

Reserved
(On 24.04.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
CIRCUIT SITTING AT NAINITAL

Dated: This the 21st day of **May** 2019

Transfer Application No 331/00015 of 2018

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Harish Chandra Joshi, S/o Late Shri Ishwari Datt Joshi, R/o 8/387 Basanti Niwas, Near Shiv Mandir, Heera Nagar, Haldwani, District Nainital.

. . . Applicant

By Adv: Shri Manoj Kumar and Shri P.K. Bhatt

V E R S U S

1. Union of India through Secretary, Department of Posts, Government of India, New Delhi.
2. Chief Postmaster General, Uttrakhand, Dehradun.
3. Senior Superintendent of Post Offices, Nainital, District Nainital.

. . . Respondents

By Adv: Sri R.S. Bisht

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

The present Transfer Application has been transferred before this Tribunal by Hon'ble Uttrakhand High Court vide order dated 03.05.2018, as the matter required to be adjudicated by Central Administrative Tribunal.

2. The Writ Petition (WP) has been filed before Hon'ble Uttrakhand High Court by the petitioner - Harish Chandra Joshi seeking quashing of letter dated 11.11.2008 and the subsequent letter dated 30.12.2009. The petitioner has also sought directions to

the respondents to sanction and release his pension and other consequential benefits.

3. The petitioner has stated that he has put in 38 years of continuous service in the department and was promoted to the post of Postman in the year 1998. According to the petitioner, the post itself was vacant in the year 1995 – 1996 and the delay in passing the order of appointment was purely on the part of the respondents. Hence, this Writ Petition / TA.

4. According to the petitioner, he was initially appointed as Branch Post Master in 1970. His service at that time was to be governed by P&T ED Agents Service and Conduct Rules 1964. Copy of appointment letter dated 28.11.1970 is annexed as Annexure No. 1. After about 25 years of services, the petitioner was asked to give consent for promotion in Postman cadre vide respondent department letter dated 28.11.1995 (Annexure No. 2). The petitioner gave his consent vide letter dated 15.12.1995 (Annexure No. 3). Again on 05.01.1996 (Annexure No. 4), consent was sought from the petitioner alongwith relevant certificates. As per the applicant, in this letter dated 05.01.1996, it was categorically stated that as soon as reply is submitted by the petitioner, selection would be made immediately. Though the petitioner had given his consent on 15.12.1995, but as nothing had come out of it, he moved another application on 14.12.1996 (Annexure No. 5) requesting for appointment expeditiously as it was likely that he would cross age limit and suffer loss. The petitioner again submitted an application dated 24.02.1997 (Annexure No. 6) requesting for appointment.

However, it was only vide letter dated 25.05.1998 (Annexure No. 7) that the petitioner was promoted in the pay scale of Rs. 2750 – 4400. Vide this order, 7 persons were promoted and the petitioner was at Sl. no. 3. The promotions were made against the vacancies of 1996 to 1998 as it evident from the said letter. Thereafter, the petitioner underwent training for 10 days from 01.07.1998 to 10.07.1998 and after completion of training, he was appointed and posted as temporary Postman with immediate effect against vacant post vide order dated 28.07.1998 (Annexure No. 8). He was confirmed with effect from 22.07.2000 (Annexure No. 9) and retired from service on superannuation on 29.02.2008.

5. The petitioner has stated that before retiring from service, he submitted a representation dated 05.12.2007 (Annexure No. 10) praying for consideration of his representation for promotion under seniority quota from earlier date. He also reminded the respondents. However, on 28.05.2008 (Annexure No. 12), the respondents stated that his prayer in the representation could not be accepted. Another application dated 30.10.2008 (Annexure No. 13) was submitted by him praying for reconsideration. Again vide letter dated 11.11.2008 (Annexure No. 14), the respondent department repeated that the representation of the petitioner cannot be considered. Thereafter, the petitioner made a complaint to Dak Adalat. The claim was considered by the Dak Adalat, but was rejected, vide letter dated 30.12.2009 (Annexure No. 15).

