

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/648/2015

Date of Reserve: 20.01.2020

Date of Order: 26.02.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Niranjan Kumar Mishra, aged about 46 years, S/o. Late Sadasiba Mishra, resident of At/PO-Tukuna, Via-Salapada, PS-Ghasipura, Dist-Keonjhar, Odisha, PIN-758 020.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani

P.K.Samal

D.P.Mohapatra

-VERSUS-

Union of India represented through:

1. The Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751 001.
3. The Supdt. Of Post Offices, Keonjhar Division, Keonjhargarh-758 001.
4. Bishikeshan Nayak, Vill/PO-Madhukeshari, Via-Sainkul, Dist-Keonjhar, PIN-758 043.
5. Tutuna Kumar Sahoo, Vill-Deogaon, PO-Kapilas, Via-Gondiapatna, Dist-Dhenkanal, PS-Gandia, PIN-759 016.

...Respondents

By the Advocate(s)- Mr.B.Swain

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs.

- i) Admit the Original Application
- ii) After hearing the counsels for the parties be further pleased to direct the Departmental respondent(s) to select the applicant for promotion to the cadre of Postal Assistants by issuing fresh selection order from the date of result declared quashing the impugned orders at Annexure-A/3, A/4 and A/8.
- iii) Pass any other order(s) as deemed just and proper in the interest of justice.

2. Brief facts leading to filing of this O.A. are that the applicant had joined the post of Gramin Dak Sevak Branch Post Master, Tukuna BO in account with Salapada SO under Keonjhar Division in the year 1999. He having been declared successful in the Postman Examination conducted by the Department of Posts, the applicant was allotted to the unit of IP, Champua Sub-Division and accordingly, he was posted as such in the year 2010. While the matter stood thus, the applicant appeared the Limited Departmental Examination – 2014 (LGOs Exam-2014) held on 23.11.2014, the result of which was declared on 10.06.2015 vide A/3 in which 32 candidates were declared successful and allotted to different Divisions for appointment as Postal Assistants/Sorting Assistants. According to applicant, another 25 candidates were selected for promotion to the cadre of Postal Assistants, but they were not allotted to any Division. In the meantime, the CPMG (O) issued a corrected list of 25 candidates vide letter dated 24.06.2015 (A/4) with the details of marks secured by the candidates who were allotted to different Divisions on promotion as Postal Assistants.

3. It is the case of the applicant that through RTI Application, he could come to know that Sri Bishikeshan Nayak (Respondent No.4) and Sri Tutuna Kumar Sahoo (Respondent No.5) having secured same marks, i.e., 114 as of him were placed in the merit list at SI.No.15 & 16 respectively, vide (A/4) and appointed to the post in question, whereas he was left out of consideration, even though they all belong to UR category. In this regard, the applicant submitted a representation dated 03.07.2015 (A/6) to the CPMG, Odisha Circle, Bhubaneswar ventilating his grievance. In response to this, the Superintendent of Post Offices, Keonjhar Division, communicated the decision

of CPMG vide letter dated 7.8.2015 (A/8), the relevant part of which reads as follows:

"Sub: Representation fof Shri NiranjanKumar Mishra, O/S Mails, Ghatgaon Sub Division i/a/w/ LGOs Examination – 2014 held on 23.11.2015:

"In pursuance of CO Bhubaneswar letter No.RE/30-23/2014 (PA/SA) dated 04.08.2015 on the above noted subject it is to intimate that you have joined in Postman cadre on 02.06.2010 and Shri Bishikeshan Nayak in Postman Cadre on 01.06.2010. Thus the length of service period of Shri Bishikeshan Nayak is more you. The selection of Shri Bishikeshan Nayak as PA in LGOs Examination is in order. The point raised by you vide your representation dated 03.07.2015 can't be taken into account for selection as P, since your length of service in Postman cadre is less than that of Shri Bishikeshan Nayak".

4. Aggrieved with this, the applicant has approached this Tribunal in the instant OA seeking for the reliefs as referred to above.

