

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00882/2016

DATED THIS THE 28th DAY OF JUNE, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sanaulla H.M.
S/o. Mohamad Hasam
Aged about 53 years
Working as GDS MD/MC
Kunniganahalli B.O.
A/w Ballupete-573214.
Resident of J.P.Nagara
Ballupete-573214.
Hassan District.

.....Applicant

(By Advocate Shri B.S.Venkatesh Kumar)

Vs.

1. The Union of India represented
By its Secretary
Department of Posts
Ministry of Communication and Information Technology
Dak Bhavan, Parliament Street
New Delhi - 110 001.
2. The Chief Post Master General
Karnataka Circle, Palace Road
Bangalore-560001.
3. The Postmaster General
South Karnataka Region
G.P.O. Building
Bangalore- 560001.
4. The Superintendent of Post Offices
Hassan Division
Hassan-573201.
5. Sri Siddalinge Gowda
GDS MD
Lalanakere
Hassan District.Respondents

(By Advocates Shri M.Raja Kumar for R1-4 & Shri B.Venkateshan for R5)
O R D E R (ORAL)

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN)

The applicant has filed the present OA seeking the following relief:

“Call for records of the case from the respondents and on perusal quash and set aside Memo No.B2-2/60/2016 dated 21/09/2016 (Annexure-A5) issued by the 4th respondent, as it is violative of Multi-Tasking Staff Recruitment Rules 2010 and arbitrary, unreasonable, discriminatory and void for the reasons stated in the application.”

2. The applicant submits that he is working as GDS MC/MD since 1983. He passed SSLC examination in 1987 and also belongs to “Other Backward Classes”(OBC) (Annexure-A2). The 4th respondent issued notification on 21.6.2016 inviting applications from GDS officials to fill up one post of MTS in Hassan Division on seniority-cum-merit basis and fixed the last date for submission of application as 4.7.2016(Annexure-A3). The applicant applied to the said post with all relevant documents. In the gradation list published on 1.7.2012(Annexure-A4), the 5th respondent is at Sl.No.158 while the name of the applicant is at Sl.No.183. Against the 5th respondent, it is shown as ‘OC’(Other Community) and his educational qualification is 9th standard whereas the applicant belongs to OBC and has the qualification of SSLC. The 5th respondent who is less meritorious than the applicant and does not come under OBC as could be seen from the gradation list, was selected for that post ignoring the merit of the applicant. Aggrieved by the said action of the respondents, he has approached this Tribunal in the present OA.
3. Applicant further submitted that if the intention of selecting the candidates for the post of MTS was based only on seniority, then the very purpose of recruitment rules to select the MTS from GDS officials under direct recruitment will be defeated and will become meaningless. The applicant has referred to several judgments of the Hon'ble Supreme Court which had held that in case of seniority cum merit, the promotion cannot be made on the basis of seniority alone and merit plays a key role. Efficiency of the administration cannot be compromised at

any cost. Therefore, he submits that the respondents ought to have considered the educational qualification of the applicant vis-a-vis the 5th respondent and should have considered the applicant as more fit than the 5th respondent. Therefore, he prayed for granting the relief as sought for.

4. The respondents No1 to 4 have filed a reply statement in which they informed that applications were called for filling up of vacancies in the cadre of MTS under the quota of 25% by direct recruitment from amongst Gramin Dak Sevak on the basis of selection-cum-seniority vide letter dated 21.6.2016(Annexure-R1). They have also enclosed the guidelines issued by the respondent No.2 vide letter dated 30.5.2016(Annexure-R2) in this regard. They stated that a three member Departmental Promotion Committee was constituted for selection in the cadre of MTS and the said committee after perusal of all the records had recommended the GDS in the ratio of 1:5 for appointment as MTS under seniority-cum-fitness quota subject to verification of genuineness of OBC certificate and other documents(Minutes at Annexure-R3). The first candidate in the list Sri Manjunatha forwarded his unwillingness letter to Respondent No.4 after which the second selected candidate i.e. respondent No.5 was informed to produce the original documents for verification. As per the MTS recruitment rules 2015 notified on 14.5.2015(Annexure-R5) the educational qualification for direct recruits is matriculation or ITI for recruitment from open market. In case the Gramin Dak Sevaks selected for appointment is non-matriculate, he shall be given training before he is appointed. The respondent No.5 who was the second senior most candidate and submitted OBC certificate (Annexure-R6) was selected to the post of MTS. Hence they submit that there is no irregularity in the entire selection process and respondent No.5 to the post of MTS.
5. The respondent No.5 has also filed a reply statement in which he submitted that he was appointed as GDS MD in June 1982 and belongs to Vakkaliga

Community which is recognised as a Backward Class both by the State and Central Governments. He was selected to the post of MTS in accordance with the provisions of MTS recruitment rules and he underwent the prescribed training. The recruitment rules prescribe no bar for selection as MTS by GDS employee who is below SSLC and if non SSLC candidate is selected, he has to be given prescribed training before appointment. Hence he was given necessary training before appointment. Since the respondent No.5 is much senior and fulfilled all the conditions for selection to the post of MTS, he was selected by the selection committee. Therefore, there is no irregularity in the appointment of respondent No.5 to the post of MTS.

