

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 6th day of January, 2011

Original Application No. 105/2007

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Prahlad Kumar Sharma
s/o Shri Chiranjit Lal Sharma,
r/o C-45, RPA Road, Nehru Nagar,
Jaipur, presently working as EDDA,
Postman, Mansarovar Post Office,
Jaipur

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India
through the Secretary to the
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle, Jaipur
3. Senior Superintendent Post Offices,
Jaipur City Dn.,
Jaipur
4. Sub-Postmaster,
Mansarovar Post Office,
Jaipur

... Respondents

(By Advocate: Shri V.S.Gurjar)



ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

“8.1 That by a suitable writ/order of the direction the impugned order dated 07.03.2007 vide annexure A/1 and A/2 be quashed and set aside and further the respondents be directed to not to fill up one post, of 2005 and for the vacancies of 2005 as the applicant upto 2005 on 2006 do not crosses the age of 50 years. The chance be given to the applicant to fill up one post of the vacancies of 20005 as per order dated 18.1.2007.

8.2 Any other relief which the hon'ble bench deems fit.

2. Briefly stated, facts of the case are that the respondents issued a notification dated 18.1.2007 (Ann.A/2) whereby application from all eligible Gramik Dak Sevak (GDS for short) candidates were called for promotion of Group-D officials to Postman cadre against the approved vacancy of Departmental quota for the year 2005. As per the said notification, the departmental competitive examination was to be held on 11.3.2007. The conditions of eligibility were mentioned in the said notification and it was specifically mentioned therein that age of the GDS candidate should not be above 50 years as on 1.7.2007. However, age relaxation in upper age limit for SC, ST and OBC GDS candidates was to be given as per rules. Pursuant to the said notification, the applicant submitted his application for appearing in the said examination. Since the applicant was above the prescribed age limit of 50 years as on 1.7.2007 i.e. on 1st July of the year in which the examination is held, the applicant was not permitted to appear in the said examination held on 11.3.2007

being over-age. The applicant was informed about his ineligibility to appear in the examination vide letter dated 7.3.2007 (Ann.A/1). It is this order Ann.A/1 and the notification dated 18.1.2007 (Ann.A/2) which are under challenge in this OA and the applicant has prayed that this notification may be quashed and the respondents may be directed not to fill one vacancy of the year 2005 as the applicant has not crossed the age of 50 years in 2005. It is on the basis of these facts the applicant has filed this OA.

3. Notice of this application was given to the respondents. The facts as stated above have not been disputed by the respondents. The respondents have categorically stated that as per the Govt. of India Gazette Notification published on 25.2.1995 by the Ministry of Communication, Department of Post vide GSR No.86 dated 30.1.1995 whereby the amendment was carried to the Postman, Village Postman and Mail Guards Recruitment Rules, 1989, the upper age limit for Extra Departmental Agents now called Gramin Dak Sewaks shall be 50 years with relaxation of 5 years for SC/ST candidates as on 1st July of the year in which the examination is held. The respondents have also placed on record copy of the notification dated 25.02.1995 as Ann.R/1. Thus, according to the respondents, the prescribed upper age limit of 50 years in terms of the aforesaid rules has to be determined as on 1st July, 2007 i.e. 1st July of the year in which the examination is held. Thus, the applicant was rightly informed vide impugned order dated 7.3.2007 (Ann.A/1) that being over age, he is not eligible to appear in the examination. The respondents have also stated that not only the applicant there

were other GDS candidates who were not permitted to appear in the said examination due to the reason shown therein in terms of the letter dated 5.3.2007 (Ann.R/2) which contain names of 11 persons including the applicant. The respondents have further stated that result of the examination held on 11.3.2007 was declared vide Senior Superintendent of Post Offices, Jaipur City Division, Jaipur OM dated 5.4.2007 (Ann.R/3) whereas the applicant has obtained interim stay from this Tribunal on 11.4.2007 by suppressing the fact that result of the said examination has already been declared. It is stated that the interim stay granted by this Tribunal deserves to be vacated.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. It has been stated that since the vacancy was of 2005 and age of the applicant will be counted 50 years upto the year 2005 and applicant cannot be made to suffer in case the respondents have conducted the examination in the year 2007 instead of 2005.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The learned counsel for the applicant has placed reliance upon the decision of this Tribunal in OA No.155/2005, Sita Ram Mathur vs. UOI decided on 13th March, 2007 where similar controversy was involved and this Tribunal while relying upon para 1.2 of the notification whereby the crucial date for determining the age was 1st July of the year in which recruitment is made and also relying upon the decision rendered by this Tribunal in OA

No.194/2000, Damodar Lal Sharma vs. Secretary to the Government of India, Ministry of Communication, New Delhi, the impugned orders dated 19th August, 2004 and 23rd February, 2004 vide which the applicant was informed that appointment to the post of Group-D could not be given as on the crucial date the applicant has crossed the age of 50 years, directed the respondents to consider the case of the applicant if he is found suitable as per his seniority and satisfactory service. It was further ordered that in case the applicant is selected he should be placed above his juniors. The basis for giving relief to the applicant in the aforesaid OA was that as per instructions which stipulate 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. It was further observed that inability to hold the DPC in any year can not deprive the 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.

