

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00630/2014****Date of order : 10.01.2017****CORAM: HON'BLE MR.JUSTICE M.S. SULLAR, MEMBER(J)
HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)**

Kulwinder Kumar son of Shri Kishan Chand, Gramin Dak Sewak Mail Deliverer (in short GDSMD), Pikhariwal Branch Post Office in a/c with Sohal Sub Office, Gurdaspur Division, Tehsil & District Gurdaspur, Punjab.

BY ADVOCATE: **Sh. Sanjeev Pandit**

.....Applicant

VERSUS

1. Union of India through its Secretary-cum-Director General (Posts), Ministry of Communications and / Information Technology, Department of Posts, Dak Bhawan, New Delhi – 110 116.
2. The Chief Postmaster General, Department of Posts, Punjab Circle, Sandesh Bhawan, Chandigarh – 160 017.
3. The Senior Superintendent of Post Offices, Department of Posts, Gurdaspur Division – 143521.
4. Shri Ranjit Singh, GDS Bhole Ke in a/c with Kala Afgana SO now stands promoted as Postman c/o Superintendent of Post Office, Department of Posts, Gurdaspur Division – 143521 (proceeded against ex-parte vide order dated 13.05.2015)
5. Sh. Dalip Singh, GDS MD, Post Office Harpur Dhandoi, Tehsil & District Gurdaspur (Punjab)

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.....Respondents

BY ADVOCATE: Ms. Nidhi Garg for respdts. No. 1-3.
 Respdt. No. 4 ex-parte
 None for respdt. No. 5.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. The present OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief(s):-

- (i) Quashing of order dated 01-08-2013 (Annexure A-6) passed by the respondent No. 3.
- (ii) Promotion of the applicant to the post of MTS cadre w.e.f. the date of promotion of his junior with all consequential benefits of the said post of MTS cadre since it falls vacant i.e. 01.01.2009.

2. It is stated in the OA that the applicant is serving in the respondent department as GDSMD since 17.10.1979. The respondent department invited applications from eligible candidates for promotion to the post of MTS for the vacancies of 01.01.2009 for which the DPC was held in 2011. The applicant, being eligible, applied for promotion as MTS. He kept waiting for the decision of the respondents on his application for promotion till 2013, but he was not promoted as MTS. Rather, his colleague, one Sh. Ranjit Singh, who was junior to the applicant as he was appointed in the Department on 29.02.1980, was promoted as Postman w.e.f. 05.09.2011 against vacancy of 2009. The seniority position of the applicant was at Sr. No. 41 whereas Sh. Ranjit Singh was at Sr. No. 49A.

3. It is further stated that respondent department finally declared applicant overage for the promotion to the post of MTS on the ground that vacancy arose in 2010 whereas applicant was fully eligible for the vacancies arising in the year 2009, as he was 49 years

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2 months and 15 days old till 01.01.2009. The vacancy of MTS of year 2009 was stated to be filled in the year 2013 through direct examination and the promotional post of MTS for 2010 for which DPC was held in the year 2011. Annexure A-11 shows that DPC was held on 17.08.2011 for the vacancies for 2009 for MTS cadre which creates doubt in the whole selection process and that respondent department has promoted persons who are junior in the seniority list to their respective seniors. Hence this O.A.

4. In the written statement filed on behalf of the respondents, it has been stated that the applicant is mixing the modes of recruitment i.e. by "Direct Recruitment from amongst the GDS on the basis of selection-cum-seniority" and "Direct Recruitment on the basis of competitive examination restricted to GDSs". The applicant has therefore, sought relief to quash order dated 01.08.2013 (Annexure A-6) and directions to promote him to the post of MTS cadre the date when his junior was promoted with all consequential benefits. The Department of Posts Multi Tasking Staff Recruitment Rules, 2010 notified vide notification No. G.S.R. (84-(e) dated 12.12.2010 prescribes rules regulating the method of recruitment to the posts of MTS in the Department of Posts (Annexure R-1). Column 11 prescribes the mode of recruitment for filling vacancies of MTS as follows:

- (i) 50% by direct recruitment from amongst Gramin Dak Sewaks* of recruiting Division or Unit, on the basis of Selection-cum-seniority;

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*Gramin Dak Sewaks are holders of civil posts but they are outside the regular civil service due to which their appointment will be by direct recruitment.

- (ii) (a) 25% by direct recruitment on the basis of Competitive Examinatin restricted to the Gramin Dak Sewaks of the Division or Unit, failing which by;
- (b) direct recruitment from amongst Gramin Dak Sewaks of the recruiting Division or Unit on the basis of selection-cum seniority.

