

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 25/4/2001

OA 194/2000

Damodar Lal Sharma, EDBPM, Daharia.

... Applicant

Versus

1. Secretary to Govt. of India, Ministry of Communication, Deptt. of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Supdt. of Post Office, Sawai Madhopur Division.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.R.P.Pareek

For the Respondents ... Mr.N.C.Goyal

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

In the Postal Division there is a provision for filling up Group-D Posts by selection from EDAs on the basis of seniority, subject to satisfactory service. The applicant has been working as EDBPM, Daharia, w.e.f. 6.7.70 and his date of birth is 2.6.1948. In the DPC for selection to Group-D, held on 7.5.99, applicant's case was not considered and his juniors have been appointed. The applicant is aggrieved by the order of selecting his juniors and ignoring his claim. He was informed by the department vide letter dated 8.3.2000 (Ann.A/1) that his name was not considered for selection to Group-D as per rules because he had crossed the age of 50 years. So far as this position is concerned, the facts are admitted on either side. The applicant has made a prayer for quashing Ann.A/1 and to direct the respondents to consider his name for promotion to Group-D from the date vacancy occurred and consequentially to modify Ann.A/2. He has also claimed all consequential benefits.


2. Applicant's case is that the department was required to work out vacancies every year and DPC was expected to consider the names of the eligible candidates. The respondents did not hold DPC every year from the years 1995-96 onwards and the next DPC was held only in 1999, by



which date the applicant had crossed the age of 50 years. His plea is that since he was to be considered against the vacancies relating to the year 1995-96, he was within the age limit. It is stated that it was for the department to calculate the vacancies in January of each year and non-holding of DPC at the proper time cannot take away his right of being considered for selection. The action of the respondents is stated to be in violation of Articles 14 and 16 of the Constitution, arbitrary and capricious. The same plea was put forth by the learned counsel for the applicant at the arguments stage and he maintained that the DPC should have been held every year. Failure of the department cannot result into harm to the applicant.

3. In the written statement filed by the respondents and the arguments advanced by the learned counsel for the respondents it has been stated that one DPC was held on 9.6.96 for two posts and the candidates senior to the applicant were considered. However, the result of that selection could be given effect to. Subsequently, it was not feasible to hold any DPC mainly because of two reasons; appeals from 56 EDAs for condonation of their break in service due to their participation in strike on 25.5.89 were pending consideration and secondly the issue relating to recruitment of visually handicapped persons was also pending consideration in the department. These were stated to have been decided on 20.11.97. Appeals of 56 EDAs were taken on 20.11.97 but the matter regarding recruitment against handicapped quota still remained under consideration of the department. Then directions to hold DPC were issued only in May, 1999 and thus the DPC was held on 7.5.99. At that time, the applicant was not found eligible as he had already crossed the maximum prescribed age limit of 50 years. It is admitted by the department that two persons junior to the applicant were selected. The main argument of the respondents is that since there were justifiable grounds for not holding of DPC after 1996 and before 7.5.99, the applicant can have no claim.

4. The learned counsel for the applicant argued on the point that the rules provide for calculating the vacancies in January each year, which means that the DPC is required to be held every year. He also drew our attention to specific directions issued on the subject by the Directorate to hold DPC as per the prescribed schedule particularly



keeping in view the fact that some of the EDAs were nearing the age of 50 years and were likely to lose their chance of promotion in the event the DPC is not held in time.

5. We have carefully perused the rules as given in Section-VI of Service Rules For Extra-Departmental Staff in Postal Department (Swamy's Compilation), (Section-VI - Promotion Prospects). Rule-10 for removal of test for absorption of ED Agents in Group-D cadre and raising of upper age limit to appear in the postmen examination, para 1.1, provides that;


"1.1 Group-D vacancies occurring in a calendar year should be calculated in January each year and the select list will be drawn up strictly in order of seniority (subject to satisfactory service) and the EDAs put on the select panel should be allotted immediately to the Sub Division/Recruiting Unit agreeably with the number of Group-D vacancies calculated for that Sub Division, Recruiting Unit."

Under Para 1.2 it has been provided that;

"1.2 EDAs who are above the age of 50 years (55 years in the case of SC/ST communities) will not be eligible for appointment as Group-D. The crucial date of determining age will be 1st July of the year in which the recruitment is made."

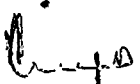
In the department's letter dated 15.8.93 instructions have been issued to hold DPCs for promotion of EDAs to Group-D as per the prescribed schedule, particularly keeping in view those cases where some of the ED Agents due for promotion are nearing the age of 50 years, as prescribed in the Recruitment Rules.


6. The rules clearly provide that Group-D vacancies occurring in a calendar year should be calculated in January each year and age is reckoned as on 1st of July of the year in which the recruitment is made. If that were provisions of rules, the conclusion is obvious that the vacancies have to be calculated every year in January. Inability of the department to hold DPC in any year, in our considered view, cannot deprive an employee who may be otherwise in the zone of consideration in that relevant year, only on the ground that at the time when the DPC has actually been held, he had crossed the age of 50 years. It is only just and equitable



that if the DPC has been held late, the eligibility should be considered with respect to the vacancies of each year and with reference to that year if a candidate is within age limit, he cannot be denied the right of consideration. In this case, the last DPC before 1999 was held in the year 1996 and the candidates considered were senior to the applicant. He cannot have any claim as far as the year 1996 is concerned. Applicant's date of birth being 2.6.1948, he would have crossed the age of 50 years in July, 1998 and the only year left for consideration is the year 1997. The department is now required to calculate the vacancies as in January, 1997 and in case the applicant is within the zone of consideration, his claim should be considered as at that time he was within the prescribed age limit.. Since some of the juniors to the applicant have been selected after due process, the junior most is likely to get affected in case the applicant finds a place against the vacancies for the year 1997. IN that event, the department should examine the possibility of continuing the junior most person against the vacancies of the year 2000 onwards.

7. In view of what has been discussed above, we allow this OA and direct the respondents to calculate the vacancies as in January, 1997 and consider the case of the applicant if he is otherwise found suitable as per his seniority and satisfactory service. The age will not be considered as bar. In case the applicant is placed on the select panel, he shall be entitled to his place in the gradation list above his immediate junior who has been already appointed in Group-D. Pay of the applicant shall also be protected with respect to his immediate junior and the applicant shall be entitled to all consequential benefits arising therefrom. This entire exercise shall be completed by the respondents within four months from the date of receipt of a copy of this order. No order as to costs.


(A.P.NAGRATH)
MEMBER (A)


(S.K.AGARWAL)
MEMBER (J)