6. The case of the petitioner is that in toto he has rendered 28 years of service in the department since 1970. After about 25 years

he was asked for giving his consent for appointment as Postman. This post was to be filled on the basis of seniority. As he was duly qualified, he first gave his consent on 15.12.1995. However, he was promoted only vide order dated 25.05.1998. This promotion was against the vacancies of the year 1996 to 1998. Of the 7 persons promoted, he was at Sl. no. 3. The petitioner has stated that had his case been considered in time, he would have been promoted on 28.11.1995 itself. Any delay in promotion was on the part of the department and as such he deserves to be given pension and other service benefits as his qualifying service for pension in that case would have been over 10 years. The petitioner has finally concluded that due to delay in promotion by the department, he is losing his pension and other retiral benefits and sympathetic view can be taken in view of his 38 years of service in the department.

7. The respondents in their counter affidavit have confirmed that the petitioner was initially appointed as Extra Departmental Branch Postmaster which is now renamed as Gramin Dak Sewak Branch Postmaster on 25.08.1970. On account of his seniority and recommendation of DPC, he was approved for promotion to the cadre of departmental Postman vide departmental memo dated 25.05.1998. After undergoing prescribed training and completion of other requirements, he was appointed and posted as temporary Postman vide memo dated 28.07.1998. He superannuated on 29.02.2008. Hence, total departmental service rendered by him was less than 10 years, which is essential condition for getting benefit of pension. Accordingly, he was not entitled to any pensionary benefits. The respondent department has also stated that the

petitioner made several correspondences with the department after his retirement for granting him pension. These were suitably replied by the department as there was no provision of pension for less than 10 years of service.

8. The department has further stated that the petitioner was only Extra Departmental Agent from August 1970 to August 1998 and these services being extra departmental agent do not count for qualifying service for pension. He cannot claim his promotion as a matter of right to him. Moreover, DPC considers more number of candidates than number of posts available, and willingness etc. is taken from all candidates coming under zone of consideration. Hence, merely asking for his willingness does not give him right for promotion. The department has also stated that the petitioner had an option to accept or refuse the promotion and he knew at the time of accepting promotion that he would not qualify for pension at the time of his superannuation.

9. The respondents have also stated that letter of the respondents does not state that he would be selected immediately on receipt of his reply. The letter only asked the petitioner to give an early reply so that an early action could be taken in his case. In any case, the letter was not written by the authority competent to promote the petitioner and the promotion can be given only after recommendations of DPC and after following due procedure in this regard as per relevant rules. The petitioner was promoted in the year 1998 based on his seniority and after recommendations of DPC.

10. The respondents have also submitted that the petitioner was well aware about the deficiency in his qualifying service for pension, as is clear from the numerous letters submitted by him to the department.

11. The respondents have also submitted that pension is admissible only subject to fulfillment of conditions as provided in the rules. And, in view of clear provisions of rules making 10 years minimum qualifying service for grant of pension, the petitioner cannot be granted pension. According to the respondents, the Dak Adalat also came to the same conclusion. The respondents have further averred that the petitioner was not promoted against certain vacancies belonging to any particular year. He was promoted against one of the vacancies which were available up to the year 1998 when DPC was held. They have also stated that the petitioner is putting facts in wrong perspective. Memo dated 25.05.1998 does not promote him against vacancies of 1995 or 1996. Rather, it clearly mentions that promotions are made against vacancies of 1996 to 1998.

12. Finally, respondents have concluded that as the petitioner does not fulfill necessary requirements for being entitled to pension, he does not qualify for the same. He was also not given any assurance that he would be entitled for pension. His services as extra departmental agent do not count for pensionary benefits. All the benefits due to him have been given and no rights of the

petitioner have been violated. As such, the Writ Petition / TA needs to be dismissed.

13. We have heard both the parties and have also gone through the pleadings in the Writ Petition / TA. We have also given thoughtful consideration to the matter.

14. The brief facts of the case are undisputed. The petitioner joined service initially in 1970 as Extra Departmental Branch Postmaster (now renamed as Gramin Dak Sevak Branch Postmaster). He continued as such for about 25 years and in 1995 he was first asked for his consent for promotion as Postman. He gave his consent first on 15.12.1995 (Annexure No. 3) and then on 14.12.1996 (Annexure No. 5). However, he was promoted as temporary Postman only vide order dated 28.07.1998. He was confirmed in 2000 in this post and retired on 29.02.2008. However, till his retirement he had not completed 10 years of minimum qualifying service for grant of pension. Accordingly, his claim for pension was rejected by the department. He made representations to this effect repeatedly. The same were considered and in view of the departmental rules and clear provisions, he could not be granted pension. He approached Dak Adalat also, but his claim was rejected.

