

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

Date of Order: 13.11.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

I. OA/050/00358/2016

Naveen Kumar Chaudhary, Son of Sri Amar Chaudhary, Multi Tasking Skill (MTS), Office of the Director Accounts of Post, Patna- 800001 (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Director General of Posts, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, Patna (Bihar).
3. The Director Postal Services, Office of the Chief Post Master General, Bihar Circle, Patna.
4. The Director of Accounts (Postal), Patna- 800001 (Bihar).
5. The Assistant Director (Recruitment), Office of the Chief Post Master General, Bihar Circle, Patna.

.... **Respondents.**

By Advocate: - Mr. H.R. Singh

With

II. OA/050/00437/2017 (MA/050/00149/17 & MA/050/00463/16)

Naveen Kumar Chaudhary, Son of Sri Amar Chaudhary, Lower Division Clerk, Office of the Director Accounts of Post, Patna- 800001 (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

6. The Union of India through the Director General of Posts, Department of Post, Dak Bhawan, New Delhi.
7. The Chief Post Master General, Bihar Circle, Patna (Bihar).
8. The Director Postal Services, Office of the Chief Post Master General, Bihar Circle, Patna.
9. The Director of Accounts (Postal), Patna- 800001 (Bihar).
10. The Assistant Director (Recruitment), Office of the Chief Post Master General, Bihar Circle, Patna.

.... **Respondents.**

By Advocate: - Mr. G.K. Agrawal

ORDER
[ORAL]

Per Dinesh Sharma, A.M:- Since the subject matter of the two OAs is inter-linked these are being disposed of by the following common order.

2. In OA/050/00358/2016 the applicant has prayed for quashing and setting aside the reason as shown in Annexure A/1 of this OA where in the table annexed, one category of posts has been shown “reserved as per CAT order”. They have also requested for directing the respondents to publish the result of LDCE 2015 for promotion of MTS to LDC held on 16.08.2015 and include the name of the applicant in final panel result dated 19.11.2015 against the unfilled vacancy kept under confusion as “reserved as per CAT order”. The applicant has further requested for giving effect of promotion to the post of LDC in favour of the applicant, in the same manner as has been adopted in the case of three other persons shown in Annexure A/2 dated 20.11.2015, with all consequential benefits.

3. In OA/050/00437/2016 the applicant has prayed for cancelling any uncommunicated adverse order if passed after the order passed by this Tribunal on 07.06.2016 (Annexure A/9) regarding the candidature of applicant for appearing in LDCE, 2016 for promotion from LDC to Jr. Accountant to be held on 18.06.2016 and 19.06.2016. On filing an MA to amend this OA the applicant was allowed to amend the prayer to include a

further prayer to quash and set aside order dated 13.06.2016 passed by respondent no. 2 as contained in Annexure A/11.

4. The contention of the applicant, very briefly put, is that the applicant should have been promoted along with three others by order dated 20.11.2015 and non-declaration of his result, in the guise of keeping a post reserved as per CAT order, was wrong. Since the Department themselves, after the filing of the first OA 358/2016), found the applicant eligible for promotion as LDC by their order dated 25.05.2016 [Annexure A/3 of 2nd OA (OA 437/2016)], the applicant's claim now is to consider his request for next promotion as JAO in the examination held on 18.06.2016 and 19.06.2016, to which he was admitted, provisionally, following this Tribunal's interim order in OA 437/2016 dated 14.06.2016.

5. The respondents have filed a written statement in the first OA (OA 358/2016) where they have denied the claim of the applicant. There was nothing wrong in stating that one post has been kept vacant as per direction of this Tribunal in OA 513/2015. It was argued by the learned counsel for the respondents in this case that the OA has become infructuous after the later decision by which the applicant has been declared successful.

6. In the written statement filed in OA 437/2016 the respondents have denied the claim of the applicant. They have stated that only eligible LDCs as on 13.05.2016 were supposed to apply for promotion to Jr. Accountant. The applicant who was in MTS cadre applied for the post incorrectly on 10.05.2016 when he was not eligible to apply for this post. After joining the cadre of LDC on 26.05.2016 the applicant has submitted an

application on 25.05.2016 which was after the last date of submission (13.05.2016) of such application. The applicant had filed OA 427/2016 to accept his candidature for promotion and the Tribunal had disposed of the same with direction to the CPMG, Bihar Circle to take a final view in regard to the candidature for appearing in LDCE for promotion scheduled to be held on 18/19.06.2016. The CPMG took a final view on 13.06.2016 rejecting the candidature of the applicant on ground that he was not an LDC on 10.05.2016 when he applied for promotion to the post of Jr. Accountant. It is stated in the WS that the delay in declaring the result (for promotion to LDC) was because of keeping one post unfilled on account of orders of this Tribunal passed in case of Pawan Kumar Mishra (OA 513 of 2015). The final outcome of that OA is still awaited. They have published the result of applicant (for promotion as LDC) as per the orders dated 12.05.2016 of this Tribunal in OA 358/2016, where liberty to publish the result against the remaining vacancy was granted.

7. The applicant has filed rejoinders in both the OAs where he has denied the contentions of the respondents in the WS and reiterated his earlier claim.

8. We have gone through the pleadings in both the cases and heard the arguments of learned counsels It is clear that the result of examination held on 16.08.2015, for promotion to the post of LDC, was not declared with respect to the applicant only because of one vacancy kept unfilled following this Tribunal's order in an unrelated case. It is not denied that the applicant had become successful in that examination and therefore

would have become an LDC if the vacancy was not kept unfilled because of this Tribunal's order. The respondents have filled that vacancy, following the liberty granted by this Tribunal by their order dated 12.05.2016, but it has happened a few days after (on 25.05.2016) the date fixed for applying for the next promotion (13.05.2016). It is obviously not because of any fault of the applicant that the declaration of the result of the earlier examination was delayed. We have already allowed the applicant, by way of interim relief through order dated 14.06.2016 in OA No. 050/00437/2016, to appear in the examination held for the JAO on 18/19.06.2016 and the result has been ordered to be kept in sealed cover. Since despite being successful in the earlier examination, the delay in granting promotion to the applicant as LDC was not on account of any fault of the applicant, depriving him of a chance to appear in the next promotional examination would be unjust. The order of the respondent no. 2 dated 13.06.2016 (in which his claim for candidature in the examination scheduled to be held on 18/19.06.2016 was rejected) is apparently based on the technical ground of the applicant not being an MTS on the date when he applied for the examination. The order does not mention anything about the circumstances in which the applicant remained as MTS and was not promoted along with others in the examination which he passed along with others. Such rejection on a technical ground is apparently unjust and therefore we set aside the order dated 13.06.2016 (Anenxure - A/11). The respondents are directed to open the sealed cover. Depending on the result, they should take further action for promotion of the applicant, if he is found otherwise fit. This should be

done within one month from the date of receipt of this order. Both the OAs as well as MA/050/00463/16 and MA/050/00149/17 are disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member