

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 021/56/2017

Date of C.A.V. : 24.10.2017

Date of Order : 09.11.2017

Between :

G.Ramesh S/o G.Dharmaiah,
Aged about 42 years,
Working as Gramin Dak Sevak Mail Career,
Sarvapuri B.O., a/w Jangala Pally,
Hanamkonda Division,
Warangal District.

... Applicant

And

1. Union of India, rep. by
The Secretary,
Ministry of Communication & IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg,
New Delhi – 110001.

2. The Chief Postmaster General,
A.P.Circle, “Dak Sadan”,
Hyderabad – 500001.

3. The Postmaster General,
Hyderabad Region,
Hyderabad – 500001.

4. The Superintendent of Post Offices,
Hanamkonda Division,
Hanamkonda – 506001.

... Respondents

Counsel for the Applicant	...	Mr. M.Venkanna, Advocate
Counsel for the Respondents	...	Mr. A.Surender Reddy, Addl.CGSC

CORAM:

<i>Hon'ble Mr.Justice R.Kantha Rao</i>	<i>...</i>	<i>Member (Judl.)</i>
<i>Hon'ble Mrs.Minnie Mathew</i>	<i>...</i>	<i>Member (Admn.)</i>

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The department of the respondents held promotional examination to the cadre of Postman on 05.12.2013. The applicant and some other eligible GDS employees appeared for the examination. One of the candidates by name Mr. G.Vijender who topped the merit list for selection by securing 75 marks was selected for promotion to the post of Postman. However, it was brought to the notice of the authorities that he obtained more marks by playing fraud in the examination and consequently he was kept under suspension. The applicant who secured 74 marks in the examination was next to the candidate who was kept under suspension on the allegation of paying fraud in the examination. The applicant submitted a representation to the department stating that he being the next candidate to the person who was proceeded against by the department by initiating departmental inquiry shall be given the said promotional post of Postman. As there was no response, the applicant filed OA.1303/2014 seeking a direction to the respondents to appoint him as Postman as he was the second meritorious candidate in the promotional examination held on 05.12.2013. The Tribunal vide order dated 25.04.2016 dismissed the OA as premature on the ground that the proceedings pending against Mr.G.Vijender were not concluded. The Tribunal however gave liberty to the applicant to make a representation to the respondents after the inquiry against Mr.G.Vijender becomes final. Sometime thereafter Mr.G.Vijender was awarded with punishment of dismissal at the conclusion of the inquiry initiated against him by order dated 29.04.2016 by the 4th respondent.

Thereafter the applicant submitted a representation dated 30.06.2016 requesting the 4th respondent to appoint him in the promotional post of Postman since he is the next meritorious candidate to Mr.G.Vijender who was dismissed from service. Simultaneously the applicant filed OA.1160/2016 seeking a direction to the respondents to appoint him as Postman since the vacancy is caused on account of dismissal of the incumbent holding the said post. The Tribunal disposed of the OA by order dated 25.11.2016 with a direction to the respondents to dispose of the representation by passing a speaking order. In pursuance thereof the 4th respondent passed an order dated 23.12.2016 which is as follows :

“Since as per the guidelines on the subject the vacancy of postman is treated to have arisen in August 2016 consequent on the rejection of appeal preferred by Sri G.Vijender and offering the post to next meritorious candidate in the examination held on 15.12.2013 in the year 2016 is against the prescribed rules. Therefore the representation of the applicant for appointment as Postman cannot be considered.”

2. In the above circumstances, the applicant filed the present OA challenging the order dated 23.12.2016 passed by the 4th respondent to direct the respondents to appoint him as Postman in the existing vacancy caused on account of the dismissal of the incumbent namely Mr.G.Vijender and extend all the consequential benefits to him right from the date of passing of the examination.

3. In their reply statement the respondents admitted almost all the material facts stated by the applicant in his OA. Their only contention is that as per rules on the subject, vacancy of Postman is treated to have arisen in August 2016 consequent on the rejection of appeal preferred by Mr. G.Vijender, as offering the post to next meritorious candidate in the examination held on

15.12.2013 in the year 2016 is against the prescribed rules and as such the representation of the applicant seeking appointment to the said post cannot be considered. Thus the version of the respondent is that though Mr. G.Vijender was under suspension from 24.01.2014 onwards, the departmental inquiry was initiated against him which was concluded with the issue of proceedings issued on 29.04.2016, the post therefore is considered to be vacant only after rejection of the appeal preferred by Mr.G.Vijender on 09.08.2016. The contention of the respondents seems to be that as the vacancy was deemed to have arisen on 09.08.2016 it has to be filled up by issuing a fresh notification and the candidature of the applicant cannot be considered for the said post.

4. Heard Mr.M.Venkanna, learned counsel for the applicant and Mr.A.Surender Reddy, learned standing counsel for the respondents.

5. The short question which follows for consideration in this OA is whether the applicant has a right to be appointed in the post of Postman which arose on account of the dismissal of Mr.G.Vijender, as the applicant was the second meritorious candidate in the examination held on 15.12.2013 for the post of Postman.

6. The contention of the applicant is that since he was the second meritorious candidate in the examination held on 15.12.2013 he has a right to be appointed in the post in question and the department is precluded from issuing a

fresh notification regarding the said post. On the other hand it is the version of the respondents that since the vacancy is deemed to have arisen on 09.08.2016 when the appeal filed by Mr. G.Vijender came to be dismissed, the applicant who appeared for the vacancy arose in the year 2013 cannot be appointed in the said post.

7. In spite of the direction of this Tribunal to the respondents while disposing of OA.1160/2016 to dispose of the representation dated 30.06.2016 submitted by the applicant by a speaking order, the respondents did not pass any speaking order. They only stated that the appointment of the applicant to the post in question would be against the prescribed rules. They however did not mention any such rule in their order. From the rejection order and also from the reply statement, their only contention seems to be that the examination for the post of Postman was held on 15.12.2013 and the vacancy is supposed to have arisen on 09.08.2016 when the appeal filed by Mr. G.Vijender was dismissed and therefore it is not possible to appoint the applicant in the said post.

8. The contention put forth by the respondents does not stand to reason. The applicant appeared for the examination with regard to the same post along with Mr.G.Vijender and others and stood as second meritorious candidate in the select list. Therefore absolutely there is no force in the contention that the vacancy is deemed to have arisen on 09.08.2016. The respondents did not mention any rules either in the rejection order or in the reply statement which specifically

prohibit appointment of the applicant in the vacancy which has arisen on account of dismissal of Mr. G.Vijender. In the absence of any such rules it has to be held that the applicant has a legal right to be appointed in the said post.

9. In an identical situation the Gujarat High Court in Special Civil Application No.1282/2011 accepted the contention that a candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or other selected candidate does not join and the occasion for the petitioner to claim such right would arise only after the selected candidate does not join.

10. For what all stated herein above, we are of the considered view that the applicant has a right to be appointed to the post of Postman in respect of which he was declared as the second meritorious candidate vide the 4th respondent letter dated 20.12.2013. The rejection order dated 23.12.2016 passed by the 4th respondent is set aside. The respondents are directed to appoint the applicant to the post of Postman in the existing vacancy caused on account of dismissal of Mr. G.Vijender, if he is otherwise eligible within a period of two months from the date of receipt of a copy of this order.

11. In the result, the OA is allowed. M.A.693/2017 stands disposed of. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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