

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/1199/2019

ORDER RESERVED ON 23.07.2021

DATE OF ORDER: 10.08.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Chandigarh Bench at Chandigarh)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

B.R.Hemanth Kumar

Age: 27 years

S/o Ramanna

Working as Postal Assistant

(Group Leader PLI)

O/o Senior Superintendent of

Post Offices

Bangalore South Dn.

Bangalore-560041.

Residing at:

Akkamahadevi Nilaya

No.97/1, 5th Main Road

Meenakshinagar

Basaweshwaranagara Post

Bangalore – 560079.

....Applicant

(By Advocate Shri A.R.Holla – through video conference)

Vs.

1. Union of India
Represented by Secretary
Depart of Post
Dak Bhavan
New Delhi – 110001.
2. Chief Post Master General

Karnataka Circle
Bangalore-560001.

3. General Manager
Karnataka Circle (PA & F)
Bangalore-560001.

4. Deputy Director General
(Postal Accounts and Finance)
Postal Accounts Wing
Dak Bhavan
New Delhi – 110001.

.....Respondents

(By Advocate Shri Vishnu Bhat - through video conference)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

a) Direct the respondents to place the applicant at S.No.69 in the merit list published by Government of India, Ministry of Communications, Department of Posts, Postal Wing, Dak Bhavan, New Delhi – 110001, OM No.F.No.301(08)/PA Admn.III/2012 to 2114 dated: 1.10.2018 Annexure-A6.

b) Consequently, direct the respondents to consider the applicant for promotion to AAO Cadre, with all consequential benefits.

2. The applicant, in his pleadings, filed through his learned counsel Shri A.R.Holla, has averred as follows:

a) The applicant was appointed as Postal Assistant on 21.01.2011 in the Department of Posts. Subsequently, he was selected and was appointed as Group Leader in PLI in level 5 of pay matrix vide memo dated 02.06.2017 by CPMG, Karnataka Circle, Bangalore.

- b) Pursuant to the notification dated 19.04.2018 for Limited Department Competitive Examination(LDCE) for the cadre of Assistant Accounts Officer, the applicant submitted application and appeared for the examination in which he has secured 480 marks.
- c) The applicant submitted that subsequently it appears that the respondents No.1 announced the merit list containing names of 949 candidates of AAO vide letter dated 01.10.2018(Annexure-A6). But the name of the applicant was not found in the said merit list.
- d) The applicant submits that the officials who joined as Postal Assistants on 30.05.2011 in Vishakapatnam Region, were allowed to participate in the examination and selected on merit at Sl.No.126, 321, 387 and also appointed as AAOs.
- e) The applicant submitted representations vide Annexures-A9, A10& A11 regarding marks obtained by him in the LDCE and with regard to officials selected from Vishakapatnam Region and requested the respondents to consider him for promotion on par with the Vishakapatnam Region officials.
- f) Column 11(2) of the Recruitment Rules stipulates that those officials in level 5 with seven years regular service were eligible. Column 9 in the column of Desirable Note 1 stipulates that 'qualifications are relaxable at the discretion of the Staff Selection Commission or Competent Authority, for reasons recorded in writing in the case of candidates otherwise well qualified'.
- g) In spite of several representations, no specific reply regarding reasons for non-selection of the applicant is forthcoming from the respondents, which is unfair and unreasonable. Applicant being well qualified by securing 480 marks should have been ranked at 69/949 in merit list. The similarly placed persons who joined as Postal Assistants on 30.05.2011 were allowed to participate in the LDCE and were selected on merit and were appointed as AAOs even though they have secured less marks than the applicant which is discriminatory and violation of Article 14 & 16 of the Constitution of India.

3. The respondents, in their reply statement, through Shri Vishnu Bhat, learned counsel, have averred as follows:

- a) The revised Recruitment Rules, 2018 of Indian P & T Accounts and Finance Services (Group B) of Account Officers and Assistant Accounts Officers for Department of Telecommunication & Department of Posts under Ministry of Communications were issued vide notification dated 02.04.2018(hereinafter referred as "Recruitment Rules 2018"). This was in supersession of all earlier notifications regarding recruitment rules since 1980 to 2005.
- b) Column 10 & 11 of para 2 to the schedule of Recruitment Rules 2018 lay down the eligibility criteria for recruitment of Assistant Accounts Officers by promotion for departmental candidates who have passed the Subordinate Accounts Service Examination or equivalent examination conducted by Department of Posts and Telecommunications or Competent Authority specified by the Department as detailed below:

"(A) Senior Accountant or Junior Accountant of Department of Posts and Department of Telecommunications with Three years or Six years regular service in level 6 in the pay matrix (Rs.35,400-Rs. 1,12,400) and in level 5 in the pay matrix (Rs.29,200-92,300).

