

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

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**Date of Order: 13.03.2012**

OA No. 588/2009

Mr. C.B. Sharma, counsel for applicant.  
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsels for the parties. O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*K.S. Rathore*  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 13<sup>th</sup> day of March, 2012

**ORIGINAL APPLICATION No. 588/2009**

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Sudhir Pandey son of Shri Ramesh Chand Pandey aged about 34 years, resident of C-177, Singh Bhumi, Khatipura, Jaipur. Presently working as Part time Waterman in Head Record Office, Railway Mail Services, Jaipur Division, Jaipur.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Department of Post, Ministry of Communication, Dak Bhawan, New Delhi.
2. Principal Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Railway Mail Service, Jaipur Division, Jaipur.
4. Head Record Officer, Railway Mail Service, Jaipur Division, Jaipur.
5. Shri Tara Chand Meena, Gramin Dak Sevak Mail Man c/o Head Record Officer, Railway Mail Service, R.S. Branch, Jaipur Division, Jaipur.
6. Shri Kuldeep Gupta, Gramin Dak Sevak Mail Main c/o Head Record Officer, Railway Mail Service, R.S. Branch, Jaipur Division, Jaipur.
7. Shri Manohar Singh Takhar, Gramin Dak Sevak Mail Man C/O Head Record Officer, Railway Mail Service, R.S. Branch, Jaipur Division, Jaipur.
8. Shri Nagar Mal Meena, Gramin Dak Sevak Mail Man C/O Head Record Officer, Railway Mail Service, R.S. Branch, Jaipur Division, Jaipur.

... Respondents

(By Advocate : Mr. Mukesh Agarwal)

**ORDER (ORAL)**

This OA is filed against the order dated 22.12.2009 (Annexure A/1) and select list dated 11.12.2009 (Annexure A/2) by which respondent nos. 5 to 8 have been taken on duty

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after selection to the post of Gramin Dak Sevak Mail Man, notified vide notification dated 10.10.2009 (Annexure A/3) issued by respondent no. 4 by which four posts have been notified and in selection casual workers like the applicants have been ignored for selection and further appointments inspite of fact that as per instructions issued from time to time provides preference to casual workers in the matter of appointment to the post of Gramin Dak Sevak. Beside this applicant is serving the respondent department since 1994 for more than 240 days in a year and since 02.07.2007 is continuously working and ignoring the instructions of department, respondent nos. 5 to 8 have been selected.

2. The applicant has prayed that respondents may be directed to select and to give him appointment on the post of Gramin Dak Sevak Mail Man notified vide notification dated 10.10.2009 (Annexure A/3) by giving preference to him as per D.G. Post letter No. 17-141/88-EDC & Training dated 06.06.1988 (Annexure A/4) and by quashing selection/appointment of respondent nos. 5 to 8 with the order dated 22.12.2009 (Annexure A/1), select list dated 11.12.2009 (Annexure A/2) with all consequential benefits.

3. The applicant has stated that respondent no.4 notified vacancies to the post of Gramin Dak Sevak Mail Man vide notification dated 10.10.2009 and in pursuance to that applicant also applied. It has been mentioned in the notification that working casual labourers would also be

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considered with other candidates and preference will be given as per instructions as contained in Circular No. 17-141/88-EDC & Training dated 06.06.1988 and 17.09.1990 (Annexure A/3). That the applicant was hopeful that he will be selected against the notified post being casual labourer by giving him preference, as he fulfill all the conditions to the post and also working in the department but respondent no. 4 ignoring the instructions on the subject for giving preference to casual labourers issued select~~ed~~ list dated 11.12.2009 by which respondent nos. 5 to 8 have been selected and these candidates were not in the employment of the respondent department and further these candidates allowed to work on the post vide order dated 22.12.2009 without completing formalities ignoring the claim of the applicant. That the applicant is serving the respondent department since 1994 and continuously with effect from 02.07.2007 and also became over age for other posts except Gramin Dak Sevak and is fully entitled for appointment to the post of Gramin Dak Sevak as per instructions of the respondent department. Therefore, the action of the respondents is arbitrary, illegal and unjustified and the same is liable to quashed and set aside.

4. The respondents have filed their reply. They have stated that the applicant was never given any appointment order for appointment in any capacity. In fact, the applicant was engaged verbally in DO/HRO Jaipur to carry out the work of Waterman on Part time contract basis for 1 to 4 hours in a day

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and for which he was paid wages on the basis of actual work done by him.

5. The applicant filed an OA No. 513/1996 before this Tribunal with the prayer to grant him temporary status and to regularize his services as Group 'D'. This Tribunal had decided the aforesaid OA vide order dated 04.10.2001 with the direction to consider the representation of the applicant. The representation of the applicant was considered and after due consideration, his representation was rejected vide Memo dated 19.12.2001 (Annexure A/10). That the applicant is not entitle for preference to appointment as GDS. It is further submitted that applicant was never appointed as part time casual labour. Thus he is not covered in the definition of casual labour. As per D.G. Post letter No. 17-141/88-EDC & Training dated 06.06.1988 (Annexure A/4), only casual labour who have been sponsored by the Employment Exchange for appointment are eligible for preference in appointment as ED Agent. The applicant was not sponsored by the Employment Exchange. Therefore, he is not entitled to the preference as per D.G. Post letter No. 17-141/88-EDC & Training dated 06.06.1988 (Annexure A/4).