(iii)

5. It is further stated that the process for filling up one vacancy earmarked for 2009 and two vacancies for the year 2010 under category "(i) 50% by direct recruitment from amongst Gramin Dak Sewaks of recruiting Division or Unit on the basis of selection-cum-seniority", was initiated as per the directions and allotment of vacancies by Postmaster General, Punjab Region vide letter No. Rectt/1-7/2012 dated 23.10.2012. The applicant, who is working as GDSMD Pikhariwal in account with Sohal Sub Post Office under Gurdaspur Head Post Office w.e.f. 11.10.1979 also submitted his willingness to work as MTS. For selection against one vacancy for the year 2009 (OC-1), seniority list of Gramin Dak Sewaks of the division corrected upto 01.07.2009 (Annexure R-2) was considered and cases of five senior-most eligible GDSs willing for selection as MTS were examined. The applicant stood at Sr. No. 42 in the seniority list. Altogether, there were five GDSs in the consideration zone and in that list the applicant secured 4th

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position. Sh. Dalip Singh, GDSMD, Harpur Dandoi (24th in the seniority list), being the senior-most was approved for selection as MTS against the vacancy for the year 2009. Since there were vacancy constraints, the applicant could not qualify for the selection. Otherwise also, there was one more candidate senior to the applicant. It was apparent that the case of the applicant was considered under "(i) 50% by direct recruitment from amongst Gramin Dak Sewaks of recruiting Division or Unit, on the basis of Selection-cum-seniority", being eligible in terms of age as on 01.01.2009. The prescribed age limit i.e. 50 years as on 01.01.2009 was meticulously observed. Copy of minutes of the selection committee for the year 2009 is annexed (Annexure R-3).

6. For filling two vacancies for the year 2010 (OC-1, SC-1), it is stated that the seniority list of Gramin Dak Sewaks of the Division corrected upto 01.07.2009 was considered and cases of ten senior-most eligible GDSs willing for selection as MTS were examined. The applicant belongs to General Category and had crossed 50 years of age on 17.10.2009. Therefore, he became overage as on 01.01.2010 and became ineligible. Sh. Pritam Dass GDSMC Sarti (12th in the seniority list, availed age relaxation being SC candidate) and Sh. Ranjeet Singh GDSMD Bholeke, respondent No. 4 (50th in the seniority

list) were approved for selection as MTS against the vacancies for the year 2010. Since the applicant (OC candidate) could not qualify the age criteria as on 01.01.2010 as he had crossed 50 years of age, thus, he was not eligible for consideration against the vacancy year 2010. Copy of the minutes of selection committee for the year 2010 is annexed as Annexure R-4).

7. It is further stated that vide letter No. Rectt/1-7/2009-10 dated 06.11.2012 (Annexure R-5), one vacancy for Gurdaspur earmarked for the year 2009 to be filled under the category "(ii)(a) 25% vacancies to be filled on the basis of competitive examination restricted to Gramin Dak Sewaks of the Division or Unit, failing which by: (b) Direct Recruitment from amongst GDSs of the recruiting division or unit on the basis of selection-cum-seniority" was notified. Accordingly exam was conducted on 27.01.2013 for the vacancies pertaining to 2009. As far as age limit is concerned, it was prescribed that the age limit for appointment of Gramin Dak Sevak is 50 years as on the 1st day of January, 2009, relaxable for those belonging to SC/ST upto 5 years and for those belonging to OBC upto three years in accordance with the instructions issued by the Government of India. The applicant appeared in the said examination under Roll No. GDP-27 but could not secure merit.

