

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Allahabad this the 6th day of Oct. 1994

Original Application no. 192 of 1993

Hon'ble Mr. T.L. Verma, J.M.

Hon'ble Mr. K. Muthukumar, A.M.

Rustam Khan S/o Sri Badal Khan

R/o Village and Post Pailani,

District- Banda.

..... Applicant

By Advocate Sri B.N. Singh/ Sri S.K. Yadav.

Versus

1. Union of India through Post Master General
Kanpur Division,
Kanpur.

2. The Superintendent of Post Office Banda Division,
District-Banda.

3. The Post Master
Hamirpur.

..... Respondents.

By Advocate Sri N.B. Singh

ORDER

By Hon'ble Mr. K. Muthukumar, A.M.

1. The applicant in this case was appointed as Extra Departmental Postman with effect from 18.11.1989 and continued in the said post at the sub-Post Office Pailani, District Banda & In the departmental examination for promotion to Group 'D'/ Postman held on 27.11.1983, the applicant was permitted to appear according to the list of seniority published by the respondents no.2.

On the basis of the results of the said examination, the applicant was approved for promotion according to his seniority and was allotted to Rath LDS by respondent no. 2 order dated 29.11.1983 (Annexure-A-2) which was one of the 25 vacancies notified by the respondent no. 2. The applicant alleges that although he had joined the post of Postman on the basis of the above allocation to the unit concerned and was allowed regular pay scale and other facilities admissible to the post, he was denied duty for no reason and was being given duty by the respondents only in leave vacancy as and when regular Postman went on leave. The applicant's representation for his regular employment on the basis of his allocation order given by the respondent no. 2, had not met with any response. Aggrieved by this, the applicant has approached this Tribunal for issuing suitable directions to the respondents to re-instate the applicant in service as Postman with all the consequential benefits.

2. The respondents have resisted this application. In their averments, their submission is that the conditions of service of Extra Departmental Employees are different from the departmental employees and that the applicant on qualifying the literacy test for promotion to Group 'D' Cadre, was allotted to Rath LSD Sub-Post Office. As there was no vacancy in the said unit, the allotment was changed from Rath to Hamirpur on 2nd April, 1984. The respondents have further averred that Extra Departmental Employees continued to work on their posts till their appointment by the unit incharge

in the vacancy of Group 'D' Employees and they are not entitled to any of the benefit of Group 'D' Employees before their appointment by the Unit Incharge. The respondents have also stated that the applicant had worked in Hamirpur from 21.2.1984 to 16th March 1985 in different spells in the vacancy of Postman Cadre in unapproved capacity on daily wages in accordance with the order dated 7th December 1972. Other submission which is in the nature of positive assertion is that the applicant was neither given any appointment letter nor appointed as Group 'D' by the Unit Incharge because there is no vacancy of Group 'D' Cadre in the office. The respondents have also resisted the petition on the ground that it is barred by limitation.

3. During the arguments the learned counsel for the applicant drew our attention to the decision of this Tribunal in O.A. No. 239 of 1992 Ram Singh Versus Union of India (Annexure-A-9 to this application) which was decided on 4.9.1992. In this O.A. the applicant was one Ram Singh who was also covered by the same order dated 29.11.1983 of the respondent no. 2 and the name was shown at serial no. 11 and was allotted to Hamirpur Post Office. The learned counsel for the applicant submits that since the applicant in this case is also similarly placed as Ram Singh he is also entitled to the same relief provided in the above decision of this Tribunal. By the decision, in this O.A. No. 239 of 1992 Supra, ^{the respondents were} directed to "give the applicant appointment in the said post as he had already qualified and was in the waiting list not only because of his work and experience

but also because of his turn."

4. The learned counsel for the respondents urged that the applicant was never regularly appointed to the post of Group 'D' Postman. All that was done in the order dt. 29.11.1983 was that on the basis of the written test, the candidates who were declared successful were placed according to their seniority and were allotted to different units taking into account the vacancy position. The learned counsel for the respondents further argued that the applicant was never regularly appointed to the post of Postman (Group 'D') and in view of this ~~that~~ the applicant had no right for such appointment and, therefore, the application deserved to be rejected.