(B) All other officials of the Department of Posts or Department of Telecommunications in Group 'C' cadre possessing a bachelor's degree from a recognised University of Institute with the following regular qualifying service:

*In level-1 with fourteen years regular service, or
In level-2 with thirteen years of regular service, or
In level-3 with eleven years of regular service, or
In level-4 with nine years of regular service, or
In level-5 with seven years of regular service, or
In level-6 with four years of regular service*

- c) Based on the recruitment rules 2018, the department issued a notification for conducting Examination Notification dated 19th April 2018 and a Corrigendum to Examination Notification dated 15th may 2018 for filling up of 1010 vacancies of Assistant Accounts Officer Cadre of IP & TAFS, Group 'B' for the year 2018-19 through Limited Departmental Competitive

Examination for employees of Department of Posts and Department of Telecommunication under the Ministry of Communication, Government of India.

- d) As per this notification, the last date for receipt of the application was 30th May 2018 and all candidates satisfying the “eligibility conditions” mentioned in the recruitment rules 2018, as on the last date for submission of application i.e. 30th May 2018 were eligible to appear for the above examination.
- e) Further, Para 7 (a to m) of the examination notification dated 19th April 2018 elucidated “how to apply” for AAO-LDCE exam 2018.
- i. As per 7(c) it was the responsibility of the candidate to ensure that he/she would fulfil all eligibility conditions mentioned in the Recruitment Rules 2018 and that his/her candidature at all the stages of the examination would be purely provisional subject to satisfying the prescribed eligibility conditions.
 - ii. 7(d) affirmed that “mere issue of Admit Card to the applicant would not imply that his/her candidature had been finally accepted by the department.”
 - iii. Further 7(h) averred that “Fulfilment of eligibility condition would be verified only for candidates who appeared in the final merit list”.
- f) DOP, PLI directorate vide its OM dated 10.08.2016, published strategy to improve sales of PLI/RPLI. It included appointing of Group Leaders (PLI/RPLI) in Level 5 of Pay Matrix from among the Group C (Postal Assistant) staff of Department of Posts. The post of Group Leader was purely temporary (tenure post) and initial tenure was for one year. The post of Group Leader would be reviewed and extended by the Competent Authority subject to procurement of business prescribed in this behalf from time to time. The appointment was also subject to any amendments/service conditions as stipulated by the Director General (Posts).
- g) In the instant case, applicant was appointed in the cadre of Group ‘C’ as Postal Assistant on 21.01.2011 in the pay level-4 and further he was

appointed as Group Leader in PLI on 01.08.2017 and was placed at level-5. As on last date of receipt of the application to the LDCE of AAO 2018 i.e., 30th May 2018, the applicant had put in regular service of 7 years 4 months only in Level-4 and just 10 months service in level-5.

- h) The applicant had applied for the LDCE of AAO-2018 even though he was aware that his candidature would be rejected on the ground that he has not met the eligibility condition on regular service as prescribed in the column 11 of point 2 of Schedule to Recruitment Rules 2018 i.e. *“In Level-4 with nine years regular service and in Level-5 with seven years”*
- i) It was the responsibility of the candidate to ensure the eligibility criteria and mere issue of Admit Card to the applicant would not imply that his/her candidature had been finally accepted by the department.
- j) Having known about the above conditions laid down in the Recruitment Rules 2018, and the Examination notification of LDCE of AAO 2018, the applicant appeared in the AAO examination. Merit list of the selected candidates of the LDCE of AAO Exam 2018 was published vide OM dated 01st October 2018. The name of the applicant was not in the merit list. The applicant claims that he had secured 480 marks in LDCE of AAO exam 2018.
- k) Since the applicant was a Group ‘C’ employee placed at level 4 and working in a tenure post of Level 5 which is to be reviewed year after year, as on the last date of receipt of application to the LDCE of AAO 2018 and had put in a service of 7 years 4 months only, (which is lesser than the minimum regular service of 9 years as prescribed in recruitment rules 2018 for level 4), he failed to meet the eligibility condition of “regular service” prescribed in the Recruitment Rules 2018. His placement in Level 5 is for a limited period as it is a tenure post. Hence, the name of the applicant did not appear in the Merit list published vide OM dated 01st October 2018.

