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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 332/2011

Date of decision: 05.11.2012

Reserved on 06.08.2012

CORAM

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER

Chandra Shekhar Sharma S/o Shri Bhagirathji Sharma, aged about 39 years, by caste Brahman, R/o H.No.84, Rawatnagar, Near Happy Home School, Bhadasia Road, Jodhpur, Office address :RMS Jodhpur (Postal Dept), Jodhpur (employed as Sorting Assistant).

.....Applicant

(By Advocate Mr. S.P.Singh)

Vs.

1. Union of India, through the Secretary, Government of India, Ministry of Communications, Department of Posts, Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur-302 007.
3. The Director, O/o Post Master General, Western Region, Jodhpur.
4. Superintendent of Rail Mail Services, ST Division, Jodhpur-342 001.
5. Bajrang Gaur, Inspector (ad hoc), IRM-I, ST Division, Ratnada, Jodhpur.
6. Smt:Santosh Bhati, Inspector (ad hoc), OS, RMS, ST Division, Jodhpur.

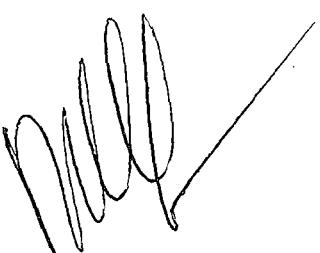
...Respondents

**(By Advocate Mr. Vinit Mathur, ASGI through Adv.Ankur Mathur (for R 1 to 4)
None for R.5&6.**

ORDER

Per: Hon'ble Mr. B K Sinha, Administrative Member

This OA is directed against the Memo No.B2/Posts/PO/ASP/ST dated 20.4.2011 of the Superintendent of Rail Mail Service, ST Division Jodhpur depriving ad hoc promotion to the applicant to the post of Inspector, RMS.



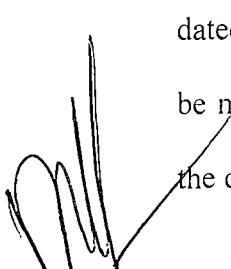
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Relief(s) sought:

- (i) *The impugned order No.B2/Posts/PO/ASP/ST dated 20.4.2011 (Annexure.A.1) may kindly be declared illegal unjust and improper and deserves to be quashed and set aside.*
- (ii) *The respondents may kindly be directed to appoint the applicant on the post of Inspector on ad hoc in accordance with law.*
- (iii) *That all consequential benefits may kindly be awarded in favour of the applicant.*
- (iv) *That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (v) *That the costs of this application may be awarded to the applicant.*

Case of the applicant

2. The case of the applicant, in brief, is that he was appointed on the post of Sorting Assistant and has rendered 17 years of unblemished service. He was made to officiate on the post of Inspector (ad hoc) vide the order dated 12.10.2007 where he performed his duties creditably [A/3]. The grievance of the applicant is that he submitted a petition that he be allowed to serve against the post of Inspector (RMS) on 4.10.2007 [A/2]. It was, however, rejected and Bajrang Gaur, Sorting Assistant and Santosh Bhati, who figure as respondents 5&6 were appointed as Inspectors (on ad hoc), even though the applicant was eligible and fit for such appointment. The applicant has stated that the DPC had found him fit for promotion vide letter dated 11.2.2010 [A/4]. The applicant made a representation requesting to be apprised of the reasons for his non-selection to which the Respondents informed him vide letter dated 20.4.2011 [A/1] that he was not found fit in the category. The applicant submits that appointing Respondents 5 and 6 overlooking his claim of seniority is arbitrary and amounts to colorable exercise of power. The applicant, thereafter, preferred an appeal before the competent authority on 27.4.2011 [A/5]. This appeal was, however, not considered by the respondents. The applicant, thereafter, submitted several representations, without eliciting any response from the respondents. Hence, the applicant has filed this OA stating that the respondents did not comply with the OM No.23315/F dated 28th May, 1984 and the Promotion Rules, 1992, which provide that promotion should be made on the basis of seniority and merit-cum-suitability taking into account inter alia the character rolls. The applicant has relied upon decided case of the Hon'ble Apex Court,



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Dharamvir Singh Tomar Vs. Administrator, Delhi Administration and others, [1991 (supp) SCC 635] that 'fitness' means that there should not be any adverse entry in the character rolls. He has stated that the punishment order of R.5 on 20.4.2011 is per se illegal and without application of mind. For ad hoc promotion an approved panel should be prepared taking into account vacancies likely to arise in the year and the senior-most should be appointed to the post in question subject to his being found suitable otherwise.

