

**Central Administrative Tribunal
Madras Bench**

OA/310/01639/2014

Dated 6th December Two Thousand Eighteen

P R E S E N T

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

K.Eshak,
S/o (late) A.Kader Mohideen,
No.55/8-A, OMC Land,
Udamalpet, Tirupur District,
PIN 642 126.
By Advocate **M/s.R.Malaichamy**

.. Applicant

Vs.

1. Union of India, rep by the
Superintendent of Post Offices,
Pollachi Division,
Pollachi 642 001.

2. Alices Dominic Raj,
MTS, Valparai SO,

3. Valparai .

.. Respondents

By Advocate **Mr.C.Ajithkumar**

ORDER

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

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

“1. To call for the records of the 1st respondent pertaining to his order which is made in memo No.BII/MTS/RECTT/2012 dated 21.1.2013 in so far as the appointment of 2nd respondent is concerned and set aside the same; consequent to

2. direct the 1st respondent to appoint/promote the applicant to the post of MTS with all service benefits; and

3. To pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case.”

2. According to the applicant, he was initially appointed as Extra Departmental Agent Chowkidar (GDS Chowkidar) on 01.12.1981. Thereafter he was appointed as Gramin Dak Sevak Packer (GDSPKR) on 01.12.1988 and then posted as Branch Postmaster w.e.f. 31.12.1988. Since then he is working in the said capacity till date. He has put in more than 33 years of service as GDS. The applicant belonged to OBC Community. He is 50 years and 8 months old as on 01.1.2012 and is entitled for age relaxation by 3 years considering him as an OBC candidate. Therefore, he was within the age limit of 53 years as on 01.1.2012. His name was at Sl.No.95 in the Divisional Seniority list of GDS as on 01.7.2010 whereas the 2nd respondent was at Sl.No.101. As such the applicant was entitled for appointment to the cadre of MTS by seniority in the cadre of GDS. It is submitted that a DPC was constituted on 18.1.2013 for selection of one post of MTS earmarked for 2012 from GDS on

seniority basis. The 1st respondent selected the 2nd respondent to the cadre of MTS by Annexure A8 order dated 21.1.2013 in total violation of principles of natural justice. Aggrieved by this, the applicant made Annexure A9 representation dated 04.6.2013 to the respondents to appoint him to the post of Postman in the place of the 2nd respondent, which has not yet been replied. Hence he has filed this OA seeking to set aside the impugned order.

3. It is submitted that in similar issues in OA 1006/2004 and 85/2007 this Tribunal allowed the OAs holding that reserved category officials can compete with general candidates for appointment against unreserved post with age relaxation. The WPs filed against the said orders was dismissed by the Hon'ble High Court of Madras and confirmed the orders of this Tribunal. Thereafter the respondents also complied with the orders and the applicants therein were appointed to the post of Postman. Therefore, the action of the 1st respondent in selecting and appointing the 2nd respondent who is junior to the applicant and denying appointment to the applicant to the cadre of MTS is arbitrary and illegal.

4. The respondents have entered appearance and filed the reply statement denying all the allegations avered in the application, except those that are specifically admitted herein. The reply further proceeds to the effect that the age is a criteria and not the seniority alone. When the selection was made for UR category, the candidates within the 50 years of age limit can only be considered for selection. Eventhough the applicant is senior in GDS in seniority list, he crossed 50 years of age as on 01.1.2012. The selection was made as per the new rules and regulations framed in

the revised recruitment rules 2010. It is submitted that 2 vacancies under UR and 1 vacancy under SC category was placed before the DPC for selection. The DPC met on 18.1.2013 and has selected Y.Mohamed Ali and J.Alices Dominic Raj under UR category and K.Kailasagiri under SC category. No vacancy was earmarked for OBC category. As per Recruitment Rules for MTS, 50 years has been prescribed as maximum age limit for UR categories. Hence, the eligible GDS official with less than 50 years according to their seniority were selected as GDS under UR category. Since the applicant has already crossed 50 years of age on 01.1.2012 he was not considered by the DPC for selection under UR category.