3. The applicant in his rejoinder to the said reply statement, has stated as follows:

- a) The applicant had joined as Postal Assistant on 21.01.2011 and later on selected as Group Leader PLI (RPLI) from 02.06.2017. In pursuant to Notification dated 19.04.2018 for LDCE for the cadre of AAO, the applicant submitted application and appeared in the examination and secured 480 marks.
 - b) As per Column 11 of Recruitment Rules 2018 which states that where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying eligibility service by more than half of such qualifying or eligibility service or two years which is ever is less.
 - c) The applicant submits that he is senior in the gradation list at Sl.No.230 whereas his juniors who were at Sl.Nos.238, 235, 261, 267, 283 in the gradation list with less than qualifying service of less than 9 years were selected and were appointed as AAO.
 - d) The applicant submits that the Director of Accounts(Postal), Postal Accounts, Hyderabad vide letter dated 27.12.2019 had re-verified the eligibility service of the officials who joined as AAO and confirmed their promotions. Therefore, the Department of Posts cannot apply different yard sticks in different circles. The applicant had completed 7 years, 4 months in level 4 as on eligibility date and scored 480 marks but not included in the select list whereas officials with qualifying service 7 years, 1 day at Sl.No.321, 126, 387 & 932 in the merit list were appointed as AAO in the Vishakapatnam Postal Region.
4. An additional affidavit was filed on behalf of the respondents in the matter on 28.06.2021 wherein the respondents have reiterated as follows:
- a. Since the promotion is based on the competitive examination, question of seniority in the feeder cadre does not arise. All the officials who are eligible

as per the RR can apply and appear for the examination irrespective of the seniority in the cadre. In the instant case, seniority has no role to play, the applicant is Postal Assistant which is a division cadre and division wise seniority is maintained. The note below Column 11 of RR will come into play only when any senior does not have required number of years and if there is a junior, who came on Rule 38 transfer under P & T Volume IV, on his/her own requests from any other unit/division and has the requisite length of service is considered for the promotion then the senior who has completed half of such qualifying service is also to be considered for promotion. The note below Column 11 does not mean that the person who has not completed required number of years of services as prescribed in the Recruitment Rules may also appear in the competitive examination. Further in the instant case, no junior to the applicant has applied for the said examination and hence the applicability of provision contained in Column 11 of RR does not arise.

- b. The contention of the applicant comparing himself with persons belonging to Visakhapatnam Region in Andhra Pradesh Postal Circle cannot be a ground to put forth his claim, and it is not a valid argument also. The seniority in each appointing unit is maintained separately and hence the inter-circle seniority is not at all considered in the instant case.

- 5. In his reply/counter affidavit filed on 12.07.2021 in response to the additional affidavit filed by the respondents, the applicant has stated as follows:

- a. The statement of the respondents that in the instant case, seniority has no role to play is incorrect. Further, the view taken by the respondents that the Postal Assistants are in division cadre is erroneous and it is an irrelevant consideration. The interpretation that the 'note below that column 11 of the Recruitment Rules come in to play only when senior does not have required number of years and if there is a junior, who came on Rule 38 transfer under P&T Manual Volume IV, on his/her own requests from any other unit/division and has the requisite length of service is considered for the promotion then the senior who has completed half of such qualifying service is also to be considered for promotion' is incorrect because no such provision is there in the rules. The reproduction of the rule 11 stated in this para does not infer any such meaning. There is no scope to read something extra in to the rules, which are not there.
- b. The applicant further submits that he is senior to Sri Shivakumaraswamy, who has been considered for promotion. He has produced a copy of the Karnataka Circle Gradation List of Postal Assistants recruited on or after 01.01.2004 and up to 31.12.2013(Annexure-A11) where his name is found at Sl.No.3233. The name of Sri Shivakumaraswamy is found at Sl.No.3506. This conclusively establishes that he is senior to Sri.Shivakumaraswamy, belonging to Karnataka Circle.

6. Heard learned counsel for both the parties.

7. A careful examination of the Rules relating to the Indian Posts and Telegraphs Accounts and Finance Service, Group “B” (Accounts Officer) Recruitment Rules, 2018 issued vide notification of Department of Posts dated 02.04.2018 that for the posts of Assistant Accounts Officer, the following provision has been made:

“Method of recruitment by promotion failing which by deputation failing both by direct recruitment”.

Promotion: Departmental candidates who have passed the Subordinate Accounts Service Examination or equivalent examination conducted by Department of Posts and Telecommunications or Competent Authority Specified by the Department.

