

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/791/2019

Date of Order: 05.09.2019

Between:

M. Suresh S/o Late M. Komurelly
Age 30 years
Occupation: Multi Tasking Staff
Hanmakonda H.O. – 506001
Hanmkonda Division. ... Applicant

AND

1. Union of India, represented by
Its Secretary to the Government of India
Ministry of Communications & IT
Department of Posts-India
Dak Bhavan
Sansad Marg, New Delhi – 110 001.

2. The Chief Postmaster General
Telangana Circle, “Dak Sadan”
Abids, Hyderabad – 500001.

3. The Superintendent of Post Offices
Hanmakonda Division
HANMAKONDA 506 001. ... Respondents

Counsel for the Applicant ... Mr. M. Venkanna

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed seeking directions to the respondents to permit the applicant to appear in the Competitive Examination, limited to GDS against unfilled vacancies for the year 2017-18.
3. Brief facts of the case are that the applicant was appointed as GDS BPM in Peddaramancherla Branch Office on 22.03.2013. Through a competitive examination, he was selected and appointed as Multi Tasking Staff (MTS) at Hanmakonda Post Office on 06.07.2018. Respondents have issued Notification dated 05.08.2019 for filling up unfilled vacancies of Postal Assistants from GDS for the years 2015-16 to 2019. Applicant applied for the examination but his application was rejected vide Memo dated 26.08.2019 on the ground that the applicant is not a GDS and hence ineligible. Aggrieved, OA has been filed.
4. The contentions of the applicant are that the applicant has completed 5 years 3 months and 5 days service as GDS and one year as MTS. As per respondents letter dated 27.01.1981, a GDS with 5 years of service is eligible to appear in departmental examination. There is no bar for the MTS to appear in the departmental examination for the post of Postal Assistant.

5. The Tribunal apprised the learned counsel for the applicant that a similar case was dismissed on 28.08.2019 at the admission stage keeping in view the rules and regulations on the subject. To this, the learned counsel for the applicant informed that he is aware of the same and that he has come up with a new ground taking cover of respondents letter dated 27.01.1981, wherein the relevant clause reads as under:

“In case an EDA, who is subsequently appointed as Class IV, appears in the test of Post man along with other EDAs, his seniority will be determined on the basis of his date of appointment as EDA.”

As can be seen from the above, the cited letter only speaks about the seniority but it does not state anything about selection. Therefore, the said clause does not come to the rescue of the applicant.

6. This Tribunal has dismissed an identical case on 28.08.2019 at the admission stage, after taking into consideration of all the grounds, as are being taken in the present OA. The operative portion of the Judgement is as under:

“7. I) Primarily the notification issued on 5.8.2019 is titled as Conducting of Limited Departmental Competitive Examination from the Grameen Dak Sewaks (GDS) for recruitment to the cadre of Postal Assistants/Sorting Assistants” for the vacancies in the years from 2015 to 2019. Applications were invited from willing and eligible GDS who satisfy the eligibility criteria as per recruitment rules notified in GSR 411 (E) dated 21.5.2015. Admittedly, the applicants working as Postman/Postwoman are not GDS and hence

are not eligible to take the examination as per the notification and recruitment rules. It is true that they did work as GDS but once they have been promoted as Postman/Post woman they cease to belong to the GDS category. In fact, Learned counsel for the respondents has explained that certain percentage of posts in the PA/SA cadre are earmarked to the cadre of GDS/Postman & MTS as per recruitment rules and exams are accordingly conducted. Therefore the applicants can appear in the exams held for their respective cadre only. Otherwise, it would imbalance the ratio of recruitment from the three sources, which is impermissible. This Tribunal has dealt a identical case in OA 1386/2012 wherein a similar relief sought by the applicant therein who was working as Mail Guard, which is equivalent to the post of Postman, was rejected on the ground that the Postal Assistant/Sorting Assistant posts are to be filled by the Grameen Dak sewaks, as per the notification issued.

II) Learned counsel for the applicants has pleaded that applicants be allowed to appear in the examination as an interim measure and that their selection could be made conditional subject to the finalisation of the OA. This submission is difficult to accept since the norms laid down in the notification have to be followed. The notification is meant only for GDS to appear in the examination and the recruitment rules notified in GSR 411 have spelt out the eligibility criteria. Applicants belong to the Postman cadre and are therefore ineligible. By acceding to the plea of the Learned counsel of the applicant, would mean disregarding the norms laid down in the notification and also violating the recruitment norms, which are statutory in nature. Besides, a binding precedent has also been set by the bench of this division in OA 1386/2012 wherein an identical relief sought has been rejected. A binding precedent has to be adhered to as per the Hon'ble Supreme court directions in Sub-Inspector Roopal vs Lt. Governor, in Appeal (Civil) No.5363-64 of 1997 [(2000) 1 SCC 644]. The Hon'ble Supreme Court has also held in Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11, that in recruitment process changing rules of the game during selection process or when it is over is impermissible. Moreover, in Sonia v. Oriental Insurance Co. Ltd.,(2007) 10 SCC 627 at para 10, Hon'ble Apex Court has held that selection has to be based on the rule laid down in the advertisement/notification. Further, if the relief sought is acceded, it would entail -(a) stultifying

the rule which is specific as to the category of persons who alone would be eligible to participate in the LDCE and (b) invidious discrimination in that the applicants would derive unintended benefit, while other postmen who have not applied will be deprived of the opportunity. This would derail the very foundation of the recruitment process and in the process rules would get de-sanctified. Applicants did rely on the interim order issued by the Hon'ble Madras Bench of this Tribunal in OA 1069/2019 on 14.8.2019 allowing similarly placed applicants to appear in the said examination. Interim orders, by their very nature are temporary or ephemeral in character, contingent upon the final order and thus, not comparable to the final orders to qualify to be treated as precedents.

III) Thus based on the above, relief sought by the applicant is against rules and the legal principles laid down by the Hon'ble Supreme Court. Hence there is no scope to intervene on behalf of the applicants. The OA being devoid of merit, merits dismissal and hence dismissed at the admission stage with no order as to costs.

7. The present OA is covered by the verdict of this Tribunal, passed on 28.08.2019 and, hence, there is no other alternative except to dismiss the present OA with no order as to costs. Ordered accordingly.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 5th day of September, 2019

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