The grounds on which the applicant has based his claim are as follows:

- i) The Superintendent of Post Offices (Respondent No.3) being the appointing authority of Postman did not issue posting order centrally and allotted the applicant to the unit of Inspector of Posts (IP) Champua Sub Division. The IP, Champua posted the applicant as Postman Joda SO at a belated date on 01.06.2010. Hence, according to applicant, he is not responsible for his delayed posting as Postman.
- ii) In the corrected list of 25 candidates for promotion to the cadre of Postal Assistants/Sorting Assistants issued by the CPMG (Res.No.2), Private Respondent Nos.4 and 5 having secured 114 were promoted to the post of Postal Assistants whereas the applicant having secured the same mark was not so promoted.
- iii) As per settled position of law the relative seniority of all direct recruits is to be determined by the order of merits in which they are selected for such appointment. This principle of determination of seniority is guided by the OM No.20011/5/90-Estt.(D) dated 04.11.1992 (A/9) issued by the DOP&T. Therefore, the plea raised by the applicant that length of service is the determining factor for determining seniority is out of place.

- iv) According to merit list of GDS employees who had come out successful in the Postman Examination vide A/1 dated 06.05.2010, the name of the applicant finds place at SI.No.4 whereas the name of Private Respondent No.4 finds place at SI.No.5. Therefore, the applicant being senior to Respondent No.4 in the grade of Postman, his seniority position cannot be changed unilaterally while considering promotion to the post of Postal Assistants/Sorting Assistants on the ground that the length of service rendered by Respondent No.4 is one day more than the applicant.
- v) The LDCE, 2014 for LGOs to the cadre of PA/SA being the selection posts, the principle of merit-cum-seniority is applicable whereas the official respondents have taken the plea of length of service, which per se is wrong and illegal.

5. To fortify his stand point, the applicant has relied on the following decisions:

- i) AIR 1967 SC 1910 (Sant Ram Sharma vs., State of Rajasthan & Ors.).
- ii) Union of India vs. Mohan Lal Kapoor & Ors. [1973 (6) SCC 836].
- iii) Civil Appeal No.3798 of 1996 .
- v) B.V.Sivaiah vs. K.Addanki Babu & Ors. [1998 (6) SCC 720.
- vi) Civil Appeal No.3595 of 2001 (arising out of SLP(C) No.7923 of 2000) & in the matter of The Central Council for Research in Ayurveda and Siddha vs. Dr.K.Santhakumari.

6. Although notice had been directed to Private Respondent Nos. 4 and 5, but, they have neither entered appearance nor filed any counter. However, the official respondents by filing a detailed counter have opposed the prayer of the applicant. According to them, Shri Bishikeshan Nayak was found place at SI.No.39 of the merit list of qualified candidates whereas the applicant ranked at SI.No.42. Official respondents have stated that the other candidates who are senior to the applicant in respect of length of service period but have secured equal marks have been placed below. They have pointed out that when the selection is made on the basis of competitive examination and the candidates have secured equal marks, their length of service is the next criteria to select

the candidates securing equal marks keeping the vacancy position in view. In sum and substance, it is the case of the official respondents that since the Private Respondents, Particularly Respondent No.4 was having the length of service more than the applicant which is the criterion to be adopted in case of the selected candidates securing equal marks, and that the applicant having less service rendered than Respondent No.4 in the cadre of Postman, ranked below the Private Respondents. Hence, they have submitted that the O.A. being devoid of merit is liable to be dismissed.

7. We have heard the learned counsels for both the sides and perused the records. From the pleadings of the parties, the short point to be decided is whether the claim of the applicant to be selected for the post in question on the ground that he was senior to Private Respondent No.4 in the cadre of Postman is sustainable.

8. Admittedly, in the merit list published for promotion to the post of Postman in pursuance of the Departmental Examination held on 31.01.2010, the name of the applicant figures at Sl.No.1 whereas the name of Private Respondent No.4 at Sl.No.5 vide A/1 dated 06.05.2010. In support of his contention, the applicant has relied on the Office Memorandum dated 04.11.1992 issued by the DOP&T (A/9) regarding delinking seniority from confirmation. The contents of the said OM relevant for the purpose are quoted hereunder:

"The seniority of Government servants is determined in accordance with the general principles of seniority contained in MHA OM No.9/11/55/RPS dated 22.12.59 (copy enclosed). One of the basic principles enunciated in the said OM is that seniority follows confirmation and consequently permanent officers in each grade shall rank senior to those who are officiating in the grade.

