

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

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OA No.290/00457/2015

Pronounced on : 28.05.2019
(Reserved on : 22.05.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Bajrang Lal S/o Sh. Sutharam, aged 43 years R/o Dhaddar, District Churu.

...APPLICANT

BY ADVOCATE : Ms. Aditi Vaishnav proxy for Mr. Sunil Joshi.

VERSUS

1. Union of India, through Secretary, Ministry of Communication (Department of Posts), Sanchar Bhawan, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Sardar Patel marg, Jaipur-302007.
3. The Postmaster General, Western Region, Jodhpur-342001.
4. The Superintendent, Post Office, Churu Division, Churu-331001.

RESPONDENTS

BY ADVOCATE: Mr. B.L. Tiwari.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Central Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "i). Call for the records leading to the selection and appointment to the post of GDSMD against the notification dated 29.11.2013 and 20.07.2015 and set aside the same in so far as it denies the appointment of the applicant as GDSMD.
- ii) Declare that the applicant is eligible and legally entitled to be appointed to the existing vacancy of GDSMD under the third respondent's office giving preference to him on the basis of his

service put in as substitute/outsider in terms of rules of 2011 with all consequential benefits.

- iii) Direct the second and third respondent to make appointment to the existing vacancy of GDSMD under the third respondent office by appointing the applicant as GDSMD.
- iv) Direct the third respondent to consider and dispose of Annexure A6 representation in accordance with law.
- v) Set aside the stringent condition stipulated regarding age in notification of 2015.
- vi) Direct respondents to reinstate applicant as outsider against the vacant post.
- vii) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- viii) Costs of this application be ordered to be awarded in favour of the applicant."

2. The facts of the present case as narrated by the applicant are that the applicant was initially engaged as an Outsider/Casual Worker against the post of GDS in the Department since 2009. The applicant had worked for 574 days in total. The details are as under:-

Post Group D	From	To	Total days
GDS CHURU HO	04.09.2009	26.09.2009	23 DAYS
GDS CHURU HO	12.11.2009	18.02.2010	99 DAYS
GDS CHURU HO	24.07.2010	15.10.2010	84 DAYS
GDS CHURU HO	18.10.2010	11.02.2011	117 DAYS
GDS CHURU HO	24.06.2011	09.07.2011	16 DAYS
GDS CHURU HO	01.08.2011	28.12.2011	146 DAYS
MTS CHURU HO	29.12.2011	29.09.2012	275 DAYS
GDS St. Road	01.10.2012	28.12.2012	89 days

3. Learned counsel for the applicant mentioned that innumerable applications dated 04.07.2015, 14.07.2015 and 11.08.2015 were filed

under the RTI Act, 2005 seeking to know why his candidature was not considered against the post of GDS in recruitment held in 2013-14. The Department of Posts refused to provide any information on the ground that the applicant is not an employee of the Department, and therefore, the information cannot be made available to him. The applicant has moved an appeal dated 01.08.2015 against the reply dated 21.07.2015, but once more his request has been turned down on the same ground (Annexure A5).

4. It is further stated in the OA that in pursuant to his application form, petitioner has sent representations to all concerned authorities of the department but none of his representation has been decided so far (Annexure A6). The ground on which this OA has been submitted is that Rule 33 of Method of Recruitment Section IV in Department of Posts GDS (Conduct and Engagement) Rules, 2011, the applicant is suitable and should be considered on preference against other incumbents. As per the GDS (Conduct and Engagement), Rules 2011, applicant's candidature was wrongly rejected. Thus, the action off the respondents in not considering the candidature of the applicant is highly arbitrary and unjust.

