

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00784/2015

Friday, this the 12th day of April, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Sri V. Ramakrishnan, S/o. Raman,
 Gramin Dak Sevak Mail Deliver,
 Koranchira Branch Post Office,
 Koranchira – 678 684. **Applicant**

(By Advocate : Mr. P.K. Madhusoodhanan)

V e r s u s

1. Senior Superintendent of Post Offices,
 Department of Posts, India, O/o. The Senior Superintendent
 of Post Offices, Palakkad Division, Palakkad – 678 001.
2. The Post Master General, Department of Posts, India,
 O/o. The Post Master General, Northern Region,
 Calicut – 673 011.
3. The Chief Post Master General, Department of Posts,
 India, Kerala Circle, Thiruvananthapuram – 695 033.
4. Union of India, represented by its Secretary to Government of India,
 Ministry of Communication, Department of Posts, Dak Bhavan,
 Sansad Marg, New Delhi – 110 116.
5. K.A. Azeez, Multi Tasking Staff, Palakkad Head Post Office,
 Palakkad, Pin – 678 001.
6. V.K. Mohammed Ali, Multi Tasking Staff, Kanjikkad West Post Office,
 Palakkad – 678 623. **Respondents**

**[By Advocates - Mr. N. Anilkumar, SCGSC (R1-4) &
 Mr. V. Sajithkumar (R5&6)]**

This application having been heard on 8.4.2019, the Tribunal on
 12.04.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“(a) Issue necessary directions to the respondents to consider the applicant as well for the post of MTS notified in Annexure A5 untrammelled by the age restriction in Annexure A4 and on finding him eligible, grant promotion on the basis of his seniority in service to the vacancies of Multi Tasking Staff notified in Annexure A5.

(b) Declare that the total denial of consideration for promotion to the applicant to Multi Tasking Staff posts prescribing cut off date of age in Annexure A4, especially Note-3 in column (6) contained therein for promotion from GDS to MTS is unreasonable, unconstitutional, highly arbitrary, discriminatory and illegal and set aside the same.

(c) Issue necessary directions to the respondents to grant promotion to the applicant as Multi Tasking Staff notified in Annexure A5 in preference to his juniors in service on finding the applicant qualified in the qualifying examination on the basis of his GDS seniority.

(d) Award costs of these proceedings.

And

(e) Grant such other and further reliefs as this Hon'ble Tribunal finds just and proper in the interest of justice.”

2. The brief facts of the case are that the applicant joined service as Gramin Dak Sevak Mail Career at Koranchira Branch Post Office on 9.11.1982 under the control of Postmaster, Kizhakkencherry. While working so the applicant was appointed as Gramin Dak Sevak Mail Deliverer at Koranchira Branch Post Office w.e.f. 23.1.2006 (Annexure A1). Applicant belongs to OBC community and he has not been granted any promotion whatsoever in his 32 years of service with the respondents. The 1st respondent vide Annexure A5 letter invited willingness from 12 GDS employees to fill up 2 vacancies of GDS under seniority quota (1 OBC and 1 UR). In Annexure A5 the name of the applicant was not included, however, juniors to the applicant were invited for willingness. Aggrieved the applicant submitted a representation Annexure A6. However, no

action has been taken by the respondents. Hence, the present OA.

3. Notices were issued to the respondents. They entered appearance through Shri N. Anilkumar, SCGSC for respondents Nos. 1-4 and Shri V. Sajithkumar, for respondents Nos. 5 & 6. Respondents Nos. 1-4 have filed their reply statement contending that as per the Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 the age has to be reckoned as on 1st of April of the year to which the vacancies belong. As such the cutoff date in the present case is 1.4.2015. The date of birth of the applicant is 3.3.1960. The age is relaxable up to 3 years for candidates belonging to OBC category. As such the applicants up to the age of 53 years as on 1.4.2015 can only be considered. However, the age of the applicant as on 1.4.2015 was 55 years and hence, he was not eligible to be considered even after extending the relaxation of age for OBC. There were two vacancies of MTS in Palakkad Postal Division to be filled up by direct recruitment from amongst GDS based on selection-cum-seniority for the year 2015-2016. One vacancy was marked for OBC and other for UR. Annexure A5 is the list of eligible GDS coming under the zone of consideration for appointment as MTS. The applicant having date of birth as 3.3.1960 is over aged and was not included in the said list. The 1st respondent had relied on the Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 which was made as per proviso of Article 309 of the Constitution of India and is binding on all including the applicant. The departmental screening committee which met on 7.10.2015 made the selection of two candidates from Annexure A5 list. Respondents 1-4 pray for dismissing the OA.