Stand of the respondents:

3. The respondents have filed a counter affidavit opposing the claim of the applicant. The CA inter alia states that willingness of the officials had been called for making officiating arrangement on the vacant posts of Inspector, RMS ST-I Sub Division, Jodhpur and Office Supervisor, Divisional Office RMS ST Division, Jodhpur vide letter dated 15.3.2011. The applicant also indicated his willingness for officiating in the post of Inspector. Respondents 5 & 6 were found more suitable for the above posts and were ordered to officiate on the vacant posts of Inspector and Office Supervisor respectively vide Memo dated 18.6.2011 and 23.7.2010. Since the respondent No 5 was working as System Manager, HO Jodhpur he was ordered to officiate on the vacant post of Inspector ST-I Sub Division in addition to his own duties, in order to save extra expenditure and manpower. Likewise, respondent No 6 who was working as Typist, DO Jodhpur was ordered to officiate in the post of Office Supervisor, Divisional Office, Jodhpur in addition to her own duties in order to save extra expenditure and manpower. Both of them have been found more suitable and fit than other officials applied, including the applicant. While making such appointment seniority-cum-fitness formed the prime consideration. The applicant had been appointed from the Sports quota and had been given exemption for 2 hours every day to pursue his sports related activities. The post of Inspector is more demanding and involves frequent journey to other places. Hence, it is not possible to grant this exemption to the applicant. Moreover, the performance of the applicant was found sub-par while he had been posted in Divisional Office as Office Assistant in the year 2008 and he had to be shifted out from Divisional office to Mail Office. Such employees

cannot be trusted to discharge the functions of a supervisory post. The respondents have refuted the contention that the applicant was promoted vide letter dated 11.2.2010 by the Screening Committee fit for grant of financial upgradation on completion of 10 years of service which cannot be treated as a promotion having higher responsibility. There is no such rule that for giving officiating appointment only to the senior most officials; he cannot be considered without having undergone a selection process to establish his fitness for such post. The respondents have stated that the representation dated 19.5.2011 submitted to the competent authority (R3) was decided and rejected vide order dated 2.9.2011. The appointment of R5 and R6 were not ad hoc promotion but only an officiating arrangement on higher post, which would be curtailed after 120 days and if necessary will continue only with proper break. The ACR of both R 5&6 were better than the applicant and others who applied; hence, they were given the officiating promotion for 120 days. The respondents, therefore, submits that there is no merit in the OA and prays for dismissal of the same.

Contention of applicant in the rejoinder:

4. The applicant filed a rejoinder in answer to the contentions in the counter affidavit. He has stated that the respondents have adopted a pick and chose policy in appointing R 5& 6 to higher posts. He has refuted the contention that two hours free time given to him stating that since 2010 the applicant is not being relieved for 2 hours which is evident from letter dated 17.8.2010 [A8]. He has stated that how persons who have not qualified in the IPO examination can be ordered to officiate as Inspector. The ACP was granted only on verification of ACRs of the last 5 years and having passed through the test it cannot be said that he was not fit for officiating as Inspector. The applicant has also reiterated most of his contentions in the original application in his rejoinder.

Facts in issue:

5. Having heard the learned counsels for the parties, and having gone through their pleadings, the only issue that emerges for consideration is that whether the officiating is to

be made on the basis of only by seniority or subject to seniority-cum-merit and that whether the applicant did not stand scrutiny in this test of suitability. The post under consideration is only for officiating arrangement as per paragraph 5 (B) of the Counter Affidavit ; this was not a post of promotion/ ad hoc promotion for which the requirement was that an approved panel should be taken into account vacancies likely to arise in the years. It was merely officiating arrangement for 120 days against Circle cadre posts in short term upto four months for which Divisional Superintendents are competent for such officiating arrangements, are to be terminated, after 120 days after giving break of one day if the vacancy still exists and the incumbent is eligible, he may further be considered for promotion on ad hoc basis for further 120 days as per the direction of Circle office, Jaipur vide letter dated 29.07.2011. The respondents has further held in paragraphs 5 (C) &(D) of their reply that on review of ACRs of both the officials for last five years who were ordered to officiate on the higher posts, performance of both the officials was found better than the applicant. The basic contention of the respondents is that in two persons namely Bajrang Gaur (respondent No.5) and Santosh Bhati (respondent No.6) have been found more suitable for the post than the applicant. However, the applicant has strongly rebutted the contention of the respondents that he has relieved for two hours every day for sports practice. He has produced a letter at Annexure-A/8 which gives a list of all those who have been exempted from duties for 2 hours for undertaking practice. The applicant has submitted in his rejoinder that it has been incorrectly stated that his case has been rejected by the competent authority on this ground. From the OM dated 17.08.2010 of the Assistant Postmaster General (Staff/Vigilance), Office of Chief Postmaster General, Jaipur, it appears that a total number of 47 persons were exempted for the year 2009-10 in which the name of the applicant is not there. Hence, it is incorrect to say that the applicant has been exempted for 2 hours for sports practice, and hence it is not in a position to devote full time for performance of his duties. When he does not get exemption, he does not carry with any such disability. While rejecting the representation of the applicant vide OM dated 02.09.2011, it has been specifically mentioned as under:-