- 1. Senior Accountant or Junior Accountant of Department of Posts and Department of Telecommunications with Three years or Six years regular service in level 6 in the pay matrix (Rs.35,400-Rs. 1,12,400) and in level 5 in the pay matrix (Rs.29,200-92,300).*
- 2. All other officials of the Department of Posts or Department of Telecommunications in Group ‘C’ cadre possessing a bachelor’s degree from a recognised University or Institute with the following regular qualifying service:*
 - i. In level-1 with fourteen years regular service, or*
 - ii. In level-2 with thirteen years of regular service, or*
 - iii. In level-3 with eleven years of regular service, or*
 - iv. In level-4 with nine years of regular service, or*
 - v. In level-5 with seven years of regular service, or*
 - vi. In level-6 with four years of regular service*

Note: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service, or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.

8. In the present case, the applicant was appointed as Postal Assistant on 21.01.2011. In the Limited Departmental Competitive Examination for recruitment to AAO Cadre of IP & TAFS, the last date for receipt of application was 30.05.2018 and as per the notification, all candidates satisfying the eligibility conditions mentioned in the Recruitment Rules, are eligible to appear for the above examination. Since the applicant was appointed as Postal Assistant on 21.01.2011, hence, he had a total service of 7 years 4 months in Level – 4 as on 30.05.2018. Therefore, in terms of Recruitment Rules, he was having less than 9 years of regular service in level-4. However, as per the Note below the paragraph specifying the eligibility, it is mentioned that:

‘Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service, or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.’

9. In this case, the eligible service for the applicant was 9 years. However, as per the note mentioned above, he would have been eligible to be considered if his junior was being considered and he was short of the qualifying service by 2 years. Since he already has a total service of 7 years 4 months at level-4 on the crucial date of 30.5.2018, hence, he was short of qualifying service for determining eligibility by one year and 8 months only, which is less than 2 years. Therefore, as provided under provision of these Rules, he was eligible to be considered, provided his juniors in the cadre were being considered for promotion.

10. The applicant has cited the case of his junior in the circle gradation list who has been declared eligible for examination. The contention of the respondents is that the issue of seniority has to be considered Postal Division wise and not circle wise. The respondents have also stated that the instances cited by the applicant in his original application pertained to the Visakhapatnam Circle whereas he belongs to Karnataka circle.
11. A careful examination of the Recruitment Rules and the note below Rule 11 indicates that it is nowhere mentioned that the seniority has to be considered division wise and not circle wise. As per para-2 of the Recruitment Rules 'all other officials of the Department of Posts or Department of Telecommunications in Group 'C' cadre with a certain amount of qualifying service are eligible for consideration'. The word used in the rules is 'in Group-C cadre' which can include all the officials contained at Group-C level without considering the seniority list within a circle or within a postal division.
12. The contention of the respondents that the note below Col 11 of RR will come into play only when, any senior who does not have required number of years and if there is a junior, who came on Rule 38 transfer under P & T Volume IV, on his/her own requests, from any other unit/division, and has the requisite length of service, is considered for the promotion, then the senior who has completed half of such qualifying service, is also to be considered for promotion. This interpretation of the rule by the respondents, is not borne out by a careful reading of rules, which do not mention any such condition.

- 13.The applicant in his additional affidavit cited the case of Sri Shivakumaraswamy who belongs to same Karnataka circle to which the applicant also belongs. He has been considered for promotion although he is admittedly junior to the applicant as per the copy of the circle gradation list furnished by the applicant.
14. Hence, in this case, the contention of the respondents that the applicant is not eligible as per the Recruitment Rules to be considered for promotion is not as per Recruitment Rules. The rules provide for relaxation of up to two years in case any junior is being considered for promotion. Hence, as provided under the provisions of these rules, the applicant is eligible to be considered for promotion.
- 15.As claimed by the applicant, he has obtained 480 marks in the said examination and should have been at Sl.No.69 in the merit list. The marks claimed by the applicant have not been rebutted by the respondents who have only stated that he was found to be ineligible for consideration, since he did not have a minimum of nine years of service at level-4 as per the eligibility criteria prescribed in the Recruitment Rules. However, since his junior has been found to be eligible for consideration for promotion, hence, he would be entitled to the benefit of relaxation of up to 2 years, in the years of service rendered at Level 4 as per the eligibility criteria as per Note below the Recruitment Rules. Since the applicant has more than seven years of service at Level 4 hence, he is eligible to be considered for promotion after providing relaxation in the eligibility criterion.

16. Accordingly, the OA is allowed. The respondents are directed to place the applicant in the merit list at the appropriate place based on the marks obtained by him in the qualifying examination and consider him for promotion to the post of AAO.

17. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER(ADMN)

(SURESH KUMAR MONGA)
MEMBER(JUDL)

/ps/