

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 275 of 2015

**Present: Hon'ble Mr.Swarup Kumar Mishra, Member (J)
Hon'ble Mr. C. V. Sankar, Member (A)**

Mahendra Kumar Das, aged about 38 years, S/o Madav Das, now working as Gramin Dak Sevak Mail Man, HRO, R<S 'BG' Division, Berhampur, residing near Old SBJ Bank, Hillpatna, Berhampur-760005.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi, Pin-110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist.-Khurda, Pin – 751001.
3. Post Master General, Berhampur Region, Berhampur-760001.
4. Director of Postal Services (HQRS), Odisha Circle, Bhubaneswar-751001, Dist-Khurda.
5. Superintendent, RMS 'BG' Division, Berhampur-760001.

.....Respondents

For the applicant : Mr.T.K.Mishra, counsel

For the respondents: Mr.S.B.Mohanty, counsel

Heard & reserved on : 29.1.2021 Order on :12.04.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

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

- “(i) That this Hon'ble Tribunal be pleased to quash the order dated 24.2.2015.
- (ii) This Hon'ble Tribunal further be pleased to direct the respondents to give appointment as a Mail Guard.
And any relief/reliefs be passed in favour of the applicant as this Hon'ble Court deem fit and proper.”

2. The facts of the case in a nutshell are that in pursuance of the Revised Recruitment Rules, i.e. Department of Posts (Postman & Mail Guard) Recruitment Rules, 2010 as amended from time to time as per revised syllabus, a notification dated 13.8.2013 (Annexure A/1) was issued calling for applications from the eligible candidates for Departmental Competitive Examination for filling up of the post of Postman/Mail Guard for the vacancies

for the year 2012 to be held on 29.9.2013. In response to the said notification the applicant working as GDSMM of RMS 'BG' Division under Berhampur Region appeared and qualified, but his result has not been published by respondent No.5. The applicant sought for his result through RTI and in reply (Annexure A/2) it has been categorically stated that the applicant has qualified in the Mail Guard examination vacancies for the year 2012 but his case could not be considered for appointment as there is no vacancy in mail Guard cadre in RMS 'BG' Division under 25% direct recruitment on the basis of examination limited to GDS quota. The respondents submitted series of representations which did not yield any result. The applicant approached this Tribunal in OA 994/2014 which was disposed of on 12.1.2015 (Annexure A/5) directing the respondents to dispose of the representation within a period of 90 days from the date of receipt of the copy of the order. The respondents rejected the representation vide order dated 24.2.2015 (Annexure A/6). Hence the present OA.

3. The respondents have filed their Counter stating therein that though the applicant qualified in the examination securing 58 marks, it does not confer upon any right for appointment to the post of Postman/Mail Guard since it was based on the number of vacancies existing in the Division under GDS quota. Moreover, there were two vacancies in Mail Guard cadre for promotion of MTS candidates i.e. one for MTS candidate on the basis of selection-cum-seniority and another vacancy for MTS candidate on the basis of competitive examination. But there was no vacancy meant for GDS quota to which the applicant belongs. It is also submitted that decision on the representation of the applicant was taken in the light of existing Recruitment Rules without any deviation. There was neither scope for selecting the applicant in Mail Guard cadre in parent Division, where there was no vacancy under the relevant quota and in other RMS Divisions, nor selecting the applicant as Postman in other neighboring Postal Divisions under the purview of the rules. Therefore the respondents have prayed for dismissal of the present OA being devoid of any merit.

4. The applicant has filed Rejoinder to the Counter filed by the respondents and the respondents have filed reply to Rejoinder. The applicant has relied on the following decisions in support of his case :

- i) State of UP –vs- Ram Swarup Saroj [(2000) 3 SCC 699]
- ii) Himansu Parida –vs- District Judge & Anr. [OJC No. 8006/1995 of Hon'ble High Court of Orissa]

5. We have heard both the learned counsels and have gone through the pleadings on record.

6. Trite is the position of law that it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court. Further, the above is has also been reiterated by the Hon'ble Apex Court in a constitution Bench decision in the case of Shankarsan Dash v. Union of India 1991 AIR 1612 by holding that even after completion of the selection process, the candidates even on the merit list do not have any vested right to seek appointment only for the reason that their names appear on the merit list. A candidate seeking appointment to a civil post cannot be regarded to have acquired an infeasible right to appointment in such post merely because of the appearance of his name in the merit list.

7. In view of the above, even though the applicant had qualified but since there were two vacancies in Mail Guard cadre for promotion of MTS candidates

i.e. one for MTS candidate on the basis of selection-cum-seniority and another vacancy for MTS candidate on the basis of competitive examination, the applicant being from GDS cadre was not selected. Therefore, we do not find any illegality or irregularity committed by the respondents on the part of the respondents.

8. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)