

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT BILASPUR

Original Application No 1172 of 2004

This the 27th day of October, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Suresh Kumar Yadu
Aged about 25 years
S/o Shiv Narayan Yadu
Occupation Dakpal, Shikarpali
(Bagbara) Mahasamundra
Tah. and Distt. Raipur C'garh

Applicant

(By Advocate – Ms. Renu Kochhar)

V E R S U S

1. Union of India,
Department of Posts and
Telegraphs,
Through its Secretary,
New Delhi.
2. Post Master General
Raipur Region, Raipur
Chhattisgarh-432001.
3. Superintendent of Post Offices,
Raipur Distt. Raipur.

Respondents

(By Advocate – Shri P. Shankaran)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought the following main reliefs :-

“(i) Quash the impugned order dated 6.10.2004 Annexure-A-1”



2. The brief facts of the case are that the applicant joined his services as Gramin Dak Sevak (for short 'GDS') in the postal department on 5.4.2002. A show cause notice was issued to him on 12.8.2004 stating that as per the notification dated 13.12.2001 your appointment is illegal as first preference should have been given to Scheduled caste and Scheduled Tribe candidates, although OBC candidate has been appointed and secondly as the number of eligible application forms received were less than three, hence effective number of candidates were less than three in such case selection committee should have taken sanction from the senior authorities before giving appointment and the same condition was not applied. The applicant has filed a reply against the aforesaid show cause notice, however his services were terminated vide order dated 6.10.2004. Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. It is argued on behalf of the applicant that the applicant was appointed by the respondents after following due procedure of selection on 5.4.2002 and he served in the respondents department with sincerity and honesty. He has neither concealed nor misrepresented any facts to the respondents and there is nothing adverse remarks against him with regard his work and integrity. However, the respondents have issued a show cause notice on 12.8.2004 to the applicant stating that the instructions contained in notification dated 13.12.2001 were not followed. Hence, appointment of the applicant is illegal and it has to be cancelled. The learned counsel for the applicant also argued that the case of the applicant was reviewed under Rule 4(3) of GDC (C&E) Rules 2001, which came into force w.e.f. May, 2003 whereas the applicant was appointed on 5.4.2002. Therefore, the matter could have been reviewed from the

date on which this rule came into existence. Hence, the applicant is legally entitled for the relief claimed.

5. In reply, the learned counsel for the respondents argued that the applicant was appointed on the post of GDS Branch Postmaster Sikripali Baghahara w.e.f. 5.4.2002. As per terms and conditions, preference was to be given to SC and ST candidates, but OBC candidate has been appointed out of two effective candidates. But as per instructions, it is necessary to have minimum three effective candidates to make selection by the appointing authority. In the instant case, the effective candidates were only two. In such contingency the approval of superior competent authority was required to make selection by the appointing authority. However, it was not done. The selection and appointment being not in conformity with the rules/instructions, therefore a show cause notice was served on the applicant as to why the appointment should not be cancelled. The applicant submitted his reply to the notice, which was not considered to be satisfactory. Since the appointment of the applicant was irregular and in violation of the existing instructions on the subject, therefore the impugned order was passed. The learned counsel for the respondents further argued that the appointment of the applicant was reviewed by the competent authority under Rule 4(3) of GDC (C&E) Rules 2001 and observed that the appointment of the applicant was made without following the due process of the rules and instructions.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant was duly selected and appointed on 5.4.2002 after following the due procedure of selection. There is nothing adverse against the applicant with regard to his conduct or integrity. We also find that the respondents have not contended anywhere that the applicant might have concealed or misrepresented any facts for getting appointment in the respondents

(P)

department. The arguments on behalf of the respondents that the appointment of the applicant was reviewed by the competent superior authority under Rule 4(3) of GDC (C&E) Rules 2001 and it was found that the appointment of the applicant was not made in accordance with the instructions of the notification dated 13.12.2001 is not tenable, as the aforesaid rules came into force w.e.f. May, 2003 whereas the applicant was appointed much earlier i.e. on 5.4.2002. The learned counsel for the respondents could not show that the aforesaid Rule 4(3) of GDC (C&E) Rules 2001 came into force w.e.f. May, 2003 was made effective retrospectively. We are of the considered opinion that the aforesaid rule does not permit the respondents to review the matter of the applicant as he was appointed much earlier whereas the rule was made effective w.e.f. May, 2003. If there was any fault in the selection procedure on account of the respondents department the applicant do not at all responsible.

7. Considering all the facts and circumstances of the case, we are of the considered opinion that this OA deserves to be partly allowed. Accordingly, the OA is partly allowed, the impugned order dated 6.10.2004 (Annexure-A-1) is quashed and set aside and the respondents are directed to reinstate the applicant in service within a period of one months from the date of receipt of copy of this order. It is made clear that the applicant is not entitled for any back wages for the period he has not worked. No costs.

(Madan Mohan)
Judicial Member

M.P.Singh)
Vice Chairman

Rein Kochan Dr BSB
P. Shan Karan Dr DSB

14.11.05