

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 233 of 2018**

**Present:** Hon'ble Mr. Swarup Kumar Mishra, Member (J)  
Hon'ble Mr. Tarun Shridhar, Member (A)

Susmita Senapati, aged about 40 years, D/o Bhaktabandhu Nath, presently working as GDSBPM, Sindurpank BO in account with Dhanupali SO under Sambalpur Division, Sambalpur.

.....Applicant

## VERSUS

1. Union of India represented through its Director General of Post, Ministry of Communication, Dept. of Posts, Dak Bhawan, Sansad Marg, New Delhi-1.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist.-Khurda-751001.
3. Post Master General, Sambalpur Region, Sambalpur.

### .....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.A.C.Deo, counsel

Heard & reserved on : 4.12.2020 Order on : 24.12.2020

## O R D E R

**Per Mr. Swarup Kumar Mishra, J.M.**

The applicant has filed this application under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) To quash the order dt. 15.3.2018 under Annexure A/5;
- “(ii) To direct the Respondent No.2 & 4 to issue offer of appointment for the post of Postman in favour of the applicant pursuant to Annexure A/1 as the applicant selected and stood 2<sup>nd</sup> position in the select list;
- “(iii) To pass any other order/orders as deem fit and proper.”

2. The brief facts of the case are that on 18.9.2019, while the applicant was working as GDSBPM, Sindurpank BO in account with Dhanupali SO under Sambalpur Division, respondent No.2 issue an advertisement for the post of Postman from 50% of vacancies on the basis of competitive examination restricted to GDS for the year 2017-18 as UR-2. The applicant being eligible, appeared in the said examination held on 29.10.2017. Respondent No.4 declared the result on 3.11.2017 where the applicant stood 2<sup>nd</sup> securing 83 marks out of 100. The applicant came to know that candidate No.1 in the

select list was offered appointment but she was not issued the offer of appointment. Moreover, the 2<sup>nd</sup> post of Postman in 50% GDS cadre has been cancelled without any notice. The applicant made a representation dated 21.11.2017 to the respondent No.2 which is still pending. The applicant approached this Tribunal in OA No. 756/2017 which was disposed of on 4.1.2018 with a direction to the respondents to dispose of the said representation. Vide order dated 15.3.2018 respondent No.2 has rejected the prayer of the applicant. Hence the present OA.

3. Respondents have filed their Counter. It is stated in the Counter that the applicant while working as GDSBPM, Sindurpank BO i.a.w. Dhanupali SO under Sambalpur Division had applied and appeared in the examination for the post of Postman. There were 2 UR posts under 50% of vacancies on the basis of competitive examination restricted to GDS out of which one vacancy was reserved for PH(OH) category. The result was declared on 3.11.2017 and it was found that Sriram Chandra Patel, GDSBPM, P.Niktmal BO i.a.w. Kesaibahal SO secured 84 marks and the present applicant secured 83 marks out of 100. As per CO, Bhubaneswar letter dated 30.10.2017 2 posts of UR category of 50% vacancies on the basis of LDCE for GDS was notified but in the foot note of the said letter it was intimated that out of the 2 UR vacancies one was allotted for PH(OH) quota. But unfortunately, the foot note had not come to notice and thereby 2 GDS were selected from the merit list and the result was declared. But subsequently when this error came to notice the result was kept in abeyance until further orders vide order dated 6.11.2017. The matter was communicated to Circle Office Bhubaneswar who in turn instructed to respondent No.4 to cancel the result declared on 3.11.2017 and to declare the result afresh as per the vacancy position. Hence the result declared on 3.11.2017 was cancelled and a fresh result was declared on 10.11.2017. Being aggrieved with this the present applicant filed OA No. 756/2017 before this Tribunal. The Tribunal vide order dated 4.1.2018 disposed of the OA with a direction to respondent No.2 to consider the representation of the applicant dated 21.11.2017 and pass a reasoned and speaking order within a period of 8

weeks from the date of receipt of the order. Respondent No.2 considered the representation of the applicant dated 21.11.2017 and issued the reasoned and speaking order dated 15.3.2018 rejecting the prayer of the applicant. The applicant has then come up with the present OA.

