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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDERS OF THE BENCH

Date of Order: 23.11.2011

OA No. 125/2010

None present for the applicant.

Mr. Mukesh Agarwal, counsel for respondents.

At the request of learned counsel for the respondents, put up the matter on 20.12.2011 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

Kumawat

20/12/2011

OA No. 125/2010

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

Held.

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)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 20th day of December, 2011

ORIGINAL APPLICATION No. 125/2010

CORAM :

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

Hari Shankar Gurjar son of Shri Shri Susi Lal, aged about 52 years, resident of Amit Colony, Post Mahukalan, Sub Post Office and presently working as Gramin Dak Sevak/ Mail Deliver Mahukalan S.O. (Gangapur H.O.).

... Applicant

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

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Sawaimadhopur Postal Division, Sawaimadhopur.
4. Shri Mohan Lal Sharma, Gramin Dak Sevak, Mail Delivery Branch Post Office, Sop (Shahar), now Postman, Sawaimadhopur Postal Division, Sawaimadhopur.
5. Shri Laxmi Narayan Sharma, Gramin Dak Sevak, Mail Delivery Branch Post Office, Kaila Devi, Sub Post Office, now Postman, Sawaimadhopur Postal Division, Sawaimadhopur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed the present OA thereby praying for the following relief:-

"(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to give promotion to the applicant on the post of Postman from the date junior so allowed by quashing selection of respondent no. 4 & 5 with the letter dated 15.02.2010 (Annexure A/1) with all consequential

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benefits by placing name of the applicant in select list dated 19.01.2010 (Annexure A/2) against selected candidates.

- (ii) That instructions at Annexure A/3 be declared arbitrary to the extent of qualification and age fixed as on 01.07.2009 instead of 01.01.2009 as fixed for regular service.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

2. Brief facts of the case, as stated by the applicant in his application, are that the applicant has been informed by respondent no. 3 vide letter dated 15.02.2010 (Annexure A/1) that he crossed the age of 50 years and vacancy for OBC category was not available, so he has not been allowed the relaxation of 3 years in the age and further he cannot be promoted to the post of Postman against seniority quota and further against memo dated 19.01.2010 (Annexure A/2) issued by respondent no. 3 after approval of respondent no. 2 by which respondents nos. 4 & 5 have been selected to the cadre of Postman against the vacancies for the year 2006, 2007 and 2008 on seniority cum fitness basis under outsider quota ignoring the claim of the applicant who is senior to respondent no. 4 & 5 inspite of the fact that three years relaxation is available to the OBC candidates and applicant having date of birth 01.07.1957 and belongs to OBC category. The applicant has also stated that for vacancy for the year upto 2008 and upto 2007, he was within 50 years of age.

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3. The applicant submitted that he is having requisite qualification of 8th standard, which is prescribed qualification for the post. That the applicant is entitled for promotion to the cadre of Postman against seniority quota as per his seniority. The applicant has further stated that he is entitled for promotion against the vacancies of 2006, 2007 and 2008 and also not completed 50 years of age at the relevant time and further belongs to OBC category for which three years relaxation is available but due to inaction of the respondents in connection with not conducting the departmental promotion committee in the year 2005 onwards as per the prescribed time. The respondents have not conducted the departmental examination year to year and applicant due to inaction of the respondents completed 50 years of age on 09.12.2008. Besides this, respondents nos. 4 & 5 have been considered against the vacancies for the year 2006, 2007 and 2008 ignoring the claim of the applicant. Therefore, the present OA be allowed and the applicant may be given promotion by quashing the selection of respondents nos. 4 & 5.

4. The respondents have filed their reply. In their reply, the respondents have stated that consolidated vacancies for Postmen cadre in Sawaimadhopur Postal Division for the year 2006, 2007 and 2008 were approved vide CPMG Jaipur letter No. Rectt/2-10-2009 dated 19.10.2009 and the date of holding the examination for the same under departmental quota and Gramin Dak Sevak (hereinafter referred as GDS) quota (Outsider quota) was fixed on 29.11.2009.

