

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 434 of 2011

Reserved on 03.03.2016.

Pronounced on 8th March, 2016

Hon'ble Mr. Navneet Kumar, Member – J

Hon'ble Ms. Jayati Chandra, Member - A

Tulsi Ram Yadav, aged about 40 years son of Shri Devi Prasad, R/o Village Mahmood Nagar, Post Office Gugauli, Balrampur, (presently working as Gramin Dan Sewak Mail Deliverer, Branch Post Office, Gugauli (via Tulsipur), District – Balrampur.).

..... Applicant

By Advocate: Sri P.K. Singh

VERSUS

1. Union of India, through the Secretary, Ministry of Communication (Department of Posts), New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Post Master General, Gorakhpur Region, Gorakhpur.
4. Superintendent of Post Offices, Gonda Division, Gonda.
5. Assistant Superintendent of Post Offices, Balrampur.

..... Respondents

By Advocate: Sri Mithilesh Kumar

ORDER

Delivered by: Hon'ble Ms. Jayati Chandra, Member - A

By means of this O.A filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:

- (i) Issuing/passing of an order or direction to the respondents, particularly the respondent No. 2, to

declare the result of the Examination for promotion of Lower Grade Officials (LGO) to the cadre of Postal Assistant/ Sorting Assistant held on 10.10.2010 in respect of the applicant without delay.

- (ii) Issuing/passing of an order or direction to the respondents, particularly the respondent No. 2, to consider his candidature for appointment by promotion as Postal Assistant/ Sorting Assistant on the basis of the result declared in respect of Examination for promotion of Lower Grade Officials (LGO) to the cadre of Postal Assistant/ Sorting Assistant held on 10.10.2010 and to appoint him within a period of one month, with the benefit of consequential back seniority and other benefits.
- (iii) Issuing/passing any other order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- (iv) Allowing the original application with costs.

2. The facts of the case are that the applicant was initially appointed as Extra Departmental Delivery Agent (EDDA) Branch Post Office Gugauli and joined on 17.09.1991. The services of the applicant were terminated vide order dated 08.08.1992. However, this order was quashed by the order dated 02.01.2001 passed in O.A No. 395/1992 and the

applicant vide order dated 26.02.2001 was taken back in service as EDDA and all back wages etc. have been paid to him. The order passed in O.A No. 395/1992 has been challenged by the respondents through writ petition No. 645(SB)/2001 which is still pending. However, no interim order has been passed in the writ petition.

3. The applicant appeared in the examination held for the post of Postman for the year 2007. On being successful in the said examination, he was posted in Balrampur Head Office vide order dated 24.07.2007. He gave his joining on 26.07.2007 (Annexure A-4) but he was not allowed to join. His posting order was terminated by order dated 31.07.2007 (Annexure A-5). This order was challenged in O.A No. 491/2007 which was finally disposed of by order dated 22.05.2008. By this order, the applicant was placed in the same position in which he was pursuant to the order dated 24.07.2007. Accordingly, the respondents passed an order dated 01.09.2008 placing him as Postman Trainee at Balrampur. Thereafter, he filed another O.A No. 275/2009 which was disposed of by order dated 31.07.2012 by which although he was not allowed back wages for the period 26.07.2007 etc. his salary was notionally fixed w.e.f. 26.07.2007 on which he had given his joining initially. Moreover, his seniority as per result of qualifying examination held in 2007 for the post of Postman has been accorded to him.

4. The applicant had applied for appearing in the examination to the cadre of Postal Assistant/ Sorting Assistant as notified vide letter dated 03.08.2010 in the prescribed proforma. He was allowed to appear provisionally by respondent No. 3 and also issued with the hall ticket (Annexure A-9 & A-10). Accordingly, he appeared in the said examination held on 10.10.2010. The result of the examination was announced on 18.01.2011 but the result of the applicant has not been declared. He has learnt that he has obtained a total of 142 marks being an OBC candidate while the lowest General Category candidate has secured 135 marks. He gave a representation to the respondents on 07.03.2011 (Annexure A-13) for formal declaration of his result and promotion on merit but the said representation has not been decided. He gave another application on 26.05.2011 and 30.08.2011 with the same request. He has not been informed the grounds for not declaring his result but he assumes that the same has been done in view of the fact that he assumes the charge of regular postman only on 06.09.2008 which would thereby mean that his seniority has actually not been fixed from 26.07.2007.

5. The respondents have filed the CA in which they have concurred with the fact of the case as narrated by the applicant. Their basic objection to declaring the result of the examination dated 10.10.2010 in respect of the applicant is that the applicant had actually joined in Postman cadre on 06.09.2008 and the essential three years continuous regular

service as on 01.09.2010 has not been completed by him. He was allowed to appear in the examination subject to the outcome of O.A No. 275/2009. RA has also been filed by the applicant.

6. Heard counsel for the parties and perused the records on file. It is unfortunate that the respondents have not kept themselves well briefed with the progress of the various cases. The respondents have stated that they have allowed the applicant to appear in the examination dated 10.10.2010 provisionally subject to the outcome of O.A No. 275/2009. This O.A was dismissed by order dated 31.07.2012. The operative portion reads as follows:

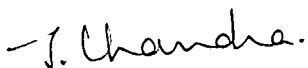
"6. From the chronology event and paper produced before us, it is seen that the position of the applicant pursuant to order dated 24.07.2007 was that of Postman Trainee/ GDS. For whatever reason he had not assumed full-fledged charge of the Postman. Therefore, the respondents have not erred in following the principal of "no work no pay". However, his pay etc. will be fixed as if he had joined on 26.07.2007 and at par with his immediate junior.


7. O.A is disposed of. The respondents are directed to ensure that his pay etc. in the scale of Postman is fixed accordingly, No costs."

7. Thus, it is very clear from the said order that the applicant was given notional promotion as Postman from the date of his initial joining report i.e. 26.07.2007. The effect of such notional promotion should reflect not only on the pay

and salary of the applicant but also on his legal status as Postman from the date of his juniors. Therefore, the applicant is deemed to have been de jure Postman w.e.f. 26.07.2007 which would mean that he has full eligibility to have appeared for the examination for the post of Postal Assistant/ Sorting Assistant on 10.10.2010.

8. In view of the discussions above, the instant O.A deserves to be allowed. The respondents are directed to declare the result of the examination held on 10.10.2010 with respect of applicant. In case he is declared successful, he is entitled to notional promotion from the date the next immediate junior is promoted initially and actually from the date of his taking over. His pay etc. will be fixed accordingly. However, he will not be entitled to back wages on the analogy of 'no work no pay'. No costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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