

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

Original Application No.508/2005

This the 18th day of March 2009

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MRS. VEENA CHHOTRAY, MEMBER (A)

Bhagwati Prasad Yadav, Aged about 49 years, S/o Sri Mahadeo Yadav, GDS (EDMP), Mohanddinpur (Bhadoi), District Pratapgarh.

.....Applicant

By Advocate: Sri R.S. Gupta.

Versus.

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi
2. Chief Postmaster General, U.P. Lucknow.
3. Senior Superintendent of Post Offices, Pratapgarh.

.....Respondents.

By Advocate: None

ORDER

By MRS. VEENA CHHOTRAY, Member-A

The applicant an EDDA, now working as GDS Mail Deliver under the Postal Department, is aggrieved at his non-selection and appointment as Postman/Group 'D' post despite claimed eligibility for the same. The O.A. seeks by way of relief quashing of the impugned order dated 1.3.2005 rejecting the prayer of the applicant (Annexure-1). Besides it also seeks directions to the respondents for his appointment in Group 'D'/Postman cadre w.e.f. the date his juniors were promoted with all consequential service benefits including the arrears of pay and allowances.

2. The present O.A. is second in the series. Earlier O.A. no. 506 of 2004 with the same prayer was disposed of limine vide Tribunal's order dated 13.12.2004 (Annexure-3). It had been submitted on behalf of the applicant that he had filed

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representations regarding his grievance on 10.7.2004 and 11.8.2004 and would be satisfied if his representations were decided by the department as per the existing rules. Accordingly, the Tribunal had disposed of the O.A. with a direction to the respondents to decide the representations by a reasoned and speaking order within a period of three months from the date of receipt of copy of the order and communicate the result of the same to the applicant.

3. In pursuance of this direction, the respondents have passed their order dated 1.3.2005 which has been impugned in the present O.A. This order specifically deals with two representations by the applicant dated 10.7.2004 and 11.8.2004. In respect of the former, it is stated that the departmental examination for the post of Postman as intimated vide letter dated 27.2.2004 scheduled to be held on 11.4.2004 has not been held so far. Similarly, as communicated vide letter dated 4.2.2002 the examination scheduled for 12.5.2002 have also not been held. The applicant claims for appearing in these examinations are said to be baseless. As regards other representation dated 11.8.2004, this letter mentions that the representation, instead of being routed through proper channel, has been addressed directly to the Chief Postmaster General U.P., which is not in accordance departmental Rules and guidelines. It is further stated that the representations is grossly time barred.

4. Briefly speaking the facts of the case are that the applicant who had joined as EDDA in 1969 claims eligibility for selection to a Postman/Group 'D' post on completion of 15 years of service in 1984. In support, a seniority list of EDDAs of Pratapgarh Division issued in the year 1992 has been annexed with the O.A. as Annexure-2. This mentions the



applicant's name at sl. No. 132. The O.A. avers that thereafter despite the applicant appearing in all the selection examinations held after 1984 onwards, neither he was selected nor any communication about his non-selection was ever received. However, many of his juniors such as S/Sri Sunder Lal, Vijai Bahadur and Ram Sewak (figuring at sl. No. 354 of the seniority list) are said to have been so selected and appointed.

5. Para 4.4 of the O.A. refers to a circular dated 28.8.1990 issued by the Ministry of Communication, Department of Posts regarding selection to the post of Group 'D' to be made according to the seniority in EDDA cadre. It also refers to the notification dated 30.1.1995 prescribing that 25% of the posts in every Postman's examination held after 30.1.1995 was to be given to ED cadre according to seniority subject to their fitness on completion of 15 years of service in EDA cadre. Copies of these two circulars have been appended as Annexure nos. 4 and 5 to the O.A.

Alleging the impugned order as non-speaking and non-reasoned, it is said not to be in true letter and spirit of the directions of the Tribunal in the earlier O.A. Para 4.5 of the O.A. also mentions that the applicant has not been supplied copies of results of the examinations and selections for the post of Postman/Group 'D' held in 1995 to 2001 and 2002 to 2004. Learned counsel appearing for the applicant would also make an averment of selections being irregular and the respondents deliberately concealing the lists and not providing them under Right to Information Act and even in response to the Tribunal's orders. Learned counsel would also emphasize that the claim of the applicant was on the basis of seniority.

6.- On behalf of respondents the stand taken is that even though the applicant had completed 15



years of service as EDDA, he was, however, not eligible for departmental examination because he did not have the requisite minimum educational qualifications. Para 7 of the Counter Affidavit makes the following averments:

"7.It is further submitted that the minimum educational qualification for EDAs to appear in Postman examination is High School, whereas the applicant is only 6th class pass. In the same way minimum educational qualification for EDAs under 25% seniority quota is 8th class pass, whereas the applicant is only 6th class passed, as such the applicant has no requisite qualification to be considered for promotion. The applicant has not applied for Postman examination, hence no information was supplied to him regarding cancellation or postponement of examination."

7. It is settled preposition of law that for warranting judicial intervention, an applicant must have a legally enforceable right. It is equally settled that such right can only accrue in accordance with statutory rules and executive instructions on the subject.

In the given case, the applicant's claim is for consideration for selection on the basis of departmental examination for the post of Postman/Group 'D' post. In support of his claim, no documentary proofs have been produced. The supportive instructions vide O.M. dated 28.8.1990 and notification dated 30.1.1995 relied upon by the applicant do not help much as they are clearly by way of only amendment of some of the earlier provisions and not by way of substitution. A perusal of these instructions does not in any way negate the respondents' contentions regarding the minimum education qualification.

8. To conclude, the applicant's claim for selection to the post of Postman/Group 'D' on the basis of seniority alone are not found to be in accordance with the relevant rules and instructions. We do not find any basis to question the



respondents' stand of the applicant for want of requisite educational qualification being ineligible even to take these examinations. The claims are founded to be legally untenable and O.A. is dismissed with no order as to costs.

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(Mrs. Veena Chhotray)
Member-A

S. Raju

(Shanker Raju)
Member-J

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