

**Central Administrative Tribunal
Madras Bench**

OA/310/01079/2013

Dated 16th November Two Thousand Eighteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

N.Rajendran
S/oNatesan,
No.1215, South Mada Road,
Devikapuram, Arni Taluk,
Tiruvannamalai District,
Pin 606 902. .. Applicant
By Advocate **M/s.R.Malaichamy**

Vs.

1. Union of India, rep by the
Postmaster General,
Chennai City Region,
Anna Salai, Chennai 600 002.
2. Superintendent of Post Offices,
Tirvannamalai Division,
Tiruvannamalai 606 601.
3. T.Venkatachalam,
MTS, Polur SO. .. Respondents
By Adovacte **Ms.Shakila Anand**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant has filed this OA seeking the following relief:-

“i) To call for the records of the 2nd respondent pertaining to his order which is made in (1) Memo No.B4/2-26 dated 20.5.2013 and (2) Memo No.B4/2-26 dated 13.6.2013 and set aside the same; consequent to

ii) direct the respondents 1&2 to appoint the applicant as MTS in the 2nd respondent Division with all attendant benefits; and

iii) To pass such further orders as this Tribunal may deem fit and proper.”

2. The applicants' case is that he joined the service as Gramin Dak Sevak Packer (GDS Packer) at Chetpet on 11.12.1980 and has put in 32 years of service. In the year 2008 he was offered to work as Group-D at Devikapuram SO and he was doing the duty till this date. According to him, he is eligible for appointment by promotion to the post of Group-D now named as MTS. His seniors were appointed much earlier. He is No.1 in the seniority list of GDS officials. In the year 2011, the 2nd respondent had directed the applicant to submit relevant documents for considering his appointment as Group-D. But the 2nd respondent had selected the 3rd respondent to the post of MTS as per order dated 20.5.2013 which is marked as Annexure A3 in this case. Thereupon the applicant had filed a representation and the respondents had replied stating that he has crossed the cut-off age of 50 years for Unreserved(UR)

post and, hence, he is not eligible for appointment as MTS. According to the applicant, the posts are earmarked for UR category and he is entitled to compete in the open category. He is also entitled for relaxation of the age which is available for OBC candidates. So according to him, an OBC candidate can compete upto 53 years and the appointment of the 3rd respondent is illegal. So, the applicant seek to set aside the impugned order.

3. The respondents appeared and filed a detailed reply denying the allegations in the OA. They admitted the service of the applicant and his working as Group-D on a daily wage basis. The applicant fulfils the eligibility conditions for appointment as MTS. His appointment can be done only if he fulfils the conditions with reference to the category in which vacancies are notified. The applicant cannot claim appointment as a matter of right only because he is the senior most in the list. As per the notification of MTS seniority quota for the year 2011, one vacancy was earmarked for UR and one for OBC category. For one vacancy at least 5 senior GDS will have to be considered by the Department Selection Committee(DSC). The applicant was one among the persons submitted before DSC. But one D.Babu, GDSOKR, Tiruvettipuram was selected against UR vacancy and one R.A.Rajendran, GDSMD, Kalambur, was selected for the OBC category who fulfilled the conditions for the post. The 3rd respondent, T.Venkatachalam, was considered for the UR vacancy as he fulfilled all the conditions and it is because of that he was appointed. The applicant was not eligible as he had crossed the age of 50 years as on 01.1.2012. As per the MTS Recruitment Rules 2010, vacancies under 25% quota meant for GDS

on seniority basis, the DSC will recommend the cases of eligible senior GDS who fulfilled the conditions of minimum service, educational qualification, age etc. From this it can be seen that mere seniority is not the only the criteria for selection. Senior GDS should also fulfil the other conditions prescribed for the post. Though the applicant and the 3rd respondent belong to OBC, the relaxed ages prescribed for SC/ST/OBC is not applicable when they are competing under the UR vacancy. The DoPT in OM No.35011/1/98-Estt(SCT) dated 01.7.98 and OM No.36028/17/2001-Est/Res dated 11.7.02, has made clear that the SC/ST/OBC candidates can claim relaxation of age only against a reserved vacancy and not against UR vacancy. The respondents had also invited the attention to the decision of this Tribunal in *OA 260/07 Shri V.Vedachalam vs. Union of India* wherein it was held that the applicant should fulfil the eligibility conditions, education qualification prescribed by the Recruitment Rules. Respondents also invite attention to the decision of Hon'ble Supreme Court in the case of *Union of India & Another vs. Sathyaprakash (CA Nos.5505-087/2003 with No.7004/2003 dated 5.4.2006)*. The Hon'ble Supreme Court has held that the reserved candidate selected under open competition on the basis of their own merit will be treated as open competition candidate and will not be counted against reserved quota. The respondents also invite the attention of the court to *Anurag Patel vs. UP Public Service Commission (CA No.4794/98)* wherein the Hon'ble Supreme Court observed that SC/ST/OBC candidates are to be treated as general category, if they are selected without relaxation. So, according to the respondents age relaxation is not applicable to the applicant who had contested in the

UR vacancy. So, according to the respondents, the OA is not maintainable.

4. We have heard the applicant and the respondents and anxiously perused the various documents produced as Annexure A1-3 and R1-7. The main contention put forward by the counsel for the applicant is that the applicant who has come from the OBC category is entitled to get relaxation of age upto the age of 53 years and the respondents have not properly selected the 3rd respondent and he seeks to set aside the order of selection made in favour of the 3rd respondent in this case. The respondents had produced and marked various OMs issued by the DoPT as Annexure R1 and R2 to show that as per the government instructions when a candidate from SC/ST/OBC applies for UR vacancies, they are not entitled to get the benefit of age relaxation under reserved category. The respondents have also produced and marked the decision of the Hon'ble Madras High Court in *Union of India vs. The Registrar, CAT and 2 Others* wherein it was held that the age limit prescribed for the UR vacancy is to be followed even when the candidate is going from a reserved category. The respondents had also produced another decision of the Hon'ble Madras High Court in *A.Veeraraghavan vs. The Registrar, CAT* decided on 29.7.2015 wherein it was held that no age relaxation can be claimed for an UR vacancy. The respondents had also produced the relevant Recruitment Rules as Annexure R6 which clearly shows that the age limit for appointment of GDS shall be 50 years as on the first day of January of the year of vacancy. So, from the above discussion, it can be seen that the applicant has appeared for promotion to the UR vacancy and he has to be qualified as per the Recruitment Rules for the post. In this case the applicant had crossed the age

of 50 years when he was considered for the post and the respondents had rejected his claim and appointed the 3rd respondent who had fulfilled all the conditions.

5. In the above circumstances, we do not find any need to interfere with the findings of the respondents and also the appointment of the 3rd respondent in this case. So, there is no merit in the contention put forward by the applicant for setting aside the impugned order produced as Annexure A3 in this case. So, the OA is devoid of merits and is liable to be dismissed. OA dismissed accordingly. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

.11.2018

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