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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.177/2011

Date of decision: 09-08-2012

Orders reserved on 01.08.2012

CORAM:

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

Banshi Lal Meghwal S/o Shri Manna Lal, aged 31 years, GDS, Branch Post Master, Post Office Morila, District Udaipur, R/o Village Banoda, District Udaipur.

: Applicant

Mr. Vijay Mehta, counsel for applicant.

Versus

1. Union of India through the Secretary, Ministry of Communication, (Department of Post), Sanchar Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Udaipur.

.....Respondents

**Mr. Ankur Mathur, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.**

ORDER

Per G. Shanthappa, Judicial Member

The above application is filed under Section 19 of Administrative Tribunals Act, 1985 challenging the legality and propriety of the Order/Memo No.B2-35/Postman/2010-2011 dated 08.03.2011 (Annexure-A/1), and further relief of direction to the respondents to issue appointment letter forthwith w.e.f. 24.12.2002 in favour of the applicant, and further relief of direction to the respondents to permit the applicant to sit in the

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departmental examination, which will be held in future, the same are held for promotional posts of Postmen and Postal Assistant notwithstanding whether appointment letter has been issued or not.

2. We have heard the learned counsel for the respective parties. It is an admitted fact from either side that the applicant was not appointed under the regular recruitment process. He was engaged as GDS BPM vide order dated 24.12.2002 at Post Office Morila, District Udaipur. The said engagement was under A.C.G-61 under Rule 267, Posts and Telegraphs Financial Handbook, Volume-I, Second Edition. There was no appointment order was issued in the year 2002, his engagement ~~was~~ continued till today. The applicant was given a pay scale as GDS BPM and he appeared for departmental examination, which was held on 06.12.2009 for promotional post of Postal Assistant, but he could not succeed in the said examination. He applied once again to appear in the examination for the post of Postman scheduled held on 27.03.2011. The applicant was not permitted to the examination on the ground that the appointment letter was not issued to him. The applicant submitted representation dated 27.10.2007 and 12.01.2011 to the second respondent with a request to now issue an order of appointment.

3. It is the grievance of the applicant, the respondents cannot reject the request of the applicant to appear for promotional



examination, when they have allowed the applicant to serve in the department from 2002 without any interruption for a period of nearly 10 years, at this stage, they cannot say that the applicant is not a regular GDS BMP. The action of the respondents is arbitrarily, deserves to be quashed and there shall be a direction to the respondents, as prayed for by the applicant.

4. The respondents vehemently opposed the OA and rejected the relief of the applicant on the ground that SSP Udiapur has directed to the SDI (P), Salumber to open branch post office and report compliance. In compliance, he opened the branch office on 24.12.2002 and engaged an outsider i.e. the applicant purely on temporary basis and handed over the charge of GDS BMP without following the prescribed procedure. The applicant is working on above mentioned basis and no appointment order could have been issued till date. Meanwhile, the applicant has applied for PA cadre promotion examination under the GDS quota and he was permitted to appear in aptitude test for the examination erroneously. The applicant applied for appearing in Postman promotion examination 2009 and 2011 but at the time of processing of his application, it was found that the appointment order has not been issued as required under the recruitment rules i.e. "the extra departmental agents those appointed after 16.11.1982 shall be eligible, if they are within 35 years of age and have put in three years of regular and satisfactory service." As such the applicant was not permitted to appear for the said





examination. The applicant was not engaged by adopting prescribed procedure and he was engaged temporarily till regular recruitment is made. There is no illegality in not permitting the applicant to appear in the departmental examination. On finalization of recruitment process, if the applicant stands selected in competition (according to merit of Xth class), the appointment order will be issued in favour of the applicant, and he will be eligible for appearing in the examination as per the provisions of the relevant recruitment rules. The applicant is not entitled to be appointed on regular basis in view of the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka vs. Uma Devi & ors.**, reported in (2006) 4 SCC 1. The applicant has not exhausted the departmental channel by way of remedy available to him under the statute. There is no impugned order in the OA unless the impugned order is challenged, the OA is not maintainable.

