

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 17.5.2002

O.A. NO. 389/2001.

Rajesh Kumar Vaishnav s/o Surgalal aged about 30 years resident of House of Dwarka Prasad, Vaishnavi Pater Nagar, Deoli District Tonk and approved candidates for appointment as Postal Assistant in Beawar Postal Division.

... APPLICANT.

versus

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communications, New Delhi 110 001.
2. Postmaster General, Rajasthan Southern Region, Ajmer 305001.
3. Superintendent of Post Offices, Beawar Division, Beawar 305901.

... RESPONDENTS.

Shri K. L. Thawani, counsel for the applicant.
Shri P. C. Sharma, Proxy counsel for
Shri Sanjay Pareek, counsel for the respondents.

CORAM

Hon'ble Mr. M. P. Singh, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Applicant Shri Rajesh Kumar Vaishnav has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 for seeking a direction to issue an appropriate order or direction to appoint the applicant as Postal Assistant in the Postal Division, Beawar, and also to impart practical training of two and a half



months.

2. The facts of the case are that PMG, Rajasthan Eastern Region (now Rajasthan Southern Region) Ajmer, respondent No. 3, issued an advertisement inviting applications for recruitment to the post of Postal Assistant in various division including the Beawar Division for filling up 12 vacant posts. The applicant applied on 10.02.1995 for appointment to the post of Postal Assistant in Postal Division, Beawar. After consideration of the candidature of the applicant, the original certificate/documents were called from the applicant and he was asked to deposit the security amount ,Rs. 5,200/-, vide letter dated 28.06.1995 (Annexure A-2). He has submitted this and fulfilled all the conditions.

3. The applicant has passed the Secondary School Examination from the Board of Secondary Education, Ajmer, in 1990. He has also passed the Intermediate Examination from Bihar Intermediate Education Council Patna in 1993. The selection was finalised and the applicant was orally told to weight for his turn. He was further told that as and when his turn comes he shall be sent for training. Many other persons who opted for Beawar Division and also belonging to other division were sent for training but the candidature of the



applicant was neglected. He learnt that he was not been sent for practical training because he passed the Intermediate Examination in Arts from Bihar Intermediate Council Patna. The applicant representing the matter and requested the Competent Authority for sending him for training. Finding no response, another representation was sent to the Post Master General, Ajmer, but there was no result. However, he was told by the Superintendent of Post Offices, Beawar, that his case shall be decided by an early date. Finally he was told that a similar case has been filed before this Tribunal and he should wait till finalisation of the case.

4. He gathered the information regarding the aforesaid case which was filed before this Tribunal by Shri Lal Chand, a batchmate of the applicant, vide OA No. 316/1997. The case has been allowed and respondents were directed to appoint the applicant on the post of Postal Assistant, vide order dated 18.04.2001 (Annexure A-10). He immediately approached to the Competent Authority and he was given assurance that his case also will be decided.

5. The Original Application has been filed on number of grounds e.g. he has been selected for the post of Postal Assistant and complete formalities have already been undertaken by him, he is becoming

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over age, all his original certificates are with the respondents and the candidates similarly situated for the recruitment year 1994 have already been appointed and the applicant has even been imparted for the requisite training.

6. The applicant has also filed a formal application for condonation of delay. The OA was admitted on 03.09.2001 and notices were issued to the respondents for filing the reply. The respondents have filed the reply to the Original Application as well as to the MA, for condonation of delay. The respondents in their reply have mentioned that the Regional Office, Ajmer, instructed them that the candidates who have educational qualification of Bihar Intermediate Council Patna, should not be adopted for training, at PTC Saharanpur, till clarification receives from C.O., Jaipur. This was said on the basis that the Board of Secondary Education, Rajasthan, had intimated vide letter dated 25.07.1995 that the Bihar Intermediate Examination is not equivalent to 10+2 Examination of Rajasthan. It has been said that the entire process of selection was completed in the year 1995 and the applicant for the first time has raised the objection after a period of about six years and the selection list has already been exhausted and thus the Original Application is hopelessly time barred and the same is liable to be