4. The applicant has filed no Rejoinder.

5. We have gone through the pleadings and citations relied upon by the learned counsels for both sides. The applicant has relied upon the following citations :

- (i) Y.V.Ragaiah & Others –vs- J.Sreenivas Rao [AIR 1983 SC 852]
- (ii) P.Mahendran & Others –vs- State of Karnataka & Ors. [AIR 1990 SC 405]
- (iii) B.L.Gupta & Anr. –vs- MCD [(1998) 9 SCC 223]
- (iv) State of Bihar & Ors. –vs- Mithilesh Kumar [(2010) 13 SCC 467]
- (v) State of Odisha & Ors. –vs- Manoj Kumar Panda & Ors. [2013 (II) ILR-CTC-746]
- (vi) BSS Welfare Society –vs- State of H.P. [AIR 2014 HP Page-1]
- (vii) Canara Bank & Anr. –vs- M.Mahesh Kumar [2015 AIR SCW 3212]

6. The applicant had applied under unreserved category in pursuance to the advertisement dated 18.9.2017 vide Annexure A/1. Learned counsel for the applicant submitted that there were two vacancies for unreserved category. Although learned counsel for the applicant submitted that in the said advertisement there was no reservation for PH i.e. Physically Handicapped (now it is called as differently able or physically disabled). This Tribunal is unable to accept the said submission of learned counsel for the applicant in view of the fact that in the footnote of advertisement itself vide Annexure A/1 it has been clearly mentioned that “from out of vacancies, one number of vacancy for PH (OH) category which is distributed/allotted to Sambalpur Division”. The fact remain that none had applied to the PH quota in pursuance to the advertisement vie Annexure A/1. It is stand of the respondents that unfortunately the footnote of the advertisement did not come to the notice of the authorities and therefore 2 GDS were selected from the merit list and result was declared vide Annexure R/1 dated 3.11.2017. Subsequently the said error

having come to the notice of the authorities the result was kept in abeyance until further orders and the matter was communicated to the Circle Office, Bhubaneswar who instructed respondent No.4 to cancel the results vide Annexure R/1 dated 3.11.2017 and to declare the result afresh. Accordingly fresh result was published on 10.11.2017 (Annexure R/3). The representation made by the applicant in this regard, in pursuance to the direction given by this Tribunal in the earlier OA has been rejected by respondent No.2 as per the speaking order dated 15.3.2018 (Annexure A/5).

7. As per the decision of Hon'ble Supreme Court in Jitendra Kumar Singh & Anr. -vs- State of UP and Ors. [AIR 2010 SC 1851], the carry forward rule is not applicable in respect of horizontal reservation of posts. In this regard the respondents have taken a stand that PH category post has been carried forward to next year as per DOPT circular dated 15.11.2018 (Annexure R/4). Learned counsel for the respondents was unable to convince this Tribunal that the circular vide Annexure R/4 is retrospective in nature. Besides that in view of the decision of the Hon'ble Supreme Court in P.Mahendran & Ors. -vs- Stte of Karnataka & Ors. [AIR 1990 SC 405] and in Y.V.Rangaiah & Ors. -vs- J.Srinivas Rao [AIR 1983 SC 852] the right accrued in favour of the applicant as a candidate to be considered for selection in accordance with existing rules, conditions and stipulations as mentioned in Annexure A/1 cannot be taken away or adversely affected by the subsequent circular vide Annexure R/4. Once the process of recruitment has started, the respondents cannot add any new conditions to carry forward the post in question in the midway of recruitment process.

8. Accordingly this Tribunal finds that the circular vide Annexure R/4 is not applicable to the present case and cannot affect the right of the applicant to be considered in accordance with the existing rules and stipulations as made in the Annexure A/1 of the advertisement. Therefore the action of the respondents in carrying forward the PH quota which comes as a horizontal reservation is found by this Tribunal to be illegal. It was the stand of learned counsel for the respondents that the applicant is not entitled to any relief in

this case since she has not challenged the advertisement vide Annexure A/1. In the fact and circumstances of this case as we have found the action of the respondents in carrying forward the UR post under PH quotas is not in accordance with law it was necessary for the applicant to challenge the advertisement vide Annexure A/1. Accordingly the said submission is not accepted.

9. In view of the findings already given by this Tribunal as above, as a necessary corollary the applicant has a right to be considered for the post of Postman under the UR category in pursuance to the advertisement at Annexure A/1, if there is no other legal impediment to do so. Accordingly the order dated 15.3.2018 (Annexure A/5) is quashed and the respondents are directed to consider the appointment of the applicant for the post in question in UR quota pursuance to advertisement A/1 within a period of three months from the date of communication of this order. If the post in question has already been filled up, then the respondents are directed to create supernumerary post to accommodate the applicant if she is otherwise found suitable to the said post till a regular vacancy in question is available in next year.

10. Accordingly the OA is allowed to the extent above. There will be no order as to costs.

(TARUN SHRIDHAR)  
MEMBER (A)

(SWARUP KUMAR MISHRA)  
MEMBER (J)

I.Nath