5. It is further submitted that as per note 3 of the Gazette of India No.683/II S.3 Sub section (1) communicated in Ministry of Communications & IT Department of Posts Dak Bhavan, New Delhi vide their letter No.37-33/2009-SPB-I dated 28.1.2011 “the age limit for appointment of Gramin Dak Sevak shall be 50 years as on the first day of January of the year of the vacancy (relaxable to SC/ST upto 5 years and upto 3 years for those belonging to OBC) in accordance with the instructions issued by the Government of India.” Since the vacancies for 2012 classified and approved as UR-2, SC-1, eventually the age limit for UR vacancy as prescribed in the above said Gazette notification for recruitment of MTS for the year 2012 is 50 years of age only. There was no vacancy in OBC category. As on 01.1.2012, the age of the applicant was 50 years, 8 months and 21 days as his date of birth is 10.4.1961. Hence the applicant was not selected as MTS for the vacancies of 2012 as he exceeded 50 years as on 01.1.2012 and, therefore, the applicant has no grounds to claim that he should

have been selected to the cadre of MTS on seniority basis. Hence they pray for dismissal of the OA.

6. We have heard the applicant and the respondents and perused the various materials available on records and the citations produced by both parties. The main contention of the applicant is that a candidate belonging to the reserved categories is entitled to relaxation in the upper age limit and relaxation cannot be denied merely because the vacancy against which he seeks to be considered is an unreserved vacancy. To support his claim that even as against an unreserved vacancy, a candidate belonging to reserved category is entitled to relaxation in the upper age limit, counsel for the applicant relied upon and produced the orders of this Tribunal in OA 1006/04 where this Tribunal has held that relaxation of age can be considered even for the post of UR vacancies. The counsel for the applicant argued 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 2nd respondent and he seeks to set aside the order of selection made in favour of the 2nd respondent in this case.

7. On the other hand the respondents have produced the subsequent 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 "if no vacancies are reserved for Scheduled Castes in the matter of promotion to a particular post, then the benefit of relaxation of the upper age limit may be available. But, where a few vacancies are earmarked and reserved for Scheduled Castes and Scheduled Tribes, they cannot claim relaxation of

upper age limit, as against an unreserved vacancy.”

8. In this respect we have to follow the Hon'ble Supreme Court decision in *Anurag Patel vs. UP Public Service Commission (CA 4794/98)* wherein the Hon'ble Apex Court has held that when SC/ST/OBC candidates are to be treated as general category if they are selected without any relaxations. The DoPT had issued OM 36028/17/200-Est/Res dated 11.7.2002 stating that the SC/ST/OBC candidates can claim relaxation of age only against a reserved vacancy and not against UR vacancies. Here separate quotas are allotted to SC/ST/OBC and the department has appointed candidates on the basis of the quota allotted to each category. In the case of OA 1006/04 decided earlier by this Tribunal, there was no separate reservation provided for the SC/ST/OBC categories. So, this decision cannot be squarely applicable to the facts of this case. In a later decision of this Tribunal in *OA 260/07 Sri Vedachalam vs. Union of India*, the Bench held that “wherein it was held that the applicant should fulfil the eligibility condition, educational qualification etc. prescribed by the Recruitment Rules and it should be followed scrupulously. In *Union of India & Another vs. Sathyaprakash (CA Nos.5505-087/200 with No.7004/2003 dated 5.4.2006)*, Hon'ble Apex Court held that the reserved candidates selected under open competition on the basis of their own merit, will be treated as open competition candidates and will not be counted against reserved quota. The new revised recruitment rules marked as R3 clearly shows that the age limit for general candidates will be 50 years.

9. In this case applicant was not eligible to be considered in the general quota and hence he was not considered for the post. There was no vacancy for OBC quota in 2012.

10. In the result we find that there is no merit in the argument put forward by the counsel for the applicant and we decline to interfere with the impugned order.

11. OA will stand dismissed accordingly with costs.

(T.Jacob)
Member(A)

06.12.2018

(P.Madhavan)
Member(J)

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