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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 05.7.2000

OA 151/95

Gopal Prasad Srivastava s/o Shri Jwala Prasad Srivastava r/o 358, Kala Bhawan, Nahargarh Road, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Supdt. Postal Stores Depot, Jaipur.
4. Shri Prabhu Dayal s/o Shri Hanhyalal, Postal Stores Depot, Jaipur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.FAIKOTE, VICE CHAIRMAN

HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.R.S.Bhadauria

For the Respondents

... Mr.K.N.Shrimal

O R D E R

PER HON'BLE MR.JUSTICE B.S.FAIKOTE, VICE CHAIRMAN

This application is filed for a direction to the respondents to consider the case of the applicant for promotion to the post of Jamadar in Group-D (Non-test category) in place of respondent No.4. Further prayer of the applicant is that the name of the respondent No.4 be deleted from the gradation list notified at serial 24, dated 1.7.94 of the non-test category, by placing the respondent in the test category and deleting his name from the non-test category.

2. The case of the applicant is that he was appointed in the year 1988 as Chowkidar in the non-test category and respondent No.4 was appointed in the year 1971 in the test category. Meanwhile, he (the respondent No.4) was deputed to Army. The person belonging to test category are eligible to be deputed to Army. While he was serving in the Army in the year 1992-93 his name was placed in the non-test category making him senior to the applicant and thereby denying the applicant a further promotion to the post of Jamadar. Therefore, it is further submitted by the applicant that the applicant being senior to respondent No.4 in the non-test category, he should be promoted and the promotion of respondent No.4 in the non-test category be deleted since he belongs to the test category. Therefore, necessary directions be issued in that behalf.

3. By filing counter the respondents denied the case of the applicant. Respondent No.4 was appointed on 17.12.71 in non-test category. However, the appointment order did not specifically say whether his appointment was in the test category or in the non-test category. A corrigendum dated 23.6.72 was issued vide Annexure R/1 stating that the respondent No.4 has been appointed in non-test category as Class-IV Mazdoor. The contention of the respondents, thus, is that he also belongs to the non-test category and his appointment is in the year 1971, whereas the applicant was appointed in the non-test category in the year 1988 and accordingly the applicant is junior to him. Since the respondent No.4 was senior, he has been promoted to the post of Jamadar and his promotion as Jamadar would be in order. But the respondent No.4 could not be promoted only because of the interim order of this Tribunal.

4. Heard the learned counsel for the parties.

5. Both from the pleadings and the arguments addressed, the case of the applicant that respondent No.4 was appointed in the non-test category, therefore, he could not have been placed in the non-test category prima-facie cannot be accepted in view of Annexure R/1. Vide order dated 17.12.71 (Annexure A/15) it is stated that the respondent No.4 was appointed in Class-IV in PSD Jaipur-6 but it did not mention whether he was in the test category or non-test category. Therefore, this order dated 17.12.71 was clarified by the respondents by issuing a corrigendum dated 23.6.72 (Annexure R/1), which reads as under :-

"In this office memo of even no. dated 17.12.71 cadre of appointment of Shri Prabhudayal may be read as Officiating CLASS IV MAZDOOR belonging to NON-TEST CATEGORY instead of CLASS IV as appearing in the said memo."

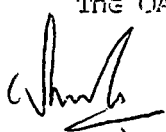
From the reading of both, Annexures A/15 and R/1, it is clear that the respondent No.4 was appointed only in the non-test category. However, in this context, the applicant submitted that the respondent No.4 could not have been deputed to Army unless he was appointed in the test category. But the legality or otherwise the deputation of respondent No.4 to Army is not an issue before us. It cannot be ascertained ^{as} on today that only test category person was deputed to Army. It is suffice for us to hold on the basis of Annexures A/15 and R/1 that the applicant was appointed in the non-test category and the order of appointment of respondent No.4 is very much earlier to the appointment order of the applicant in the year 1988. The applicant was appointed vide order dated 7.4.88 (Annexure A/2) for the first time in non-test category. If that is

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so, on the basis of their respective appointments, it is clear that respondent No.4 is senior to the applicant in the non-test category.

6. However, the contention of the learned counsel for the applicant is that this correction was made by placing the respondent No.4 in the non-test category only in the year 1993-94 when he was in the Army. But this submission prima-facie appears to be not correct in view of Annexure R/1 dated 23.6.72, which is a corrigendum to the order dated 17.12.71. From this it follows that in the year 1972 necessary corrections were made in the appointment order of respondent No.4 clearly stating that respondent No.4 was appointed in the non-test category. Annexure A/9 dated 30.12.91 and Annexure and A/10 dated 14.10.92 are only the reply given to the representation made by the applicant, stating that in fact the respondent No.4 was appointed w.e.f. 17.12.71. In Annexure A/10 it is specifically stated that a corrigendum was issued on 23.6.72 placing the respondent No.4 in Class-IV non-test category. From Annexures A/9 and A/10 it cannot be held that the respondent No.4 was placed in the non-test category only in the year 1991-92. On the basis of Annexure R/1 it is clear that the respondent No.4 was appointed in the year 1971. If that is so, he would be definitely senior to the applicant, who was appointed only in the year 1988. From this it follows that this application has absolutely no merits. Accordingly, we pass the order as under :-

The OA is dismissed but in the circumstances without costs.


(N.P.NAWANI)
MEMBER (A)


(B.S.RAIKOTE)
VICE CHAIRMAN