4. Respondents Nos. 5 & 6 also filed a brief reply statement contending that they have been selected as per the Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015.

5. Heard Shri P.K. Madhusoodhanan, learned counsel appearing for the applicant, Shri N. Anilkumar, SCGSC appearing for respondents Nos. 1-4 and Shri V. Sajithkumar, learned counsel appearing for respondents Nos. 5 & 6. Perused the record and appreciated the legal position.

6. The grievance of the applicant who belongs to OBC community is that after rendering 32 years of service with the respondents as GDS he has not been granted promotion to the post of Multi Tasking Staff on the basis of seniority and his juniors were considered and given promotion to the post of Multi Tasking Staff. The reason cited by the respondents is that he was age barred as per the Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015. The applicant has also challenged the Recruitment Rules to the extent of Note-3 in column (6) which debars him being age barred. As per the Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 at column 6 age limit is prescribed. It reads thus:

“18-25 years for candidates from open market.

(Relaxable for Government servants up to 35 years, for candidates belonging to Scheduled Castes and Scheduled Tribes up to five years and for candidates belonging to Other Backward Classes up to three years in accordance with the instructions issued by Government of India.)

Note : The crucial date for determining the age limit shall be closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir State, Lahaul and Spiti district and Pangi Sub-division of Chamba district of Himachal Pradesh, Andaman and Nicobar Island and Lakshadweep).

2. In the case of recruitment made through the Employment Exchange, the crucial date for determining the age limit shall be the last date up to which Employment Exchange is asked to submit the names.

3. The age limit for appointment of Gramin Dak Sevak shall be 50 years as on 1st April of the year of the vacany(ies) (Relaxable for those belonging to Scheduled Castes and Scheduled Tribes up to five years and for those belonging to Other Backward Classes up to three years in accordance with the instructions issued by Government of India)."

As per the Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 25% of the posts of MTS is to be filled by direct recruitment from amongst Gramin Dak Sevaks of the recruiting Division or Unit on the basis of selection-cum-seniority, 25% by direct recruitment on the basis of competitive examination, restricted to the GDS of the Division or Unit, 25% on the basis of appointment of casual labour conferred with temporary status on the basis of selection-cum-seniority and remaining 25% by direct recruitment on the basis of competitive examination restricted to GDS of the recruiting Division or unit for joining Army Postal Service only as Sepoy/Packer.

7. The age limit prescribed for direct recruitment is 18-25 years relaxable for Government servants up to 35 years. For GDS it is 50 years relaxable for OBC candidates up to 3 years. The stand taken by the respondents in the reply statement is that there were two vacancies of MTS in Palakkad Postal Division to be filled by direct recruitment from GDS on selection-cum-seniority for the year 2015-2016. One vacancy was marked for OBC and the other for UR. The list of eligible GDS coming under the zone of consideration for appointment as MTS was drawn and communicated to all offices. The applicant who was 55 years of age was not eligible as per the Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 framed under the Act 309 of the Constitution of India. The said Recruitment Rule is binding on all including the applicant. The

applicant joined as GDS Mail Career on 9.11.1982 and subsequently appointed as GDS Mail Deliverer w.e.f. 23.1.2006. The eligible allowances were paid to the applicant since then. Further in OA No. 1054 of 1995 filed by **Ms. Arundhati Banerji v. Union of India & Ors.**, it was held on 15.11.1999 as under:

“.....whether to grant relaxation in a particular case or not to grant such a relaxation is entirely the domain of the UPSC. In the circumstances, we find that no directions can be issued as prayed for. Prescribing qualifications is the domain of the UPSC. Similarly, grant of relaxation is also the domain of the UPSC. The Tribunal cannot usurp the said function upon itself.

The mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive.”

Further the respondents have relied on the judgment of the apex court in **P.U. Joshi & Ors. v. Accountant General, Ahmedabad & Ors.** - (2003) 2 SCC 632

wherein it is held as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

The Hon'ble Supreme Court in *State of Mysore & Another v. P. Narasingh Rao*

- AIR 1968 SC 349 held that granting higher scale for Matriculates and lesser scales to non-Matriculates will not offend Article 14 & 16 of the Constitution.