6. The applicant has filed rejoinder to both the reply statements in which he submits that the respondent No.5 has produced a certificate which was issued on 15.7.2016 whereas the notification for recruitment to MTS was issued on 21.6.2016. The selection was based on seniority-cum-merit and not seniority alone and as such when a person with matriculation is available, the selection should be on the basis of marks obtained in matriculation. Only if no candidate is available then the person with less qualification can be selected. He further submits that though the selection is based on seniority-cum-merit and not seniority alone, the method of selection was changed in between which is irregular. He again referred to the Supreme Court judgment saying that the seniority should have been given weightage while selecting the candidate.
7. The respondents have filed additional reply in which they have reiterated that the MTS recruitment rules clearly stipulated that 25% by recruitment from amongst GDS of the recruiting division or unit on the basis of selection-cum-seniority. There is no mention of the merit in the notification and the contention of the applicant that the process is changed in between is also not correct. The process of selection is on the basis of selection-cum-seniority as per MTS recruitment rules 2015 and hence there is no infirmity in the entire process. The respondent

No.5 who was appointed as MTS fulfils the conditions stipulated for such selection. Therefore, the contention of the applicant does not merit any consideration.

8. Heard the Learned Counsel for all the parties. The Learned Counsel for the applicant referring to the submission made in the OA submits that the original notification inviting applications to fill up the post of MTS is in Kannada and it could be seen that the selection is based on seniority-cum-merit. More over in the gradation list, respondent No.5 is mentioned as 'OC' and he is less qualified to that of applicant. Hence the applicant should have been selected in preference over the respondent No.5 as he is more qualified and therefore, the action of the respondents is completely irregular and it should be set aside.
9. The Learned Counsel for the official respondents, on the other hand, submits that the recruitment rules clearly mentioned that the selection shall be on the basis of selection-cum-seniority. The notification also does not mention the seniority cum merit and the interpretation of the applicant is incorrect. The MTS rules also provide that if the selected person is non-matriculate, he should be given training which was done in this case. He further mentioned that the 'OC' has been mentioned in the cases of both the applicant as well as respondent No.5 in the seniority list. However, both have produced OBC certificates. Hence, there is no irregularity in the selection of respondent No.5 to the post of MTS.
10. The Learned Counsel appearing for respondent No.5 also reiterated the contention made in the reply statement and submits that he has been selected by following due procedure by the selection committee strictly in accordance with the MTS recruitment rules. Hence there is no irregularity in the process of selection of respondent No.5 as contended by the applicant.
11. We have carefully considered the facts of the case and submissions made by all

the parties. The MTS recruitment rules 2015 which has been notified on 14.5.2015 stipulate the method of recruitment for MTS. The column No.10 of the recruitment rules provides for 50% by direct recruitment from amongst GDS as follows:

- i) 25% by direct recruitment from amongst Gramin Dak Sevaks of the recruiting Division or Unit, on the basis of Selection-cum-seniority.

Failing which by: direct recruitment from amongst Gramin Dak Sevaks of the neighbouring Divisions or Units on the basis of Selection-cum-seniority.

(Gramin Dak Sevaks 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 Examination restricted to the Gramin Dak Sevaks of the Division or Unit failing which by;
- (b) direct recruitment from amongst Gramin Dak Sevaks of the recruiting Division or Unit, on the basis of Selection-cum-seniority.

In this case it is a direct recruitment from amongst GDS of the recruiting division or unit on the basis of selection-cum-seniority. Therefore, interpretation of the applicant that it should be seniority-cum-merit is neither correct nor justified. The MTS recruitment rules also provide that the educational qualification is matriculation or ITI from recognised Boards for recruitment from open market. It is not applicable in the case of GDS. If the GDS selected for appointment by direct recruitment is non-matriculate, he shall be given training before he is appointed. Therefore, as far as the MTS recruitment rule is concerned which is by way of selection-cum- seniority, there is no bar in selection of the respondent No.5 to the post. A reference has been made by the applicant to the GDS gradation list as on 1.7.2012. We note that in the said seniority list the respondent No.5 is at Sl.No.158 while the applicant is at Sl.No.183. Against both of them, the category is mentioned as 'OC'. So there is no distinction between the applicant and the respondent No.5 as far as the category mentioned in the gradation list is concerned. However, both belong to OBC category as per the certificates produced by them. We do not feel that the submission of the OBC certificate by the respondent No.5 on 15.7.2016 is very material in this regard.

The fact remains that he belongs to OBC and can be considered against the said vacancy.

12. The various orders passed by the Hon'ble Apex Court referred to by the applicant in the OA pertain to relevance of merit in the process of seniority-cum-merit. The said judgments will have no applicability in the present case where the person has been selected on the basis of selection-cum-seniority. Therefore, on detailed consideration of the facts of circumstances of the case, we do not find any irregularity in the selection process undertaken by the respondents and on the selection of respondent No.5 to the post of MTS under OBC category for which the applications were invited.

13. Therefore, we hold that the contention of the applicant does not merit any consideration and accordingly, the OA is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

