

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No. 125/2014**

Reserved on: 17.07.2019  
Pronounced on: 22.07.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)  
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Babu Lal Saini S/o Shri Kalu Ram Saini, aged about 18 years, Resident of Village Post Hathona, Tehsil Newai District Tonk (Rajasthan).

...Applicant.

(By Advocate: Shri Nikhil Yadav for Shri Shashank Agarwal)

Versus

1. Union of India, through Secretary, Ministry of Communication and Information Technology, Electronics Niketan, 6 CGO Complex, Lodhi Road, New Delhi-110003.
2. Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001, through Secretary/Chairman.
3. The Superintendent, Office of the Superintendent – Post Office, Tonk Circle, Tonk-304001.
4. Mr. Ashok Kumar Sodh S/o Shri Nandlal Jat, resident of Isarawal, Dhani Nawadi, Post Bilochi via Morja, Tehsil Amber, District Jaipur.
5. Mr. Jodhraj Gurjar S/o Shri Pokharmal Gurjar, resident of Thikaria Charnan Post Lileda, via Taleda, District Bundi presently posted as Gramin Das Sevak Branch Post Master at Village Dakhiya, District Tonk.

...Respondents.

(By Advocate: Shri N.C.Goyal)

**ORDER****Per: A.Mukhopadhyaya, Member (A):**

The brief facts relating to this Original Application, (OA), are that the applicant responded to an advertisement dated 30.09.2013, (Annexure R/2), issued by the respondents for appointment of Gramin Dak Sevak Branch Post Master, (GDS BPM), Dakhiya in the Unreserved Category. He points out that the only criterion for eligibility/selection mentioned in the notification was the marks obtained in the Secondary Examination; (Annexure R/2 refers). However, on an enquiry from the respondents, he was told that his application which had been sent by Speed Post, (Annexure A/6), had not been received by the respondents. Subsequently, Respondent No.4, Mr. Ashok Kumar Sodh who had secured only 74.17% marks in the Secondary Examination was chosen for the post, although the applicant, with 76.83% marks, had the highest marks amongst all the candidates who applied. Aggrieved by this, he approached this Tribunal seeking the following relief:-

- i. To cancel the Selection and/or appointment of Respondent No.4 as Gramin Dak Sevak Branch Post Master for the advertised post in Village Dakhiya, District Tonk.
- ii. To appoint the applicant as Gramin Dak Sevak Branch Post Master for the advertised post in Village Dakhiya, District Tonk and grant all benefits.

(3)

- iii. Any other appropriate order or direction which is deemed fit and proper in the facts and circumstances of the present case be passed in favour of the applicant.
- iv. The cost of the litigation be awarded in favour of the applicant.

2. This Tribunal passed an interim order in the applicant's favour on 21.02.2014 directing that the appointment of Respondent No.4 on the post of Gramin Das Sevak Branch Post Master in Village Dakhiya, District Tonk shall be subject to the outcome of this OA. The applicant further states that he later discovered that Respondent No.4 did not take up the appointment in question and the official respondents, (Department of Posts), thereafter appointed Mr.Jodhraj Gurjar S/o Mr. Pokharmal Gurjar to the post. Upon this, the applicant impleaded the said Mr.Jodhraj Gurjar as Respondent No.5 in this OA, even while adding a plea for the cancellation of the selection and appointment of Respondent No. 5 to the post of GDSBPM Dakhiya.

3. In reply, the respondents confirmed that the application sent by the applicant by Speed Post was not delivered to Respondent No.3, i.e. the office of the Superintendent, Post Office, Tonk, but was instead wrongly delivered to the office of the Chief Medical and Health Officer, (CMHO), Tonk on 25.10.2013, (Annexure R/12 – para 9 of reply refers), and consequently, when applicants

(4)

were considered for the appointment after the last date for filing applications, i.e. 12.11.2013 had passed, there was no application from the applicant available for consideration. The respondents in good faith considered all the applications available to them and thereafter chose Respondent No.4, Shri Ahsok Kumar Sodh who had the highest percentage of marks from amongst the applicants available, i.e. 74.17%, for the post on 13.11.2013; (para 5 of reply refers). Thereafter, a panel of 5 others candidates valid for one year was also prepared as a wait list in case the selected candidate did not accept the offer of selection. On Respondent No.4 refusing to join, (Annexure R/9 refers), the candidate with the next highest marks in the Unreserved Category, Shri Jodhraj Gurjar, was selected for the post. The respondents reiterate that the wrong delivery of the application sent by the applicant in this OA was not due to any malafide intention but was a bonafide error as applications were also going to the office of CMHO Tonk for a ward boy vacancy advertised by them and as many as 641 Speed Post articles were delivered to CMHO Tonk during the period in question. Thus, the respondents contend that the selection of Respondent No.5 was done strictly as per rules and procedures prescribed and therefore that the relief sought in this OA is not admissible to the applicant.

4. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Both

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counsel reiterated the points made in the OA and its reply respectively.

5. In the present case, it is undisputed that the application preferred by the applicant for the post of GDSBPM Dakhiya and sent by Speed Post was not delivered to the intended address and that on the date when the selection for the post took place, the said application was not available to the respondents for consideration. It is also not disputed that in the absence of such an application, the respondents did not err, first in appointing Respondent No.4, and then, on Respondent No. 4 not joining duties, Respondent No.5 to the post. In all that transpired in this case, while it is true that the incorrect delivery of the applicant's Speed Post was an error on the part of the respondent department itself, there is nothing on record to support the contention that this error was malafide in any way. Even otherwise, the respondents cannot be held liable to make the appointment of an applicant whose application is admittedly not available with them at the time of consideration of competing applications for the appointment. Any claim that the applicant may have for the damage that he has suffered on account of this wrong delivery is of a civil nature, the adjudication of which does not lie within the jurisdiction of this Tribunal.

(6)

6. In the result, this OA is found to be devoid of force and merit and is dismissed. The applicant however shall be free to pursue his claim for civil damages, if any, in a court having appropriate jurisdiction to adjudicate upon the same.

7. There will be no order on costs.

(A.Mukhopadhyaya)  
Member (A)

(Suresh Kumar Monga)  
Member (J)

/kdr/