2. This principle has been coming under judicial scrutiny in a number of cases in the past, the last important judgment being the one delivered by the Supreme Court on 2.5.90 (JT

1990 (2) SC 264) in the case of Class II Direct Recruits Engineering Officers Association vs. State of Maharashtra. In Para 47(A) of the said judgment the Supreme Court has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

3. The general principle of seniority mentioned above has been examined in the light of the judicial pronouncement referred to above and it has been decided that seniority may be delinked from confirmation as per the directive of the Supreme Court in Para 47 (A) of its judgment dated 2.9.90. Accordingly in modification of the general principle 3, proviso to general principle 4 and proviso to general principle 5 (i) contained in MHA (now DOPT) O.M.No.9/11/55-RPS dated 22.12.59 and para 2.3 of this Department OM dated 3.7.86 (copy enclosed) it has been decided that seniority of a person regularly appointed to a post according to rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation".

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9. On the other hand, while not disputing the applicant's position above the Private Respondent No.4 in the merit list or the list allotted to various Units prepared in respect of GDS officials who had come out successful in the Postman Examination conducted by the Department, it has been pointed out that in the LGO Examination held on 23.11.2014, the applicant as well as Respondent No.4 had secured equal marks and as such the name of other two candidates including Respondent No.4, who are senior to Sri Mishra in terms of length of service as Postman have been included in the merit list as it is next criteria to prepare the merit list.

10. Admittedly, the applicant's position in the merit list of successful GDS officials, who got through the Postman Examination conducted by the Department, is at SI.No.4 whereas the name of Private Respondent No.4 at SI.No.5. But the seniority list placed at Annexure-A/7 of the OA shows that the applicant is senior to the Respondent No.4 in the Postman cadre although

length of service of the Respondent No.4 as Postman is more than the applicant. The ground on which the respondents have placed the applicant below the Private Respondent No.4 in the list of successful candidates for the promotion to PAs/SAs after a Departmental Examination, is that the Private Respondent No.4 was below the applicant in the merit list published for the post of Postman and below the applicant in the seniority list of Postman, but length of service of the Respondent No.4 as Postman is more than the applicant. The official respondents have brought to the notice of this Tribunal the date (s) of joining as Postman of the applicant and the Private Respondents. On a perusal of the same, it reveals that whereas the applicant's length of service as Postman was 3 years 6 months & 29 days, the length of service of Private Respondent Nos. 4 and 5 was 3 years, 7 months and 3 years 7 months & 16 days, respectively. Thus, according official respondents, the length of service of Private Respondent No.4 being one day more than the applicant, he was rightly shown above the applicant in the merit list which is the basis for preparation of the same.

11. As indicated above, the seniority list of Postman at Annexure-A/7 of the OA has not been disputed by the respondents and it shows that the applicant is senior to the Private Respondent No.4. Besides, the official respondents have not produced any corroborative documents to establish that in case equal marks are secured by two candidates in a Departmental Examination for SA/PA, the criterion to prepare the merit list is the length of service as Postman and not the seniority in the feeder cadre. In our considered opinion, as per the DOP&T OM, cited supra, the applicant having been regularly appointed to the post of Postman in pursuance of a Departmental Examination, his seniority as per the Gradation List at Annexure-A/7 ought to

have been taken into consideration by the official respondents while finalizing candidate to be included in the merit list in case of equal marks. There may be circumstances being beyond the control of a qualified candidate at a higher position in the merit list to join later than the another candidate at a lower position of the merit list. Since in the instant case, the allotment of successful candidates as Postmen to various Units in pursuance of Postman Examination makes ostensibly clear that the applicant was higher in the seniority than the Private Respondent No.4 in the gradation list (Annexure-A/7), it was incumbent on the part of the official respondents to give due regard to the seniority position of the applicant vis-a-vis Private Respondent No.4 both having secured equal marks in the LGOs Examination, while finalizing the merit list and publishing the results vide A/4. In view of this, we answer the point in issue mentioned at Paragraph-7 of the order in favour of the applicant and against the Private Respondent No.4.

12. Having regard to what has been discussed above, we quash the impugned communication dated 07.08.2015 (A/8) and direct Respondent No.2 to pass an appropriate order regarding inclusion of the applicant in the merit list vis-a-vis Respondent No.4, keeping in view the observations made by us in the preceding paragraphs, within a period of sixty days from the date of receipt of this order and in case of selection to the post, the applicant shall be given the benefit of notional pay fixation in the cadre of PA or SA, as the case may be, with effect from the date the said Private Respondent No.4 had been so promoted.

13. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