15. Now through this Writ Petition / TA, the petitioner is pleading for pensionary benefits. He is basically claiming benefit on the ground of his 38 years of service in the department. He has also stated that he was appointed as Postman against vacant post which was available in the year 1995 itself. He also gave his consent in 1995 and 1996 in response to departmental letters seeking his willingness. Therefore, the petitioner is pleading that he should be considered for promotion against seniority quota on 28.11.1995 itself (when consent was first sought from him by the

department) in which case he will be entitled for pension and other retiral benefits.

16. We find that it is not disputed even by the petitioner that his services as Extra Departmental Branch Postmaster do not count towards pensionary benefits. Hence, sole point for decision is the date of his appointment as Postman. We are of the clear view that seeking willingness from eligible officials and giving willingness for any promotion / appointment does not entitle a person for that promotion. Even the date of grant of consent does not bestow any right for promotion. In the instant case, even letter dated 05.01.1996 (Annexure No. 4) of the department does not anywhere state that he would be promoted as soon as he gives his willingness. This letter is in Hindi. However, it only states that the petitioner should send his willingness by return post. And, even if he is not willing, this should also be intimated by return post. The letter requests for early reply. It does state that as soon as the reply is received, selection will be made. But what is implied is that selection process will be completed on receipt of reply. We cannot take this letter as right of the petitioner to claim appointment. If at all, the letter shows proactive action of the department to complete selection process expeditiously. Even otherwise, public appointments are to be strictly governed by constitutional provisions and rules there-under. Promotions can be made only by the competent authority and that too only after recommendations of DPC. In the instant case, DPC was held on 25.05.1998 (Annexure No. 7). Promotion order was also issued on the same date. After completion of training, the petitioner was appointed vide order dated 28.07.1998. Hence, there was no unusual or avoidable delay in appointment of petitioner after holding of DPC. Even if holding of DPC is taken as the date of promotion, the petitioner is not eligible for pension as he would still not complete 10 years of qualifying service for pension (having retired on

29.02.2008 itself). Hence, the petitioner does not have any grounds for claiming for predating his date of promotion for claiming pensionary benefits.

17. Besides, the claim is highly time barred and there is no delay condonation application. The claim - if at all - first arose on his date of appointment in 1998 itself. However, the petitioner has chosen to approach Hon'ble High Court only in 2010 i.e. 12 years after original cause of action and almost 2 years of his retirement. There is no delay condonation application and not a word about reasons for delay. Hence, the petition needs to be dismissed on this account as well.

18. We also find that the petitioner has not challenged his promotion / appointment order dated 25.05.1998 and subsequent order dated 28.07.1998 appointing him as temporary Postman w.e.f. that date. These orders will also need amendment in case change in the date of appointment of the petitioner and grant of pension to him are to be considered. On this ground as well, the Writ Petition / TA need to be dismissed.

19. We also note that the petitioner approached Dak Adalat and his claim was rejected there also. Obviously, Dak Adalat did not find any merit in his case.

20. Regarding argument of the petitioner that he was appointed against vacant post of the years 1995 - 1996, the respondents have categorically stated that the post against which he was appointed was not of the year 1995 or 1996, but was for the years 1996 to 1998. This is clearly borne out from the letter of appointment at Annexure No. 7. The respondents have categorically denied that 6

other persons appointed with him were appointed against vacant posts belonging to any particular year. Rather, they were appointed against vacant posts for 1996 to 1998. Hence, the petitioner cannot claim appointment against vacant post of the year 1995. We note that it is settled law that no government servant can claim appointment from the date of vacancy.

21. In view of all above, we do not find any merit in the Writ Petition / TA and the same is dismissed. There is no order as to costs.

(Rakesh Sagar Jain)
Member – J

(Ajanta Dayalan)
Member – A

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