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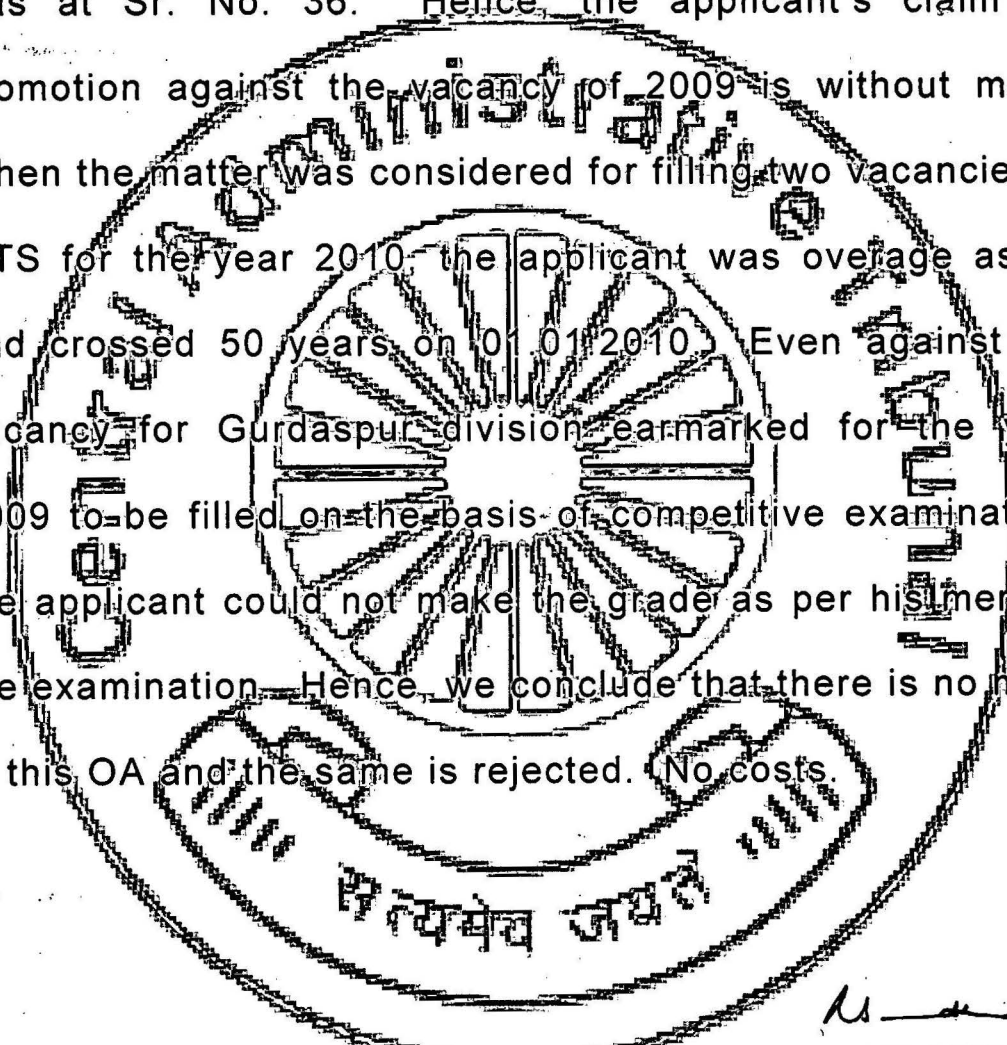
8. Through MA No. 060/00615/2015, amended memo of parties was filed, but the newly added respondent No. 5 Sh. Dalip Singh was not represented.

9. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant narrated the background of the matter. He also referred to the minutes of the DPC meeting held on 17.08.2011 (Annexure R-3) and stated that although the vacancy was earmarked for OC, one Sh. Dalip Singh who belonged to OBC category, was actually promoted as Group 'D' MTS. He stated that the promotion of Sh. Dalip Singh was in violation of the Rules since as per the roster point, this vacancy had to go to a person of OC category. Had Sh. Dalip Singh not been promoted, the applicant would have got the chance for promotion as MTS.

10. Learned counsel for the respondents reiterated the content of the written statement.

11. We have given our careful consideration to the matter. It is quite clear from the material on record that the applicant was not eligible for promotion as MTS against the vacancy of 2009 as he was at Sr.No. 42 in the seniority list while the person actually promoted, i.e. Sh. Dalip Singh, was at Sr. No. 24 in the seniority list. The assertion of the learned counsel for the applicant that the vacancy of 2009 could not go to Sh. Dalip Singh who belonged to the OBC

category although the roster point was for OC, cannot be accepted since Sh. Dalip Singh was promoted on the basis of his seniority and to fill an OC vacancy, the category of an employee is of no relevance when seniority is the only consideration. Moreover, the applicant was at Sr. No. 42, but another GDSMD, one Sh. Sunder Singh who was OC, was at Sr. No. 36. Hence, the applicant's claim for promotion against the vacancy of 2009 is without merit. When the matter was considered for filling two vacancies of MTS for the year 2010, the applicant was overage as he had crossed 50 years on 01.01.2010. Even against the vacancy for Gurdaspur division earmarked for the year 2009 to be filled on the basis of competitive examination, the applicant could not make the grade as per his merit in the examination. Hence, we conclude that there is no merit in this OA and the same is rejected. No costs.



(Signature)
 (RAJWANT SANDHU)
 MEMBER(A)

(Signature)
 (JUSTICE M.S. SULLAR)
 MEMBER(J)

Dated: 10.01.2017
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