of Postman from MTS (Gr.D) and GDS cadre for the year 2013 was issued. Applicant participated in the examination held on 20.01.2013. Three candidates including the applicant were declared successful. All the three candidates belong to GDS cadre. Applicant

secured 70 marks in the examination. However, one Sh.Vijay Shankar, Roll No.15, who belongs to SC category and secured 46 marks, was given promotion ignoring the claim of the applicant. Applicant submitted the representation son 15.03.2013 and 26.03.2013 raising his grievance that the candidate securing less marks was promoted and he was ignored. Subsequently, the matter was brought to the notice of PMG, Allahabad in the meeting with the GDS Federation wherein it was submitted that three vacancies of Postman in Mirzapur Division were sent for the year 2013 but due to some reason, approval was given for promotion of one post of Postman to be filled up from MTS cadre. Thereafter, respondent No.3 wrote letter to respondent No.2 mentioning that vacancies of Postman cadre to be filled up from GDS cadre were wrongly shown as zero in the Mirzapur Division and that the examination was held for two posts of Postman to be filled up from GDS cadre and one post to be filled up through MTS cadre. In view of this according to the Applicant the respondents have not considered the case of the applicant in correct perspective when respondent No.3 vide letter dated 18.12.2013 stated that the information was received for only one vacancy of Postman from MTS cadre which was approved vide letter dated 17.12.2012 regarding which examination was held on 20.01.2013. He submitted that the claim of wrong calculation of vacancies in Mirzapur Division is not acceptable.

Thereafter, applicant again sent a representation dated 20.01.2016 to the respondents but no action has been taken till now. Hence this OA.

3. Counter affidavit has been filed by the respondents. In para 13 of the reply, it is stated that only one post of Postman was circulated for the year 2013 and this vacancy was to be filled up from MTS cadre whereas applicant belongs to GDS cadre. It is stated in the counter affidavit that the vacancy position was wrongly calculated by the respondents. It is further stated that necessary disciplinary action has been taken against the Office Assistant, Sh. O.P.K. Mishra for submission of wrong vacancy position. It is further stated that Sh. Vijay Shanker, who was below in merit to the applicant, was declared successful and was promoted as he belonged to the SC category.

4. Rejoinder has been filed by the applicant reiterating the claim of the applicant as raised in the OA.

5. We have heard Sh. B.N. Singh, learned counsel for applicant and Sh. Ram Kumar Verma, learned counsel for respondents and perused the pleadings on record including the supplementary affidavit filed by respondents and rejoinder thereto.

6. Applicant has filed MA seeking condonation of delay. For the reasons stated in the MA, delay is condoned. MA is allowed.

7. The controversy in short here is that though the applicant secured 70 marks, and achieved first rank in the examination dated 20.01.2013, he could not be promoted for following reasons:

7.1 Firstly, the applicant was from GDS cadre while the vacancy available was for promotion from MTS cadre. Secondly, the vacancy position was wrongly determined. Thirdly, the claim of the applicant is that there are still vacancies at Mirzapur Division which were meant for GDS cadre and applicant also belongs to GDS cadre. Fourthly, according to the respondents there was only one vacancy which was given to the reserved category candidate, namely, Sh. Vijay Shanker, who secured 46 marks.

8. From the above conspectus of the case, it is clear that both the applicant and Sh. Vijay Shanker belong to the same cadre, i.e. GDS. The submission of the respondents that there was only one vacancy, which has been filled, cannot be stated to be correct, in view of the Committee's report dated 25.03.2013 signed by Post Master General, Allahabad

(enclosed at page 30 to the counter reply). The relevant portion is at page 32 para 5, which reads as under:

“इलाहबाद रीजन के कुछ मंडलों में जैसे मिर्जापुर मंडल में पोस्टमैन/मेलगार्ड की परीक्षा में वर्ष 2013 के रिक्त खाली पदों को नहीं शामिल किया गया है। वर्ष 2013 के खाली पदों को शामिल करते हुए श्री आशुतोष तिवारी जी डी एस बी पी एम् कब्बवा मिर्जापुर ने परीक्षा उत्तीर्ण किया है रोल न. MZP -73 है एवं मेलगार्ड RMS में भी एक पद खाली है। उस स्थान पर उनका चयन किया जाना न्यायसंगत है, क्योंकि परीक्षा समान पोस्टमैन/मेलगार्ड की हुई है। इस प्रकरण पर अपने स्तर से न्याय दिलाये जाने की कृपा की जाय।”

9. From the above quoted para 5, it is clear that at that time there was one vacancy of general category where the applicant should have been accommodated. This report has not been controverted by the respondents. In their counter affidavit it is clearly mentioned that there was a Committee constituted to examine the entire issue. Placing reliance on this Committee's report that there was indeed an unreserved vacancy available and in the light of the fact that the applicant secured first rank in the examination and was declared successful, this OA is allowed. Order dated 18.12.2013 issued by respondent No.3 is set aside. Respondents are directed to give promotion to the applicant on the post of Postman in pursuance of result dated 21.01.2013 of LDCE for the year 2013 within 2 months from the receipt of the copy of this order. No costs.

Hon'ble Shri Devendra Chaudhry, Member (Administrative) has consented to this order through email.

(Pratima K. Gupta)
Member (J)

'sd'

(Devendra Chaudhry)
Member (A)