इसके अलावा कर्मचारी खेल कोटे से नियुक्त है तथा उसे रोजाना 2 घण्टे की छूट दी जा रही थी। निरीक्षक के जिम्मेदारी पूर्ण पद पर इस तरह की छूट देना संभव नहीं पाया गया। क्योंकि इस पद पर निरीक्षण/जांच/जरूरी कार्य हेतु बाहर भी जाना पड़ता है, ऐसी स्थिति में 2 घण्टे की छूट देना संभव नहीं था।

6. There is another communication dated 01.12.2011 to the applicant stating that the applicant was being granted 2 hours off duty for practice in sports till 30.08.2011. As his name, however, was not contained in the OM No.Khel/57-10/2010 dated 17.08.2011, this facility is not being extended to him. It is to be noted here that for the year 2009-2010, his name does not find mentioned in the OM dated 17.08.2011.

7. In the same communication at Annexure-A/9, it is admitted that the applicant is senior to the respondent No.5 as per the service records, but the respondents No.5&6 were otherwise found more suitable while the applicant was not been found suitable. The communication goes ahead to mention that the applicant had not given charge of Sorting Assistant in the year 2008, and his performance being not up to the mark, he had been removed from the same. In view of the past experience, the applicant cannot be expected to perform the duties of Supervisor Male adequately. In para 4.5 of his rejoinder, the applicant has submitted that the respondents misled this Court by stating that the fitness alone constitutes the basis for officiating post of Inspector (ad hoc). The respondents have failed to consider that respondent no 5 has already appeared in the IPO examination more than four times without having cleared the same. Therefore, if the applicant is not fit to work as Inspector how are the respondents to be appointed against the job? The fact that the applicant has been granted MACP on the basis of his satisfactory performance wherein the ACRs for the previous five years of service were also considered weighs in his favour. This is supported by the document annexed at Annexure-A/4. We find that the applicant fulfills all the qualification under Rule 279/1 of Dak Tar Book Khand, para 4 i.e he is below 45 years of age; he has undertaken the examination for Inspector and is well aware with the rules; he has physically fit; he has officiated work on the post of Inspector; and he knows cycling. These have not been rebutted by the respondents at any point of time.

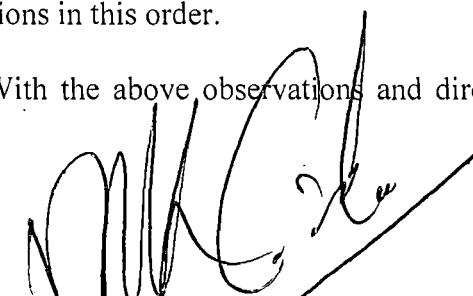
8. From the facts discussed above, it appears that the applicant is otherwise eligible and this being an officiating post of 120 days. It is a normal practice to make selection on

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the basis of seniority-cum-merit in which seniority is not to be overlooked totally. Even if, it were to be accepted that it is seniority-cum-merit post, there is nothing on the record to indicate that the applicant is in less meritorious than the respondents No.5 &6. To the contrary it is established that wrong reasons have been stated regarding the exemption of 2 hours from the duty to deny him officiating against the post.

9. In view of the afore consideration, we are of the opinion that the impugned order at Annexure-A/1, dated 20.04.2011 is illegal and hereby quashed. The respondents are directed to consider the applicant on the post of ad hoc Inspector in view of the observations in this order.

10. With the above observations and directions, the OA is allowed. No order as to costs.


[BK Sinha]
Administrative Member


[G Shanthappa]
Judicial Member