

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on August 05, 2013

Judgment Delivered on August 07, 2013

+ W.P.(C) 3153/2010

UNION OF INDIA & ORS. Petitioners
Represented by: Mr.M.K.Bhardwaj, Adv.
Advocates

versus

FIRE RAM SINGH & ORS. Respondents
Represented by: Mr.S.K.Gupta, Adv. for
Respondent No.1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. A short question arises for our consideration in this writ petition which is, whether it is the age or the length of service in the feeder grade which would determine the appointment as Postman when the zone of consideration is from amongst the Extra Departmental Agents?
2. The few relevant facts are that the respondent No.1 was appointed as Gramin Dak Sewak on July 11, 1989, Meerut Division whereas the respondent No.3 was appointed as Gramin Dak Sewak earlier to the respondent No.1 on July 1, 1988.
3. As per the Recruitment Rules the next higher post of Postman is filled up in the following manner:-

“(i) The existing method of recruitment to 50% of vacancies in the cadre of Postmen/Village Postmen by promotion of Group ‘D’ officials, who qualify in the test will continue.

(ii) The remaining 50% of the vacancies, which are for outsider’s quota and are filled in from amongst the ED Agents, should be further divided into two halves. One half of the 50% of the vacancies will be filled in from amongst ED Agents who have put in three years (now five years) regular service and are within the age limit on the basis of merit in the examination. The remaining half of the 50% of the vacancies will be filled in, on the basis of length of service, from EDAs who have put in three years of regular service and are within the age limit and who qualify in the examination. The number of ED Agents to be permitted to take the examination under this quota will be five times of the vacancies announced under this quota.”

4. In 2004 the respondent No.1 and the respondent No.3, amongst others, applied for the examination for six posts of “Postman”. The aforesaid examination was conducted against 25% of the vacancies meant to be filled under “outsiders’ quota” from amongst the Extra Departmental Agents of a particular Division i.e. Meerut Division.

5. The result of the aforesaid examination was declared in the month of September, 2004 and it was found that the respondents No.1 and 3 had secured same 116 marks in the said examination.

6. The respondent No.1 filed an Original Application No.334/2006 challenging the appointment of one Paramvir Singh, respondent No.2. Later on it was detected by the petitioners that Mr. Paramvir Singh had appeared in the examination from Meerut Postal Division, however, the post office in which he was working

in the feeder post had been transferred to Ghaziabad Division. Therefore, he was adjusted in Ghaziabad Division and one vacancy which was caused in the Meerut Division was filled by giving appointment to the respondent No.3.

7. The respondent No.1 had challenged the appointment of respondent No.3 as Postman against the outsider quota which Original Application was decided in favour of the respondent No.1 whereby the appointment of respondent No.3 was quashed with a further direction to appoint the respondent No.1 as Postman from the date of appointment of respondent No.2 Mr. Paramvir Singh.

8. The petitioners had filed a writ petition bearing W.P. (C) No.9045/2007 before this Court. This Court was of the view that the Tribunal has not decided the issue whether a person who is older in age or a person who has longer service as ED Agent should have been given preference when they had secured same marks.

9. On remand the Tribunal heard the Original Application No.334/2006 and was of the view that the length of service cannot be the criteria to adjudge comparative merits, it is only the age which will determine and in that event the respondent No.1 being senior in age is entitled to be promoted as Postman.

10. Mr.S.K.Gupta, learned counsel appearing for the respondent No.1 would submit that the Rule prescribes the appointment be made on merit and not on the basis of length of service. He would further submit the Tribunal has rightly held in favour of respondent No.1 being older in age, should be given the appointment.

11. We have considered the submissions so made along with the record of the writ petition.

12. A perusal of the Recruitment Rule would show that 50% vacancies of Postman/Village Postman/Male Guards has to be filled by promotion of Group D officials. The remaining 50% have to be filled from amongst the ED Agents divided into two halves. One half of 50% i.e. 25% of the vacancies will be filled from amongst the Extra Departmental Agents who have put in 5 years of regular service. The remaining half of the 50% i.e. 25% of the vacancies will be filled in on the basis of length of service from Extra Department Agents who have put in three years of regular service. The petitioners have given the appointment to the respondent No.3.

13. On a pointed query to Mr.S.K.Gupta as to whether any instructions exist which covers the cases of this nature. The answer of Mr.S.K.Gupta was in the negative. The petitioners on the other hand relied upon para 32E of the P&T Volume IV which stipulates (page 93 of the paper book):

“32E. Subject to any special rules prescribed for any particular service, the seniority of an official in the cadre to which he belongs should be fixed according to the date of his permanent appointment to that cadre. When this date happens to be the same in the case of two or more officials, seniority should be determined according to the following principles:-

(a) In cadre to which recruitment is made through an examination.

(i) If the examination is competitive, seniority should be fixed according to the order of merit, in the examination. Where recruitment is made partly from departmental candidates and partly from outsiders, the former should always rank senior to the latter.

(ii) If the examination is qualifying, seniority should

be fixed according to the position of the official on the waiting list.”

14. A perusal of the same would reveal that as a general Rule the seniority of an official in a cadre has to be fixed according to the date of his permanent appointment. In an eventuality when the date happens to be the same in respect of two or more officials the seniority has to be determined, in the case of examination, in the order of merit. Where recruitment is made partially from departmental candidates and partially from outsiders the former should always rank senior to the latter.

15. In the case in hand, it is accepted position that the respondent No.1 and respondent No.3 are departmental candidates, in the sense both were appointed as Extra Departmental Agents. Extra Departmental Agent is a feeder category for the post of “Postman”. Even though the rule prescribes the quota as an “outsider quota”, the respondent No.1 and respondent No.3 are “insiders” as they belong to Meerut Division. The words used in Rule 32(a)(i) contemplates if the examination is competitive, which is in this case, seniority should be fixed according to the order of merit in the examination and where recruitment is made partly from departmental candidates and partly from outsider the departmental candidate should rank senior.

16. In this case both the respondents being departmental candidates, merit being equal surely the length of service would determine the seniority, in this case the appointment. There is nothing in the Rule to suggest “age” as a factor for determining the seniority or in this case the appointment.

17. If the petitioners have determined the appointment on the basis of Rule 32E, we are of the view that it is the only view or a plausible view (in the absence of anything shown contrary). The Tribunal could not have interfered with such a decision.

18. It is seen the Tribunal does not deal with Rule 32E of the P and T Volume IV while allowing the OA when the petitioners have in their reply taken the following stand:

“Shri Zile Singh was declared successful being senior to the applicant as per instructions contained in Rule 32E of P and T Manual Volume IV.”

19. In view of the above, we allow the writ petition and set aside the order passed by the Central Administrative Tribunal in Original Application No.334/2006 and dismiss the Original Application filed by the respondent No.1.

20. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 07, 2013
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