

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Jodhpur, this the 1st day of April, 2014

Original Application No. 94/2013

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

Prithvi Raj Bahadu s/o late Shri Ganga Ram, aged about 51 years, b/c Jat
r/o vill+ PO-Mirzewala, Tehsil – Shri Ganganagar, District-Sriganganagar,
office address- working as GDS under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Director O/o Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Shri Ganganagar Division, Shri Ganganagar.
5. Inspector of Post, Shri Ganganagar Sub Division, Shri Ganganagar.

.....Respondents

By Advocate : Mr. Vijay Rajpurohit on behalf of Ms. K.Parveen

ORDER (ORAL)

Per Justice K.C.Joshi, M(J)

The present OA has been filed against the action of the respondents whereby the applicant has been deprived for appointment on substantive post of Group-D despite rendering requisite service and having requisite qualification for the post. Therefore, he has prayed for the following reliefs:-

2

(a) That by writ order or direction, the respondents may kindly be directed to consider the case of applicant for appointment to the post of Group-D in accordance with rule.

(c) The respondents may kindly be directed to consider the rendered service as criteria for appointment on the post of Group-D and consequential benefits may kindly be granted.

(d) 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.

(e) That the costs of this application may be awarded to the applicant.

2. Brief facts, as averred by the applicant, are that he was initially appointed as Extra Departmental Agent (EDA) on 12.8.1993 and posted at Mirzewala Post Office. The respondents directed the applicant to do the work as Group-D frequently whenever the department needed it and after completion of job, the applicant was reverted to the post of Gramin Dak Sevak in arbitrary manner. The applicant has averred that he is eligible for appointment on the substantive post of Group-D as he possesses all requisite qualification and has rendered more than 3 months service as Group-D. The respondents appointed the applicant as GDS in the year 1994 and he has rendered service in the department continuously, therefore, he has a legal right to be considered for appointment on substantive post of Group-D. The applicant has further averred that for the purpose of recruitment to Group-D post, substitutes should be considered only when casual labourers are not available. The applicant has also relied upon the judgment in the case of Yashwant Hari Kakkat vs. Union of India and ors reported in (1996) 7 SCC 113 and Para 53 of Secretary, State of Karnataka and ors. vs. Uma Devi and ors., reported in (2006) 4 SCC 1 and stated that he has rendered service of approximately two decades as GDS and is entitled to be considered against Group-D post. Therefore, aggrieved

with the inaction on the part of the respondents, the applicant has filed this OA praying for the reliefs as extracted in para-1 above.

3. By way of filing reply to the OA, the respondents have denied right of the applicant and submitted that the applicant was engaged at the vacant post of Group-D for the Sriganganagar RS NDTSO by respondent No.5 vide letter dated 10.9.2012 and it was clearly mentioned that this arrangement was purely temporary and the applicant could be moved back to his parental post any time by the competent authority. The applicant's engagement as Group-D never exceeded 90 days and he never worked continuously for 90 days or more as Group-D in the Department. It has further been submitted that the candidates who were appointed as Group-D for the years 2010, 2011 and 2012 belonged to the seniority No. 46, 78 & 98 whereas the applicant belonged to seniority number 659 in the seniority list formed at Sriganganagar Divisional Level. According to the respondents, the applicant could have availed the option of Departmental Examination for selection as Group-D under direct entry as well as for Postman. The applicant is at seniority No. above 600, therefore, he could not be selected even if he has served for 20 years or more years in the department as GDS. In the year 2011 and 2012 the candidates selected were GDS and preference was given to the GDS staff and not to the casual labourers or others in compliance to letter dated 17.5.1989. The applicant could not be selected because he ranked much low in the seniority list of GDS. It has also been submitted that the vacancies were filled up by following due criteria as per the departmental rulings, therefore, the applicant is not entitled to any relief.

4. Heard both the parties.

5. Counsel for the applicant contended that the applicant has served the Department for more than 20 years and he has also worked for some time on the post of Group-D, but the respondent department is not considering him either for regularization or promotion on the post and after a very long period of service the applicant shall not be entitled to any pension or pensionary benefits. Therefore, the respondent-department be directed to consider the candidature of the applicant for the post of Group-D.

6. Per contra, counsel for the respondents contended that the applicant is not entitled to be posted as Group-D because he did not qualify the departmental examination and the respondents department is considering his candidature on the basis of seniority but he is at S.No. 659 in seniority list, therefore, his candidature could not be considered.

7. After considering the contention of both the parties and looking to the facts and circumstances of the case, we dispose of this OA with certain directions.

The applicant shall make a representation before the respondent department regarding his grievance of non-considering him on the post of Group-D, within one month from the date of receipt of this order. Thereafter, respondent-department shall decide the representation of the applicant by way of speaking order within 6 months from the date of receipt of such representation. Thereafter, if applicant has any grievance, he will be at liberty to approach this Tribunal.

8. The OA stands disposed of in the above terms with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

R/