dismissed on this ground alone. The examination which has been passed by the applicant is not equivalent to 10+2 Examination of Rajasthan Board of Secondary Examination, Ajmer, and specific instructions were received from the Regional Office that the candidature of the applicant should not be considered. It has also been mentioned that the applicant has just passed with grace marks with supplementary in 10th class but in Bihar Intermediate Examination he had secured 78% marks. It has been also mentioned that mere selection does not confer any right of appointment and the selected candidates were sent to training in the year 1995 and now the applicant cannot complain after a period of four years, that he also should be sent for training. Shri Lal Chand approached the Tribunal well within the time and thus the applicant cannot take advantage of his case. Further it has been said that no assurance whatsoever was given to the applicant by the Officers of the answering respondent. The grievance raised in the Original Application generally contraverted. A reply has been also filed in the MA. Almost repeating the contentions which has been raised in the reply to the OA and the OA deserves to be dismissed on the ground of limitation itself as per the stand taken by the respondents.



7. We have heard the learned counsel for the parties and have perused the record.

8. The respondents have vehemently banked upon their objections that the application is time barred and suffers from delay and latches. There is no sufficient reason for condoning the delay and the Original Application deserves to be dismissed on this count alone. On the other hand Learned counsel for the applicant submitted that the matter relates to appointment which give rise to continuous cause of action. Further the applicant came to know about the judgement of this Tribunal, he immediately approached to the competent authorities. There is no deliberate or intentional delay on his part. Further it has also been submitted that the applicant has a meritorious case and very recently a similarly situated person has been given appointment to the post of Postal Assistant. In fact the applicant ought to have been given similar treatment and applicant should not have been denied his due legal right, merely on the basis of one litigity or another nonlitigity. The delay, if any, in filing of the OA, deserves to be condoned. We are of the considered opinion, that the matter of appointment give rise to a continuous cause of action and we are supported by the judgement of Bombay Bench of the Tribunal, in the case of Gautam C. Meshram vs. Divisional Railway Manager (1991) 15 ATC 274, wherein wrongful



denial of appointment has been held to be a continuing wrong. Thus there is no delay in filing of this OA. Otherwise also we feel it expedient to apply justice oriented approach in the matter since the applicant has got a meritorious case and resort the exercise of deciding the case on merits.

9. At the very outset, Learned counsel for the applicant has drawn our attention towards the judgement of this Tribunal, a copy of which has been placed in it as Annexure A-11, in OA No. 316/97 decided on 18.04.2001, Lalchand Rathore vs. U.O.I. & Ors., wherein a similar controversy has been arose and the Original Application is allowed specifically holding that no where in the advertisement it is mentioned that minimum qualification for the post is that a person must be 10+2 passed from a Board or University, which is recognised by the Board of Secondary Education, Rajasthan, Ajmer. The controversy has been settled and does not remain res integra. We are also informed that the judgement has already been implemented in respect of applicant in that Original Application. We are in full agreement with the aforesaid judgement and have no hesitation in holding that the controversy in the present case is fully covered by the aforesaid judgement. Thus we are not inclined to repeat the merit of the case afresh.



10. Consequently, we follow the decision in Lal Chand Rathore vs. U.O.I. & Ors. (Supra), and pass the order on similar lines as under :-

" We, therefore, allow this O.A. and direct the respondents to appoint the applicant on the post of Postal Assistant after completing all the formalities required for this purpose, within two months from the date of receipt of a copy of this order and the respondents shall not deny the appointment to the applicant on the post of Postal Assistant only on the ground that the applicant passed Intermediate Examination from Bihar Intermediate Education Council, Patna, which has not been recognised by the Board of Secondary Education Rajasthan, Ajmer."


(J. K. KAUSHIK)

MEMBER (J)


(M. P. SINGH)

MEMBER (A)