

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH**

O.A. No. 415 of 05

Date of order : 30.5.08

C O R A M

**Hon'ble Shri Shankar Prasad, Member (A)
Hon'ble Ms. Sadhna Srivastava, Member (J)**

Badri Narayan Mishra, S/o Late Dharnidhar Mishra, r/o village and post office – Shahkund, Bhagalpur, at present working as ED Packer Shahkund Post office in Bhagalpur Postal Division.

....Applicant

By Advocate : Shri I.D. Prasad

Vs.

1. The Union of India through the Chief Postmaster General, Bihar Circle, Patna.
2. The Superintendent of Post Office, Bhagalpur
3. The Sub-divisional Inspector of Post Offices, Bhagalpur Central Sub-division.
4. Shri Ranjit Thakur, at present posted as Group 'D' at Bhagalpur Head Post Office.
5. Shri Panchanand Singh, at present posted as Group 'D' employee at Bhagalpur head Post Office.
6. Shri Umakant Jha, at present posted as Group 'D' employee at Bhagalpur head Post Office.
7. Shri Laxmi Kant Chaudhary, at present posted as Group 'D' employee at Bhagalpur head Post Office.

....Respondents

By Advocate : Shri S.K. Tiwary

ORDER

Sadhna Srivastava, M [J]:- The applicant is aggrieved by the action of the respondents in not putting his name for consideration of promotion to the post of post man / Group 'D' before the Departmental Promotion Committee [DPC in short] held on 26.4.05.



2. The facts are that the applicant is working on the post of ED Packer since 4.5.1973. His name was included in the list of eligible candidates for promotion to Group 'D' post to be put up before DPC which was likely to be held in November, 2003. The DPC did not meet in 2003 and instead it met only on 26.4.05. At that time the name of the applicant was not put up before the DPC for promotion to Group 'D' post.

3. The respondents admit that the name of the applicant was not put up before the DPC which met on 26.4.05. They have given valid reasons for the same. It has been pleaded by them that as per the provisions, EDA[s] who are above the age of 50 years [55 years in the case of SC/ST community] are not eligible for appointment as Group 'D'. The crucial date of determining the age is 1st July of the year in which the recruitment is made. They alleged that since the applicant had already attained the age of 50 years in the year 2004, his name was not put up before the DPC for consideration.

4. We have heard learned counsel for the parties.

5. The respondents have stated that there were four vacancies for 2001. The approval of screening committee in New Delhi was received in July, 2002. The DPC could not meet in 2003. The vacancies were of 2001. The applicant was not senior enough in either 2001 or 2002. It is accepted that the D.G has issued instructions dated 25.8.1993 to hold DPC in time, but it is not imperative.



6. The said instructions read as under:-

" It has been reported to the Directorate that in number of Circles, the DPC for promotion of EDAs to Group 'D' is not being held in time. As the maximum age prescribed for promotion of EDAs to Group 'D' is 50 years, some of the EDA[s] lost their chance to get promoted as Group D. It is, therefore, requested that the DPCs for promotion of EDAs to Group D should be held as per the prescribed schedule particularly keeping in view those cases where some of the EDAs due for promotion are nearing the age of 50 years as prescribed in the Recruitment Rules."

7. As per Note 2 ^{in (iv) & (v) Ar} ~~10101v~~ below Rule 3 , GDS is out-side the civil service of the Union and cannot claim to be at par with the servant of the Central Government. They are not expected to perform duties beyond the maximum of five hours a day. In case of appointment as postman/Group 'D' etc., they sever their links with the GDS service and become a regular government employee enjoying various benefits admissible to the Central Government employees.

8. The Department of Personnel and Training, which is the nodal department for personnel policy for Government of India, have issued a detailed guidelines in the matters of promotion. The General policy is that the DPC should be convened at regular annual interval to draw a panel which could be utilized for making promotion against the vacancies occurring during the course of the year. It has been repeatedly reiterated that regular meetings of the DPC are held over the year for each category of post so that the approved select panel is available in advance for making promotions against the vacancies arising over the year. Para

B

6.4.1 of the DOPT O.M. Dated 10.4.89 , as amended from time to time, further provides as under:-

Preparation of year-wise panels by DPC where they have not met for number of years.

:- Where for reasons beyond control, the DPC could not be held in a year [s], even though the vacancies arose during that year [or years], the first DPC that meets thereafter should follow the following procedures:-

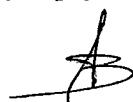
[i] Determine the actual number of regular vacancies that arose in each of the previous year[s] immediately preceding and the actual number of regular vacancies proposed to be fill in the current years separately.

[ii] Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

[iii] Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on."

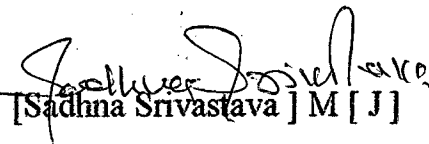
9. Not holding of DPC in time or not considering the vacancies separately when the DPC meets after a period of time has the effect of totally changing the zone of consideration and subsequent appointment to postman/Group 'D' post. We are accordingly of the view that the department has erred in not considering the vacancies in the concerned year.

10. It also appears that the notices have been served on respondent No. 5, one of the four persons promoted by the impugned order. He has neither appeared nor has filed any reply. The OA will proceed ex-parte against him.

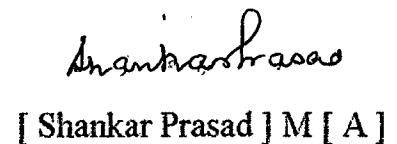


Notices have been served by the registered posts with A/d , and A/D has not been received back. Rule 25 [c] of The CAT Rules of Practice provides that the presumption of service could be raised in such circumstances.

11. Having regard to to what has been discussed above, we are of the view that the selection based on eligibility as on 01.07.05 has changed the zone of consideration, and is thereby vitiated. Resultantly, the impugned order dated 26.4.05 are quashed and set aside, and the respondents are directed to re-consider the matter in the light of what has been stated above. The OA is disposed of accordingly. No costs.


[Sadhna Srivastava] M [J]

/cbs/


[Shankar Prasad] M [A]