Equality can be considered only among equals and any reasonable classification cannot be challenged as against Article 14 of the Constitution of India. The respondents have also relied upon the judgment of the apex court in

Subramanian Swamy v. Director, Central Bureau of Investigation & Anr. -

(2014) 8 SCC 682 wherein the apex court held as under:

“40. This Court expositioned the ambit and scope of Article 14 in *Budhan Choudhry v. State of Bihar* – AIR 1955 SC 191 as follows:

“5.It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

44. In *Vithal Rao Nagpur Improvement Trust v. Vithal Rao* – (1973) 1 SCC 500, the five-Judge Constitution Bench had an occasion to consider the test of reasonableness under Article 14 of the Constitution. It noted that:

“26.the State can make a reasonable classification for the purpose of legislation and that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question.”

The Court emphasized that in this regard object itself should be lawful and it cannot be discriminatory. If the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.”

8. The main thrust of argument of the counsel for the applicant was that the classification must be based upon intelligible differentia and differentia must be

rationale with object to be achieved. In the present case there is no age limit prescribed for casual labour who acquired temporary status and there is age limit of 50 years prescribed for the GDSMD to become MTS. The counsel for the applicant had equated his client, GDSMD with Casual labour. Both are having distinct nature of work and duty hours and payment of wages. The casual labour works 8 hours a day and on completion of 240 days in a year is eligible for grant of temporary status whereas the applicant works only for 3-4 hours a day on need bases. The GDS can only be selected when vacancies are there. Therefore, both posts stands totally on the different footing. This is also the cardinal principle of law that the equals can be equated and unequals cannot be equated with equals. As per apex court decision in *P.U. Joshi's* case (supra) framing of the Recruitment Rules, changes/addition and subtraction of the qualifications, eligibility criteria and other service conditions including avenues of promotion vest within the powers of executives. Normally the courts/Tribunals should not interfere with the same unless discrimination is pointed out.

9. Thus, the following things emerges. Two different category of cadre/post with different service condition, different pay scale, nature of work, different working hours are there and applicant cannot challenge the same on the pretext that there is no intelligible differentia. What post requires what qualification, age limit, criteria for promotion is within the domain of the executive alone. Judiciary cannot interfere in that. Secondly applicant's service is on need based and less than half day work. He cannot equate with casual labours having full day work. Therefore, the age limit of 50 years with 3 years relaxation cannot be held to be arbitrary or discriminatory. The MTS post which applicant is

claiming is selection-cum-seniority post and not by way of seniority-cum-selection by which automatic promotion is entitled for eligible employees. All the terms and conditions attached to it have to be fulfilled as these rules are framed under the Article 309 of the Constitution and it cannot be said to be discriminatory particularly when there is a provision of age relaxation for 3 years over and above the maximum age limit already prescribed under the rules. The rules are in consonance with the criteria and sound principle of reasonable classification. The submission on behalf of the applicant is unfounded and untenable in the eyes of law.

10. Thus, we are of the considered view that the applicant failed to convince us on merits and accordingly, the OA is liable to be dismissed. We order so. There shall be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

Original Application No. 180/00784/2015**APPLICANT'S ANNEXURES**

Annexure A-1 - True copy of the memo No. GL/22/Koranchira dated 20.1.2006 at Kavassery – 678 543 of the Inspector of Posts, Alathur Sub Division, Kavassery.

Annexure A-2 - True copy of the Cast Certificate dated 5.4.2013 issued by the Village Officer, Kizhakkencherry Village Office.

Annexure A-3 - True copy of the relevant extract of the seniority list of GDS of Palakkad Division as on 1.7.2010 the applicant is at serial No. 87.

Annexure A-4 - True copy of the relevant pages of Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 dated 14.5.2015.

Annexure A-5 - True copy of the letter dated 14.9.2015 by the 1st respondent.

Annexure A-6 - True copy of the representation dated 21.9.2015 submitted by the applicant to the 3rd respondent.

Annexure A-6(a) - True English translation of Annexure A6.

Annexure A-7 - True copy of the detailed track events along with the postal receipt.

RESPONDENTS' ANNEXURES

Annexure R-1(a) - True copy of the memo No. B2/MTS Rectt/2015 dated 9.10.2015.

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