5. We have heard the learned counsel for the parties and perused the record. On the question of limitation raised by the respondents we find that there is a continuing cause of action and, therefore, the application is not barred by limitation.

6. The main point^{of} dispute in this case appears to be the nature of the order dt. 29.11.1983 allocating successful candidates in the written test to the various units for the post of Postman Group 'D'. In the counter affidavit the respondents have submitted that the Extra Departmental employees are promoted to Group 'D' Cadre after passing a literacy test but this test has been abolished^{since 11-1-91}. The vacancies for Departmental Employees are being ^lfiled by selection from Extra Departmental Employees on the basis of seniority cum fitness by the selection committee. In other words prior to 1.1.1991 they were promoted to Group 'D' Cadre after passing the the literacy

test. From the nature of the order dt. 29.11.1983 it appears that the successful 25 candidates mentioned therein, of whom the applicant's name figures in serial no. 18, were allocated to the different units mentioned therein. This order also refers to the departmental test dt. 27.11.1983 for promotion to Group 'D'. In the endorsement dated 9.11.1983 of the respondent no. 2, the total number of vacancies was notified as 25 Group 'D' vacancies. By the same notification the seniority list of the Extra Departmental Agents who were permitted to appear in the promotion test to be held on 27.11.1983 was also notified and on the basis of the above notification the candidates who were passed, were allotted to the different units vide an order dt. 29.11.1983 of the respondent no. 2. The seniority list and the relative position of the applicant and the fact that he was declared successful are all admitted facts. From the notification dated 29.11.1983 it is evident that this was purported to be an order of allocation of successful candidates in the promotion test and by allocation order they were allocated to the different units. The respondents' plea that the applicant was not appointed as Group 'D' because there was no vacancy is not supported by the facts of the case, as notification dt. 9.11.1983 makes it clear that there were 25 vacancies for which promotion test was held and the applicant was declared successful and was allotted to one of the units. This is fortified by the fact that the notification dt. 27.11.1983 is for allotment for 25 vacancies. There is also no indication in the above order that the applicant and allocation of these candidates to the concerned units on the basis of the promotion test and the appointments thereof was in an unapproved capacity on daily wages basis of these candidates who were Extra Departmental

Agents and that these were casual appointments and would not confer any right of regular absorption to the departmental posts as contemplated in the DG P&T of the letter dt. 7th December 1972, which has been relied upon by the respondents in the counter affidavit. The respondents have also not produced any material before us to establish that the applicant alongwith other 24 candidates covered by an order dt. 29.11.1983 of the respondent no. 2 were engaged only on the casual basis and not on regular posts. By their own admission in para 3 A of the counter, prior to 1991 Extra Departmental Employees were promoted to Group 'D' Cadre after passing the Literacy test. In the case under consideration, the applicant had also passed his test and was allocated against the vacant post. In these circumstances it is reasonable to infer that the said allocation is in pursuance of the procedure for promotion of these Extra Departmental Agents. It has also been contended by the applicant in para 14 of the rejoinder affidavit that the juniors to the applicant at serial no. 19 to 25 covered in the order dated 29.11.1983 of the respondent no. 2, are still working regularly on the promoted post. Since this plea is not taken by the applicant in the Original Application, we can not solely rely on this submission as the respondents were not given the opportunity to accept or deny this submission. All the same we are inclined to hold that in the absence of any material before us to contradict the substantive points made by the applicant that he was allocated on passing the promotion test to one of the regular vacancies as notified as in accordance with the procedure then in vogue and in the absence of any order to say that the allocation was against the casual posts and the appointment was also a casual one, the respondents should be directed to review the case of the

applicant and consider him for regular appointment in the post of Postman / Group 'D' with effect from the date when his junior to him if any, covered by the same allocation order of the respondent no. 2 was appointed in the regular capacity on the above said post and we direct accordingly. On such appointment, the pay may be regulated notionally with effect from that date from time to time till he actually assumes the charge of the post of regular Group 'D' / Postman. This is also further subject to his being found eligible to the said post interms of orders / proceedure then in force.

7. In the light of the above discussion, the application is allowed with the above directions in regard to the reliefs sought.

8. There shall be, however, no order as to costs.


Member (A)


Member (J)

am/ 6-10-1994