

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: this the 22 day of March. 2012

Original Application No. 1050 of 2006

Hon'ble Mr. Sanjeev Kaushik, Member – J

Hon'ble Ms. Jayati Chandra, Member – A

Dasai Ram, S/o late Niranjan Ram, R/o Village and post Khalsipur, District Ghazipur.

... Applicant

By Adv : Sri Jaswant Singh

VERSUS

1. Union of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Director Postal Services Recruitment, in the office of Chief Post Master General, UP Circle, Lucknow.
3. Superintendent of Post Offices, Ghazipur Division, Ghazipur.
4. Director Postal Services, Allahabad.

... Respondents

By Adv: Sri R.K. Srivastava

(Reserved on 15.03.2012)

ORDER

By Hon'ble Ms. Jayati Chandra, Member – A

Instant Original Application has been filed by Shri Dasai Ram, S/o late Niranjan Ram being aggrieved by the denial of opportunity for participating in the examination held on 11.12.2005 as the process of special drive to fillup the backlog vacancies of SC/ST candidates to the post of Postal Assistant though an examination held on 11.12.2005.

2. The applicant Shri Dasai Ram has stated that he is a Schedule Caste candidate. He has been working as a Postman on regular basis

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w.e.f. 17.01.1996 in the Head Post Office Ghazipur Division, Ghazipur under respondent No. 3. There was a departmental decision to hold special examination for filling up the backlog vacancies for SC/ST candidates in the cadre of Postal Assistant (PA) which is a Group 'C' post. The order No. REctt./M-75/LGO/Spl/2005/5 dated 18.10.2005 (Annexure A-1) was issued by office of respondent No. 2, wherein the applications were invited by 07.11.2005 from permanent officials in the Group 'D' positions who had completed 03 years of regular services by 10.11.2005 and who belonged to SC/ST categories. There being no other criteria laid down, the applicant applied in prescribed proforma for appearing in the special scheduled to be held on 11.12.2005.

3. The applicant did not get any admit card before the date of said examination. He was informed on his application by respondent No. 3 on 09.12.2005 (Annexure 3A) that his candidature has been rejected on the ground that he had already availed of 06 chances earlier for consideration of promotion to the post of Postal Assistant. The same information was communicated on 16.12.2005 by Annexure 7A. Thereafter the applicant made different representations (Annexure A-3, A-4, A-5 and A-6) vide which he requested for another opportunity as he had learnt that there was no restriction of six chances for SC/ST candidate. At this he was rebuffed and his explanation called on 16.02.2006 (Annexure 7 b).

4. Therefore, the applicant has moved this Tribunal for setting aside the order dated 09.12.2005, 26.12.2005 and 06.02.2006.

5. He has placed reliance on the postal department circular No. D.G.(P) Letter No. 37-25/2001 – SPB -1 dated 09.01.2006 (Annexure 7D – para 2 last sentence), wherein it was clarified that under the special

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recruitment drive to fillup the backlog vacancies of reserved categories the number of chances availed will not be reckoned against the six chances admissible. He has also said that there is still one post left unfilled after the examination held on 11.12.2005 to fill up the backlog vacancies.

6. Learned counsel for the respondents have not denied the factual contention including the service conditions of the applicant and the special recruitment drive. However in para 8 of the counter affidavit they have upheld the departmental decision on the ground that, "*the applicant has already availed six chances of appearing in the examination for the promotion to the post of Postal Assistant, as such in view of Instruction contained in letter dated 20/26.08.1999 issued by Director General, New Delhi, the applicant is not eligible to appear in the said examination for the 7th attempt, as such he was rightly not allowed to appear in the examination, which was held on 11.12.2005*". However, they have also admitted vide para 23 of the counter affidavit as per Govt. of India, Ministry of Communication and IT Department of Posts, New Delhi's letter No. 37-25/2001-SPB I dated 09.01.2006 restriction of six chance is not applicable in special examination. However, they have upheld the action taken by the respondents on the grounds that clarification with regard to non-restriction of chances was received after holding of the examination on 11.12.2005. They have also admitted that there is one such backlog vacancy of SC quota is yet to be filled in and they have assured that applicant's case will be considered for allowing to appeal in special LGO examination to be held in future if any to fill up the backlog vacancy of SC quota in the light of communication dated 09.01.2006.

7. In the rejoinder affidavit the learned counsel for the applicant has placed reliance on the decision of this Tribunal (Ernakulam Bench) in

S. Chandrasekaran

2002 (2) ATJ 436 – P.D. Malathy and anr Vs. Senior

Superintendent of Post Offices, Kochi and ors, in which the Tribunal

has held that the order rejecting candidature of the applicants on the ground that they have already availed six chances to qualify in the was not sustainable.

8. We have heard Shri Jashwant Singh, learned counsel for the applicant and Shri R.K. Srivastava, learned counsel for the respondents and have gone through the facts of the case. Both the parties have held that the applicant was eligible to participate in the examination held on 11.12.2005 for filling up the backlog vacancies for SC/ST quota for the post of PA/SA as part of the special drive examination as the restriction of six chances does not apply in this case. They have also admitted that at least one post of backlog vacancies of SC candidate is available in the department. While respondents have assured that the applicant will be allowed to participate in any future special drive we do not find that assurance is enough to undo the denial of the earlier opportunity. The assurance of future consideration may prove to be quite hollow as there is no indication that special recruitment for filling up backlog vacancy is to be held any time in the near future. In fact six years have passed since filing of this Original Application and it does not appear that during the course of disposal of this OA any examination was held in which the applicant has been allowed to sit. Similar may be the situation in the next six years. There is a well known axiom that justice delayed is justice denied.

9. In view of the above we find merit in the OA and direct the respondents to hold the special examination for the applicant to appear in an examination for consideration against the one vacancy still available.

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While there may be no relaxation in the standard and condition of the examination, the applicant will not be denied the opportunity simply on the ground of having exhausted six chances. The OA is allowed. The examination may be held within a period of three months from the date a certified copy of this order is served upon them. No cost.

T. Chandra

Member (A)

Janu

Member (J)

/pc/