5. The applicant has filed rejoinder to the reply statement, there is no much clarification to the reply statement except some of the facts are in repetition as mentioned in the OA. In the rejoinder, the applicant has stated that he denied that he was engaged on temporary basis and was appointed without following the prescribed procedure. The respondents are guilty of withholding of the documents, which amounts to playing fraud on the Court, the Rules do not forbid permitting to sit to the GDS for examination on the ground that he is not a regularly appointed



GDS or that no appointment letter was issued to him. Annexure-A/7 reveals that it has nowhere been mentioned that the applicant should be a regular employee and must possess appointment letter. The respondents have admitted that the applicant has been regularly given increments and bonus. The **Uma Devi's** case and case of **Ved Prakash** are not applicable to his case. The applicant belongs to SC and as such has preference in appointment of GDS BPM.

6. We ^{have} carefully examined the documents available on record, and the pleadings and reply and rejoinder. On the admitted facts narrated in the earlier para, it is evident that the applicant was not appointed as GDS BPM under the regular recruitment process. The applicant has not established that he had applied for the post of GDS BPM under a particular notification. The applicant has not denied the statement of the respondents at para 3 that the applicant was engaged duly on temporary basis in pursuance to the instructions given by the SSP Udaipur. If we read the relief carefully, the applicant is challenging the letter dated 08.03.2011 (Annexure-A/1), which relates that the applicant has not been permitted in the Postman examination, which was to be held on 27.03.2011, due to the reason appointment order was not issued. The relief of applicant is also for a direction to issue an order of appointment w.e.f. 24.12.2002 i.e. date on which he was engaged. No doubt that the applicant was engaged as GDS BMP w.e.f. 24.12.2002, he has been



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continued till today on the same capacity. In the reply statement, the respondents have stated that the applicant was continued as GDS BPM on temporary basis. He was permitted to appear in aptitude test for examination erroneously. The applicant has taken the benefit of the mistake committed by the respondents. We posed the question to the applicant what is the benefit of appearing for the departmental examination, he answered, for promotion to the post of Postal Assistant. Earlier, in the year 2008, he could not succeed, when he was allowed to write the examination, now the respondents cannot reject the applicant to appear in the examination. For the purpose of promotion to the post of Postal Assistant, the promotion can be given only to a regular employee, when the applicant has not been issued an order of appointment for which he is asking for the relief, which clearly established that the applicant was not a regular employee. Once mistake committed cannot be allowed to commit once again. According to the Recruitment Rules one has to put three years of regular service, they are eligible for Postal Departmental Examination for the post of Postal Assistant. In the instant case, though the applicant has put in more than three years service, which is not regular. In a logical conclusion that if the applicant is permitted to write examination even if he get through in the examination, he cannot be promoted as Postal Assistant, since he is not a regular GDS BPM. No purpose will be served if the applicant has been allowed to write departmental examination. It is not the case of the applicant that his service is regular and issue

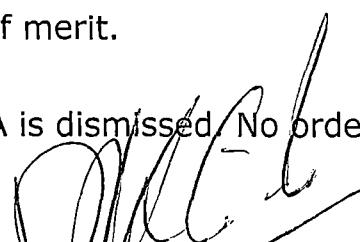
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an order of appointment w.e.f. 24.12.2002, the judgements of Hon'ble Supreme Court i.e. ***Uma Devi and Ved Prakash*** (Supra) are not relevant to the facts of this case. There is no relief of regularisation.

7. For the forgoing reasons, the applicant fails to establish to appear for the departmental examination for the post of Postal Assistant. To issue an order of appointment as prayed in the OA, appointment order can be issued only the persons who applied and selected under the employment notification. The applicant has not been selected under the Recruitment process, accordingly, he is not entitled for appointment order. The respondents have justified in the reply statement that the applicant is not eligible to appear in the said examination. The applicant has taken us to the notification dated 28.08.2012 in which the notification was issued to the persons working as ED Sevak. If the ED Sevak or GDS are regular employees, they are only eligible for promotion. In the present case, the applicant is a temporary employee, he cannot be allowed to write departmental Postal Assistant Examination for the promotion to the post of Postal Assistant. Accordingly, OA is devoid of merit.

8. OA is dismissed. No order as to costs.


[B.K.Sinha]
Administrative Member


[G. Shanthappa]
Judicial Member