7. We have given due consideration to the submissions made by the learned counsel for the applicant based upon the aforesaid judgment. We are of the view that the applicant cannot draw any assistance from the judgment relied upon for the reasons stated herein. It may be stated that in terms of the provisions contained in Recruitment and Promotion Rules, which have been issued in exercise of power conferred by the proviso to Article 309 of the Constitution, the upper age limit has to be seen on 1st January of

the year in which the examination is held. At this stage, it will be useful to reproduce relevant portion of Column 7 item No.(ii) of the Department of Posts (Postman and Village Postman Mail Guard) Recruitment Amendment Rules, 1994, which thus reads:-

"For Extra Departmental Agents, the upper age limit shall be 50 years with 5 year relaxation for the Scheduled Castes/Schedules Tribes candidates as on 1st July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1st January of the year in which the examination is held."

Thus, in view of this statutory provision contained in the recruitment rules, it does not permit us to hold that the age limit prescribed in the recruitment rules as on 1st July of the year in which the examination is held should be ignored and the eligibility of the upper age has to be seen with reference to occurrence of vacancy. The matter was not examined by the Tribunal in the light of the statutory provisions and from the judgment it is evident that in fact this statutory provision was not brought to the knowledge of the tribunal and the finding was recorded on the basis of similar provisions quoted in the advertisement. Thus, it appears that the finding was recorded by the Tribunal based upon the administrative instructions and the judgment rendered by the Tribunal in the case of Damodar Lal Sharma (supra) passed on the basis of the instructions that Group-D vacancy occurring in a calendar year should be calculated in January each year meaning thereby that it was mandatory for the department to fill the post when the vacancy has fallen. According to us, such a construction give by the Tribunal to the administrative instruction ignoring the mandate

of the statutory rules is neither permissible nor such a contention was raised before the Tribunal in the earlier OA. Thus, the Tribunal has not given any finding to the effect that administrative instructions will over rule the statutory provisions. Thus, according to us, the applicant cannot take assistance from the judgment rendered by this Tribunal in the case of Sita Ram Mathur (supra). It is settled position that statutory rules has to be given effect to unless the provisions of the rules are not declared arbitrary or ultra-vires by the Court. In this case, the applicant has not challenged validity of the aforesaid rules being arbitrary, discriminatory or ultra-vires to the constitutional provisions. As such, we have no option but to give effect to the statutory rules which prescribe that only those GDS are eligible to appear in the examination who have not crossed 50 years with 5 years relaxation to the SC/ST candidates as on 1st July of the year in which the examination is held. Admittedly, in this case examination was held in the year 2007. Thus, we see no infirmity if candidature of the applicant alongwith others was rejected by the respondents and he was informed vide order dated 7.3.2007 (Ann.A/1).

8. Yet for another reason, the applicant is not entitled to any relief. Applications of eligible GDS candidates were called vide notification dated 18.1.2007 (Ann.A/2). In the said notification it is categorically mentioned that age of the GDS candidate should not be above 50 years as on 1.7.2007. In case the applicant was aggrieved by this notification, he should have approached the Tribunal immediately. As per the said notification examination was

to be held on 11.3.2007. Even the applicant was informed vide letter dated 7.3.2007 that he is not eligible to appear in the examination. The result of the examination was declared on 5.4.2007 (Ann.R/3). It is only on 10.4.2007, the applicant has filed this OA when the selection process was over. The right has accrued to a person who has been selected pursuant to the notification dated 18.1.2007. Admittedly, as per the notification dated 18.1.2007 the applicant was aware that his candidature cannot be considered being overage. Still he has applied for the post so advertised. It was incumbent upon the applicant to approach this Tribunal prior to the date of the examination i.e. 11.3.2007. Had the applicant approached this Tribunal before that date, he could have been provisionally permitted to appear in the said examination. Thus, in view of what has been stated above, when the entire selection is over and the result has been declared, it is not permissible for us at this stage to quash the entire selection process and direct the respondents to conduct a special examination qua the applicant only whereas there are as many as 10 persons who are similarly situated and whose candidature has been rejected on the similar ground. Even on this ground also the applicant is not entitled to any relief.

9. That apart, pursuant to declaration of the result, vide order dated 5.4.2007 persons who have qualified the selection test and have a right to be appointed against the post of Postman have not been impleaded as party-respondents in this case, who will be be

materially affected in case relief is granted to the applicant. Even on this ground also, the applicant is not entitled to any relief.

10. Thus, viewing the matter from any angle, we are of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member



(M.L.CHAUHAN)
Judl. Member

R/