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5. The respondents have further stated that a circular showing the vacancies of the Departmental quota as well as outsider (GDS) quota to be filled by examination (Merit quota) and on the basis of Seniority (Seniority quota) was issued by respondent no. 3 vide its Memo No. B2/35/2009 dated 21.10.2009. They have further submitted that as per condition mentioned in the aforesaid Memo dated 21.10.2009, for GDS employees minimum five years satisfactory service as on 01.01.2009 and maximum age limit as 50 years (55 years for SC/ST and 53 years for OBC) as on 01.07.2009 was fixed as eligibility in accordance with the rules i.e. Department of Posts (Postman Village Postman and Mail Guard) Recruitment Rules 1989 and Recruitment Amendment Rules 1994 published in Gazette Notification No. 8 dated 25.02.1995. Photocopy of these Rules has been annexed as Annexure R/1 and R/2. It is further stated that as per letter dated 13.03.1995 (Annexure R/3), which has been issued regarding recruitment rules of Postman- Village Postman cadre, for GDS the upper age limit is 50 years with five years relaxation for ST/SC candidates as on 1st July of the year in which examination is held and further a minimum of 5 years satisfactory service as on 1st January of the year in which examination is held, is the requisite eligibility for promotion/selection in the Postman- Village Postman cadre.

6. That the applicant had applied to appear in the examination for recruitment/promotion in Postman cadre

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and he was also possessing the qualification of 8th pass but his date of birth is 01.07.1957, therefore, he crossed the prescribed maximum age limit of 50 years as on 01.07.2009 i.e. 1st July of the year in which examination was held and became~~s~~ overage. The respondents have also stated that the vacancies of OBC category were not available under merit quota as well as seniority quota of outsider (GDS) quota for promotion/selection in Postman cadre, therefore, the applicant was considered being general candidate and was not entitled for 3 years age relaxation being OBC candidate. Thus, he was not permitted to appear in the examination held on 13.12.2009, for selection/promotion in Postman cadre. The respondents also submitted that there were two vacancies of Postmen in seniority quota for GDS and for that screening committed meeting was held on 19.01.2010 and accordingly screening committed after considering the eligibility of the candidates, selected Shri Mohan Lal Sharma and Laxmi Narayan Shrma as OC candidates (respondents nos. 4 & 5 respectively) on the basis of seniority cum fitness in the seniority quota of outsider (GDS) quota. The respondents also submitted that their action regarding promotion in the postman cadre is perfectly legal and in consonance with the relevant rules/instructions and provisions of Articles 14, 16 and 21 of the Constitution of India. They have further stated that since the vacancies for OBC category were not available in Postman cadre, the applicant was considered as General candidate and, therefore, he was not eligible for 3 years relaxation in age being OBC candidate. Thus the applicant

Anil Sharma

was treated as overage and not considered for promotion for the post of Postman cadre. Therefore, this OA has no merit and it needs to be dismissed with costs.

7. Heard learned counsel for the parties and perused the relevant documents on record. Learned counsel for the applicant argued that this selection was based on seniority cum fitness basis. Since the applicant is senior to respondents nos. 4 & 5, and, therefore, he should have been considered and promoted to the post of Postman. That the applicant is an OBC candidate and, therefore, relaxation of age of 3 years is applicable to him even against the general category vacancies and to support of his arguments he referred to the order of CAT Madras Bench in the case of

A. Ganesan vs. Union of India & Others, 2006 (3) ATJ 420, in which Hon'ble Tribunal in Para No. 23 held that:-

“23. Applying the ratio and view of the decisions referred earlier, the applicant cannot be denied the age relaxation available to OBC candidates and consideration on the plea that the vacancy is meant for open category.”

8. Learned counsel for the applicant further argued that applicant is Class 8th Pass and, therefore, he possesses the requisite qualification. He also argued that had the respondents conduct the examination yearwise for the years 2006, 2007 and 2008, the applicant would not have been overage and because of inaction on the part of the respondents, the applicant crossed the age of 50 years on 01.07.2009. Therefore, the action of the respondents is not

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promoting the applicant is arbitrary, illegal and against the rules. Therefore, the OA may be allowed with all consequential benefits.

