

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00143/2014 Date of order:- 07.9.2016.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Raj Karan s/o Sh. Kalu Singh, working as GDS, SO Dharan, Distt. Rewari, Haryana, presently r/o Village & Post Office Dharan, Distt. Rewari.

.....Applicant.

(By Advocate :- Mr. Rohit Seth)

1. Union of India through Secretary, Ministry of Information & Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.

2. Director General, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.

3. The Chief Post Master General (Staff), Haryana Circle, Ambala Cantt. Haryana.

4. Director Postal Services, Gurgaon Division, Gurgaon.

5. Senior Superintendent of Post Offices, Gurgaon Division, Gurgaon.

...Respondents

(By Advocate: Ms. Nidhi Garg).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Raj Karan has filed the present Original Application, praying for the following relief:-

" i) Direct the respondents to consider the claim of the applicant for appointment to the post of Outsider Liftman in view of the fact that applicant was made to work as such on higher salary w.e.f. 31.7.2008 vide order of DPS dated

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31.7.2008(Annexure A-7) when he was reverted back two steps below on 1.6.2011 without any notice and opportunity of hearing in lower pay by telling him that the post of Outsider Liftman at Head Post Office, Gurgaon, shall now be filled on permanent basis by considering him for appointment and he was told to wait time and again including by a letter of DPS, Gurgaon, vide letter dated 1.10.2009(Annexure A-8) and he choose to wait since the post was kept vacant, requirement remains there till date and name of applicant was already registered with the Employment Exchange for post of Electrical Assistant cum Lift Operator and against the action of respondents in not retaining the applicant as Group 'D' on which post he took charge on 7.4.2008 (Annexure A-6) before his placement as Outsider Liftman on 31.7.2008 vide order of DPS, Gurgaon, dated 31.7.2008 at Head Post Office, Gurgaon, on a higher salary of Rs.10,000 in the scale of that post on which post he continued to work till 1.6.2011 with notional break of one day or little more or and for issuance of direction to the respondents to consider the claim of the applicant for appointment against the vacant post of Postman/Group 'D' now MTS in terms of the Recruitment Rules (Annexure A-9) then prevalent against 50% outsider quota of ED Agents within a fixed time frame as due to reduction of pay of applicant the family is suffering from financial crunch or direct the respondents to retain the applicant as Group 'D' on which post he took charge on 7.4.2008 and or protect his pay drawn as Outsider Liftman in the light of law laid by Hon'ble Apex Court in the case of Badri Prasad and others versus Union of India, 2005(3) SCT 454 SC and in L.Parmeswaran v/s CPO and Ors., Civil Appeal No.1325 of 2008b arising out of SLP No.18227 of 2005 decided on 156.2.2008 in case he is to be put back to work only as GDS i.e. two steps below with all consequential benefits, arrears, interest @ 12% on the arrears etc. as the applicant has a wife who is undergoing treatment for Cancer apart from three school going (two girls and one son) children studying in Class Xth, Xth and VIIIth and as the action of respondents is illegal, arbitrary, unreasonable, harsh, violative of Articles 14 & 16 of the Constitution of India and as such is liable to be quashed and set aside".

2. Facts as presented by the applicant are that after passing Electrician-cum-Wireman course, he joined the respondent department as GDS through Employment Exchange on 1.1.1989. The applicant has stated that the respondents had issued a circular dated 16.11.1995 for filling the post of Liftman from amongst Group 'D' of test category on temporary and ad hoc basis. Later on, the respondents vide letter dated 11/12.1.2000 asked the applicant

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whether he has any valid certificate regarding operation of lift. After protracted correspondence, the applicant took the charge of the post of Group 'D' at Head Post office, Gurgaon, on 7.4.2008 and he relinquished the charge of Group D post on 31.7.2008 and was given the charge of outsider Liftman on the same day i.e. 31.7.2008. The applicant has stated that he continued to work on the said post till 1.6.2011 with notional breaks. Now the applicant has again put back to work as GDS on reduced pay of Rs.9000/-. The applicant made a number of representations to appoint him as Liftman, but without any fruitful result. Hence the present OA.

3. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the present OA is barred by the law of limitation as the cause of action, if any, had arisen in the year 2011, but the present OA has been filed in 2014. They have stated that the present OA is not maintainable as the applicant has not exhausted the departmental remedies available to him. The respondents have relied upon a judgment passed by the Hon'ble Apex Court in the case of **State of Karnataka & Ors. Versus Uma Devi & Ors.** (Civil Appeal No.3595-3612 of 1999 decided on 10.4.2006). As per Recruitment Rules, the post of Liftman is to be filled by transfer failing which by direct recruitment. In Column No.11 of the Recruitment Rules, it has been notified under the head transfer that from amongst to the regularly appointed qualified Class-IV (test category employee) of the Circle/District concerned subject to observance of any law relating to production of a valid certificate of registration for operation of lifts wherein force.

4. On merits, the respondents have stated that the applicant was appointed as GDS MD Dharan in Gurgaon division from 1.2.1989. The applicant was not appointed as Liftman on regular basis, rather, he was engaged as Outsider Liftman against the vacant post of Liftman at his request from 1.8.2008 to 31.12.2008, 1.3.2009 to 30.6.2009, 1.6.2010 to 31.12.2010 & 1.1.2011 to 31.5.2011 as stop gap arrangement. They have thus prayed for dismissal of the OA.

5. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. The applicant in support of his case has taken the ground that he is entitled for Group 'D' post as per Recruitment Rules. He has already put in more than five years of service on the post of Liftman apart from 18 years as GDS. He has further contended that the applicant has been put back to work as GDS on reduced pay of Rs.9000/- per month without any notice or an opportunity of hearing which is violation of principles of natural justice. He has further stated that the vacancies are available, but his case has not been considered.

8. We note from the record that the applicant is basing his claim essentially on two counts. One that he has been designated as Group 'D' employee and (b) that he was given the charge of Liftman between 31.7.2008 to 1.6.2011. As regards the first fact, there is nothing on record to suggest that there was any formal order to the

effect that he has been designated as Group 'D' employee. The only evidence produced by the applicant is Annexure A-16 which is a copy of charge report which indicates that he has assumed the charge of the office of Group 'D' post. This has not been signed by the relieving officer and has not been countersigned by any senior functionary of the department. Therefore, to claim that he was designated as Group 'D' in the department on a permanent basis may not be correct and seems contrary to facts on records. His claim that he was given the charge of outsider Liftman for the aforementioned period, may be true but not this contention that holding this charge entitles him to get a permanent and regular promotion to this position. There are clear rules with regard to filling the post of Liftman. The applicant was not able to show the relevant rules that provides for promotion to the post from the cadre of GDS and how he is the only eligible GDS to be promoted to this post. The respondents on the other hand have also clarified that this post has not been filled by any other person.

9. During the course of arguments, learned counsel for the applicant has produced before us a copy of the judgment passed by the Hon'ble Apex Court in the case of **Badri Prasad & Ors.** Versus **Union of India & Ors.** (2005(3) S.C.T. Page 454) in support of his arguments and grounds for relief. It is the contention of the applicant that the instant case is also similar to the case mentioned above and in this case, the Apex Court had protected the last pay drawn by the petitioners in Group 'C' when they were repatriated to Group 'D' post. We have gone through this judgment carefully and we find that the facts and circumstances of the aforementioned case are quite different. First of all, the petitioners in the above case had worked in Group 'C' post for more than ten years in ad hoc capacity through a

formal order, while the applicant in the present case has worked only for five years in an indeterminate capacity. Secondly, in the cited ruling, the claim was for regularization. Here, it is not the case of regularization, but of promotion. The Apex Court had allowed the additional relief of protecting their last pay drawn in Group 'C' after their repatriation to Group 'D' post in their parent department. So it was a case of more than one department involved in the process. Thus, it is clear from the above that the judgment cited by the applicant cannot be taken as legitimately supporting the case of the applicant.

10. Given these facts, the claim of the applicant that he be promoted to the post of Liftman which is a group 'D' post is devoid of merit, legal or otherwise. We do not find any force in the claim of the applicant and accordingly dismiss the OA. No costs.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- September 07, 2016.
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