5. Per contra, the respondents have raised the preliminary objection regarding the maintainability of the OA filed by the applicant. At the outset, it is submitted that the OA is not maintainable on the ground of mis-joinder of causes, since Recruitment Notification 2013 and Recruitment Notification 2015, both have been challenged in this single application whereas in sum and substance above, the two notifications materially differ with each other. The recruitment process pertaining to notification dated 20.07.2015 has been cancelled, and taking note off this subsequent development, the prayer for grant of interim relief also has been rejected by this Tribunal vide its order dated 14.12.2015. Not

admitting the claim of the applicant with relation to 2013 advertisement, the present application suffers from gross delay and laches, therefore, the same deserves to be dismissed at thresh hold on the ground of limitation. The OA is also not maintainable for want of any formal order as contemplated under Section 19 of the Central Administrative Tribunals Act, 1985.

6. The respondents have also made the case that the contents of the charge reports appended by the applicant show that the applicant performed his work as substitute and without any documentary evidence in support of his being Casual Labour, it will be treated as false statement and misleading this Tribunal.

7. Heard learned counsel for both the parties and perused the material available on record.

8. The counsel for the applicant stated that preference should be given to him during the course of recruitment of GDS under Section IV of Rule 33- Method of Recruitment, under GDS (Conduct & Engagement) Rules, 2011. Per contra, the respondents counsel submits that the applicant misinterpreted the said rule. He does not belong to the category of Causal Labour, full time and part time Casual Labour, therefore, not eligible for obtaining preference in the process of Recruitment of GDS. He applied in consonance of notification dated 29.11.2013, but neither his application was in prescribed proforma nor he got meritorious status amongst eligible candidates. As per his marks sheet of secondary, he secured only 45.16% whereas the merit status prescribed was as under:-

Category	Maximum %	Minimum %
Other Cast	87.50	75.17
Scheduled Cast	77.50	70.50

Scheduled Tribe	67.50	61.83
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Therefore, due to his non-meritorious status, his selection for the post of GDS could not have been made.

9. Notification of Recruitment of GDS was issued on 29.11.2013 and last date for submitting application was 30.12.2013. Panel of meritorious selected candidates were issued on 31.12.2013 and process of engagement of GDS were completed. This OA has been filed after 2 years of the completion of process and is therefore time barred.

10. The respondents drew our attention to various case law on the issue of limitation for filing an application under 19 of the C.A.T. Act and wherein it has been clearly observed that mere submission of representation does not extend the period of limitation in the case of Boop Singh Vs. UOI & Ors. The CAT Bench, Jaipur has also, while quoting the judgment of Apex Court in the case of C. Jacob Vs. Director of Geology and Mining & Ors. And UOI & Ors. Vs. M.K. Sarkar, observed in its decision dated 22.03.2010 in OA No.585/2009, which involved the same issue, that granting relief to the applicant at this belated stage will not only affect right of third party but also cause drainage to the public funds, and therefore, no relief can be given in public interest. In the case of C. Jacob Vs. Director of Geology and Mining and Ors. (supra), the following observations were made by the Apex Court are as under:-

"The Courts/Tribunals proceed on the assumption that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any decision on right and obligations of parties. Little do they realize the consequences of such a direction to consider. If the representation is considered and accepted, the ex-employee gets a relief, which we would not have got on account of the long delay; all the ex-employees file an application/writ petition, not with reference to the original cause of action of 1982 but by treating the rejection of representation given in 2000 as the cause of action. A prayer is made for quashing the rejection of representation and grant of the relief claimed in the representation and proceed to examine the

claim on merits and grant relief. In this manner, the bar of limitation or the latches get obliterated or ignored.”

11. In view of above judicial pronouncements, limitation of period in this case is counted from 31.12.2013 (result sheet issued on 31.12.2013). The case filed before CAT by the applicant is grossly barred by limitation as the case is filed by the applicant after two years later of incident and this delay does not cover under limitation of period as prescribed under Section 21 of the Administrative Tribunals Act, 1985. The case, is therefore, liable to be rejected on the ground of limitation because application is barred by limitation in pursuance to notification dated 29.11.2013 last date for submitting application was 30.12.2013 and panel of meritorious selected candidates was issued on 31.12.2013, thus, process of engagement of GDS was completed. The respondents have also submitted that no application for condonation of delay has been filed as required under Section 21 of the Central Administrative Tribunals Act. In the Supreme Court decision in case of S.P. Kurdukar and R. P. Sethi, JJ. reported as AIR 1999 SC 3837, wherein the Apex Court has held that in a case of delay of 3 years when no application for condonation of delay has been made before the Tribunal, the Tribunal could not have entertained such a case. The OA filed after two years deserves to be dismissed on this ground.