9. On the contrary, learned counsel for the respondents argued that the applicant crossed the prescribed maximum age limit of 50 years as on 01.07.2009 i.e. 1st July of the year in which the examination was held and, therefore, he *Anil Kumar* became over ^{age} and on that ground he was not considered for promotion. There was no OBC vacancy and, therefore, the applicant was considered being a General category candidate. The OBC candidates are not entitled for 3 years age relaxation against the general quota vacancies. Had there be an OBC vacancy, only then the applicant was entitled for 3 years relaxation. Since the applicant was overage, he was not permitted to appear in the examination held on 13.12.2009 for selection/promotion for the postman cadre. He further argued that screening committee selected S/Shri Mohan Lal Sharma and Laxmi Narayan Sharma (respondents nos. 4 & 5 respectively) as OC candidates on the basis of seniority cum fitness basis in the seniority quota of outsider (GDS) quota. Learned counsel for the respondents also referred to Ministry of Communication (Department of Posts), New Delhi GSR 86 dated 30.01.1995, which is quoted below:-

"G.S.R. 86 - In exercise of the powers conferred by the proviso to article 309 of the Constitution the President hereby makes the following rules to amend the Department of Post (Postman Village Postman and Mail Guard) Rules 1989 whereby

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1. (1) These Rules may be called the Department of Post (Postman - Village Postman and Mail Guards) Recruitment Amendment Rules, 1994.

(2) They shall come into force on the date of their publication in the official Gazette.

2. (a) In the Schedule to the Department of Post (Postman, Village Postman and Mail Guards) Recruitment Rules, 1989, against the posts of postman, Village Postman and Mail Guards, in column 7, for item (ii), the following item shall be substituted, namely:-

(ii) For extra Departmental Agents, the upper age limit shall be 50 years with 5 years relaxation for the Scheduled Castes/ Scheduled 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."

(b) against the post of Postman/Village Postman in Column II, for the item 2(i) the following shall be substituted, namely:-

2(i) 25% of the vacancies of Postman shall be filled up from amongst Extra Departmental Agents with a minimum of 15 years of service on the basis of their seniority, failing which by the Extra Departmental Agents on the basis of departmental examination."

10. Learned counsel for the respondents also argued that the ratio laid down by the CAT Madras Bench in the case of

A. Ganesan vs. Union of India & Others (supra) is not applicable in this case. He further argued that there were 3 more persons who were senior to the applicant and they were not considered on the ground of overage and on this ground; the applicant is not entitled for promotion to the post of Postman cadre as only 2 vacancies were available for promotion under seniority quota. Therefore, he argued that

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the action of the respondents is in consonance with the relevant rules and cannot be said to be illegal in any manner and further the applicant does not come in the zone of consideration and, therefore, the OA has no merit and should be dismissed with costs.

10. Having heard the rival submissions of the parties and after perusal of the relevant documents on file, we are of the opinion that there is no justifiable ground of our interference in this case. The GSR 86, which has been quoted above, clearly mentions that for extra departmental agents, the upper age limit shall be 50 years as on 1st July of the year in which examination is held and that the applicant should have completed a minimum of 5 years satisfactory service as on 1st January of the year in which examination is held. It is not disputed in this case that the applicant had crossed the age of 50 years as on 1st July, 2009 in which the examination was held. Learned counsel for the applicant has not been able to show any rule or instruction of the Government on the issue that OBC candidates should be given relaxation of 3 years even ^{when} they apply against the post for general category. The ratio laid down by the CAT Madras Bench in the case of **A. Ganesan vs. Union of India & Others** (supra) is not applicable in the present case as the facts & circumstances of that case are different from the facts & circumstances of the present case. The selections were made against two vacancies for general category (OC) candidates. The upper age limit for OC categories was 50 year as on 1st July 2009 and since the applicant had crossed

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the age of 50 years as on 01.07.2009, he was not rightly considered by the respondents for promotion/selection to the post of Postman and there is no illegality/ arbitrariness on the part of the respondent in not considering the applicant for selection/promotion to the post of Postman. Accordingly, we do not find any infirmity in the action taken by the respondents.

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

Anil Kumar
(Anil Kumar)
Member (A)

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

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