6. That the respondents have issued an advertisement dated 10.10.2009 inviting applications from all the eligible candidates for recruitment on the post of Gramin Dak Sevak Mail Main. As per the method of recruitment provided under Section IV of Gramin Dak Sevak (Conduct and Employment)

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Rules, 2001, all the applications received in pursuance of the advertisement issued for recruitment on the post of Gramin Dak Sevak Mail Man was duly considered, merit list was prepared and on the basis of marks obtained in the requisite qualification of Matriculation as laid down in the Gramin Dak Sevak Recruitment Rules. In the selection, respondent nos. 5 to 8 were found suitable and meritorious in the merit list, therefore, they have been appointed on the post of Gramin Dak Sevak Mail Man vide order dated 11.12.2009 (Annexure A/2). The respondents have further stated that as per letter dated 06.06.1988, casual labour who are initially sponsored by Employment Exchange for appointment as casual labour are entitle for preference in appointment of GDS. However, it is clarified that now the said letter is not in force because of clarification issued vide letter dated 17.09.2003 vide which whole criteria for selection is merit. Therefore, the action of the respondents in selecting respondent nos. 5 to 8 is perfectly as per the procedure and the present OA has no merit and needs to be dismissed with costs.

7. Heard the learned counsel for the parties and perused the document on record. Learned counsel for the applicant argued the facts, which he has stated in his OA. He argued that since the applicant was a part time casual labourer with the respondents, he should have been given the benefit of D.G. Post letter No. 17-141/88-EDC & Training dated 06.06.1988 (Annexure A/4). He referred to Para No. 4 of the said letter, which read as under:-

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"4. The suggestion has been examined in detail and it has been decided that casual labourers, whether full-time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment of ED posts, provided that they fulfill all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange."

He also referred to the notification dated 10.10.2009 (Annexure A/3) for filling up the post of Gramin Dak Sevak Mail Man. He argued that even in this notification, <sup>it</sup> ~~he~~ <sup>Anil Kumar</sup> has been stated that preference will be given to the candidates according to the D.G. Post letter No. 17-141/88-EDC & Training dated 06.06.1988 and 17.09.1990. Then he referred to the instructions dated 17.05.1989 (Annexure A/5) which gives clarification regarding casual labourers/ part time casual labourers. He drew our attention to Para 3(iii) which is quoted below:-

"(iii) Casual/ (full time or part time labourers For purpose of computation of eligible service, half of the service rendered a part time casual labourer should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years, he will be treated, for purpose of recruitment to have completed one year of service as full time casual labourer)".

8. Learned counsel for the applicant also argued that vide instructions dated 28.04.1997 (Annexure A/6), the department has issued instructions for providing full time employment to part time casual labourers working in the Department of Posts. He argued that the respondents have

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not followed their own instructions of providing employment to part time casual labourers to the post Gramin Dak Sevak Mail Man. Therefore, the order dated 22.12.2009 (Annexure A/1) be quashed and the applicant may be given appointment to the post of Gramin Dak Sevak Mail Man.

9. On the contrary, learned counsel for the respondents argued that applicant is not eligible for being given any preference as his name was not sponsored by the Employment Exchange when he was initially given part time employment. He also referred to D.G. Post letter No. 17-141/88-EDC & Training dated 06.06.1988 (Annexure A/4). He submitted that even according to this letter, the nominations are required to be called for from Employment Exchange to fill up the vacancies of the Casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange and to support his arguments, he also referred to the order passed by this Tribunal in OA No. 428/2008 decided on 19.01.2011 [**Hansraj Bairwa vs. Union of India & Others**]. In this order, this Tribunal has held that since the applicant was not sponsored through the Employment Exchange, therefore, the applicant was not given preference to be considered for GDSMD Sapotara (Gangapur).

10. Learned counsel for the respondents further argued that on the contrary private respondents nos. 5 to 8 were meritorious and, therefore, they were given appointment. The

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respondents have followed the procedure for filling up these posts. Merit list was prepared of the eligible candidates on the basis of marks obtained in their requisite qualification of Matriculation as laid down in the GDS Recruitment Rules. The applicant is not covered under the definition of Casual Labourers. Therefore, he is not entitled for consideration in the category of Casual labourer. Therefore, the action of the respondents is according to the relevant rules and instructions and the present OA has no merit and it needs to be dismissed with costs.

11. Having heard the rival submission of the parties and after careful perusal of the documents on record, we are of the opinion that the applicant has failed to make out any case for our interference in the present OA. It is not disputed that even in the notification dated 10.10.2009 (Annexure A/3), there is a provision of preference to be given to the candidates as per the provisions of D.G. Post letter No. 17-141/88-EDC & Training dated 06.06.1988 and 17.09.1990. Perusal of order dated 06.06.1988 (Annexure A/4) makes it clear that nominations are to be called for from Employment Exchange to fill up the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange. It is not disputed that the name of the applicant was not sponsored by the Employment Exchange. In our opinion the preference can be given only those full time/ part time casual labourers whose name have been sponsored by the Employment

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Exchange. This Tribunal has already taken this view in OA No. 428/2008 decided on 19.01.2011 [Hansraj Bairwa vs. Union of India & Others] (supra). The ratio decided in this case is squarely applicable in the present OA. Therefore, the applicant was not entitled for any preference as his name was not sponsored by the Employment Exchange. According to respondents, the applicant was never appointed as casual labourers and thus he is not covered under the definition of Casual Labourer. Moreover the learned counsel for the respondents argued that the selection to the post of Gramin Dak Sevak Mail Man was made as per the recruitment rules on the subject and merit list was prepared of eligible candidates on the basis of marks obtained in the requisite qualification of Matriculation. We find no illegality/infirmity in the action of the official respondents in giving appointment to private respondent nos. 5 to 8. Therefore, we find no merit in the OA.

12. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K.S. Rathore*  
(Justice K.S.Rathore)  
Member (J)

*AHQ*