

7 -

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 1613 of 1993

Chandrika Prasad Applicant.
Versus

Union of India
and others Respondents.
...

Hon. Mr. S. Das Gupta, A.M.
Hon. Mr. T.L. Verma, J.M.

(By Hon. Mr. S. Das Gupta, Member(A))

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the order dated 6.10.1993 (Annexure- A 5) passed by the Respondent Nos. 1 & 2 relieving the applicant from the post of Runner be quashed and set aside and to allow the applicant to work on the post of Runner and pay to him the salary applicable to that post.

2. Briefly stated the facts of the case are that the applicant was initially appointed as Extra Departmental Mail Peon (EDMP for short) on 27.10.1961. After he had rendered 31 years of satisfactory service, the respondent no. 2 appointed the applicant to the post of Regular Group-D by the order dated 16.7.1992 (Annexure- A 2) on the basis of the recommendation of the Departmental Promotion Committee (DPC for short) in accordance with the recruitment and promotion rules contained in the Posts and Telegraph Manual Volume-III. Pursuant to the above order, the respondent no. 1 posted the applicant vide his order dated

W.C.

3.8.1992 (Annexure- A 3) to the post of Runner, Khakharadu under Khaga Sub-Division. Since then, the applicant has been continuously working in the post of Runner without any complaint about his working or behaviour. He was even awarded one increment after one year satisfactory service in the post of Runner. However, vide the impugned order dated 6.10.1993 (Annexure- A 5), the applicant was asked to be relieved from the post of Runner without showing any reason, it is this order dated 6.10.1993 which has been assailed in this application.

3. We have heard the learned counsel for both the parties and carefully perused the records.

4. In their counter affidavit, the respondents have admitted that the applicant who was initially appointed as EDMP on 27.10.1961 was promoted to Grade-D cadre on the recommendation of the DPC in accordance with the instructions ⁱⁿ enforced from time to time for giving promotion to the ~~post of~~ Extra Departmental Agents to regular ⁱⁿ Group-D cadre. They contend, however, that the promotion given to the applicant was erroneous since he was overage for this promotion to regular Grade-D cadre and that it was for this reason he was ordered to be reverted to this original post of EDMP pursuant to the instructions contained in the letter dated 4.10.1993 from the Director Postal Services.

5. The applicant has taken a plea that the

W.P.

impugned order dated 6.10.1993 was passed by an authority not competent to do so as he is sub-ordinate to the appointing authority. This contention has been contested by the respondents in their counter affidavit. We need not go into the discussion on this issue since the entire case revolves on the main issue as to whether the appointment of the applicant to the regular group-D post was erroneous because he was allegedly age-barred for such appointment. It is this issue that we would now proceed to consider.

6. The respondents did not file a copy of the relevant instructions under which promotion of EDMP can be made to regular Grade-D post. We ~~and~~ therefore, asked Sri S.C. Tripathi, learned counsel for the respondents to make a copy of the relevant orders available to us. He accordingly produced a copy of the communication No.44-31/87-SPB-I dated 20.8.1990, addressed to all postal circles on the subject of removal of test for absorption of EDAs in Group-D cadre and raising of ~~the~~ upper age limit for EDAs to ~~appear~~ in the examination for recruitment as postmen. The relevant extract from this communication is quoted below;

"The literacy test prescribed for EDAs for selection to Group-D post is hereby abolished. Selection from EDAs to Gr(D) will be on the basis of seniority subject to satisfactory service. The seniority list will be combined one for all EDAs post. The selection committee shall consist of the Head of the Division and

WLP

a Gazetted Officer of the Department of posts or any other Central Government Department at the station. Group D vacancies occurring in a calendar year should be calculated in January each year and select list will be drawn up strictly in order of seniority (subject to satisfactory service) and the EDAs put on the select panel should be allotted immediately to the sub-Division/Recruitment unit calculated for that sub-Division/ recruiting unit agreeable with the number of Group D vacancies. If a vigilance of disciplinary case occurs against an EDA before he/ she is actually appointed, his/ her appointment will not be made and matter will be reviewed after conclusion of vigilance case/disciplinary proceeding. This recruitment procedure will be effective for vacancies occurring on or after 1.1.1991.

- 1.2 EDAs who are above the age of 50 years (55 years in the case of SC/ST communities) will not be eligible for appointment as Group-D . The crucial date for determining age will be 1st July of the year in which the recruitment is made."

7. It was seen from the instructions quoted above, that the age limit ^{for} eligibility for appointment as Group-D is 50 years, the crucial date for determining the age being 1st July of the year in which the recruitment is made. In the instant case, the recruitment took place in the year 1992 and hence, the age of the applicant ~~is~~ relevant for this purpose shall be reckoned as on 1.7.1992. The admitted date of birth of the applicant is 20.7.1947, ^{It} which will, therefore, be seen that as on 1.7.1992, the applicant was

Wf

less than 45 years old. He had not, therefore, attained the age ~~of~~ limit prescribed under the department's communication dated 28.8.1990 rendering him ineligible for appointment to group-D post.

8. We had put pointed question to Sri S.C. Tripathi, learned counsel for the respondents as to whether there are any other instructions under which the applicant is considered to be age-barred for appointment to regular Group-D post. He, however, submitted that he was not aware of any other instructions in this regard.

9. In view of the above, it is quite clear that there has been no error in appointing the applicant to regular Group-D post and that the impugned order reverting him to his original post of EDMP is patently bad both in fact and in law.

10. We ~~are~~, therefore, allow the application. The impugned order dated 6.10.1993 is quashed and set aside with all consequential benefits to the applicants. We, do not, however award any costs.

J. H. Verma
Member (A)

W. C.
Member (A)

Dated : 2 February, 1994

(n.u.)