12. During the course of arguments, the learned counsel for the applicant reiterated that preferences to be given to Casual Labourer in appointment as GDS in terms of the rule 33 of GDS (Conduct and Engagement) Rules, 2011. The learned counsel for the applicant submitted that the applicant has worked as Substitute / Casual Labour and reiterated the relief sought in the OA.

13. Learned counsel for the respondents during submissions highlighted the legal objections stating that the case was not maintainable under Rule

10 of CAT Act, which under only a single cause of action to be pleaded in the OA. He drew our attention to the relief sought for by the applicant at Para 8 to "Call for the records leading to the selection and appointment to the post of GDSMD against the notification dated 29.11.2013 and 20.07.2015 and set aside the same in so far as it denies the appointment of the applicant as GDSMD". The details of the Court order dated 14.12.2015, the relevant paragraph is reproduced hereunder:-

"Heard on IR. With reference to order dated 01.12.2015, counsel for respondents submitted that a notification dated 30.10.2015 has been issued whereby the examination for selection to the posts of GDS, advertised vide notification dated 20.07.2015 have been cancelled. In view of the aforesaid notification dated 30.10.2015, the prayer for interim relief to keep one post vacant for the applicant in ongoing selection process against the notification dated 20.07.2015 has become infructuous."

The grounds and prayer for selection of 2015 order does not exist in view of the Court order as above.

14. The respondents counsel reiterating what has been mentioned in the pleading stated that as notification of Recruitment of GDS was issued on 29.11.2013 and last date for submitting application was 30.12.2013. Panel of meritorious selected candidates were issued on 31.12.2013 and process of engagement of GDS were completed. This OA has been filed after 2 years of the completion of process and is, therefore, time barred.

15. The respondents submitted that applicant's counsel has raised the issue of appointment of Kesar Dev Prajapat vide the department of posts of order dated 31.12.2013 at page 136. As such Sh. Prajapat should have been made a party in this OA which has not been done on this legal infirmity, the OA is liable to be dismissed. To fortify his argument, respondent quoted the decision of the Apex Court in State of Rajasthan Vs. Uchhab Lal Chhanwal, reported (2014) 1 SCC 144, wherein the issue of non-impleadment of necessary parties have been discussed and the requirement of principles of natural justice have been referred to. The

respondents also submitted that no rejoinder has been filed by the applicant till date, therefore, his right to file rejoinder has been forfeited.

16. The respondents also referred to the Supreme Court judgment in the case of UOI Vs. Debika Guha reported as AIR 2000 SC 325, wherein it was held that substitute extra departmental agents of the Postal Department, who have worked for 180 days or more in one year continuously cannot legally claim to be regularized on the basis that they have worked for 180 days continuously.

17. Without going into too much detail on the issue of merits, suffice to say that the case filed before C.A.T. by the applicant is grossly barred by limitation as it has been filed two years after the incident and has also not been covered by delay statement as prescribed under Section 21 of the Central Administrative Tribunals Act, 1985. Moreover, the OA as per Rule 10 of the Central Administrative Tribunals Act, 1985 should be restricted to a single cause of action which is not the case. The relief sought is against the notifications of the Department of the Posts dated 29.11.2013 and 20.07.2015. Thirdly, it also suffers from the legal infirmity of non-joinder of selected candidates, Shri Kesar Dev Prajapat has not been made a party and OA therefore deserves to be dismissed.

18. In view of the legal infirmities which the OA suffers from, it deserves to be dismissed and it is accordingly dismissed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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