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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS.664,665.503 & 366 OF 1996
Cuttack, this the ~~6th~~ day of March, 2003

Manoranjan Mohapatra, ^{ETC.} Applicants
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all to all the Benches of the Central Administrative Tribunal or not?

Seal
06/03/03
(M.R.MOHANTY)
MEMBER(JUDICIAL)

Seal
(B.N.SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

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In OA 664/96

Manoranjan Mohapatra, aged 39 years, son of Sri Khetrabasi Mohapatra, at present working as ED Branch Postmaster, At/PO Biragovindapur, Via Ghasipura, Dist. Keonjhar.....Applicant.

Vrs.

1. Union of India, represented by its Chief Post Master General (Orissa Circle), At/PO Bhubaneswar, Dist. Khurda 751 001.
2. Superintendent of Post Offices, Keonjhar Division, At/PO Keonjhargarh, 758001..... Respondents.

In OA No.665/96

Baikunthanatha Sahoo, aged 31 years, son of Aparti Sahoo, at present working as Extra Departmental Branch Postmaster, At/PO Bailo, Via Salapada, Dist. Keonjhar. Applicant.

Vrs.

1. Union of India, represented by its Chief Post Master General (Orissa Circle), At/PO Bhubaneswar, Dist. Khurda 751 001.
2. Superintendent of Post Offices, Keonjhar Division, At/PO Keonjhargarh, 758001..... Respondents.

In OA No.503 of 1996

Shri Ratnakar Nayak, aged 42 years, son of Sri Bamadev Nayak, Village Balisahi, P.O. Balikuda, at present working as E.D.Packer, Balikuda Sub Post Office, At/PO Balikuda, Dist. Jagatsinghpur... Applicant.

Vrs.

1. Union of India, represented through its Secretary, Ministry of Communication, Dak Bhawan, New Delhi 110 001.
2. Chief Postmaster General (Orissa), At/PO Bhubaneswar, Dist. Khurda 751 001.
3. Superintendent of Post Offices, Cuttack South Division, At P.K.Parija Marg, PO GPO Dist. Cuttack 753001.
4. Assistant Superintendent of Post Offices, I/C Jagatsinghpur Sub Division At/PO Dist. Jagatsinghpur 754 013.... Respondents.

In OA No.366 of 1996

Pranaballav Jena, aged about 36 years, son of Maguni Charan Jena At/PO Sankho, Via Fakirpur, District Keonjhar, at present working as eDDA in Sankho Branch Post Office, At/PO Sankho Dist. Keonjhar Pin 758 022..... Applicant

Vrs.

1. Union of India, represented through Secretary, Post, At Dak Bhawan, New Delhi 110 001.
2. Chief Post Master General of Orissa, At/PO Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Keonjhar Division, At/PO Dist. Keonjhar. Respondents.

Advocates for the applicant in OA No.366/96-M/s P.K. Mishra & SK Das
 Advocate for the applicants in OA Nos. 664,665 & 503/96-Mr.P.K.Padhi
 Advocate for the Respondents – Mr.A.K.Bose, Sr.CGSC.

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ORDER

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

These Original Applications have been filed by four Extra Departmental Agents on the ground that although they were declared successful in the departmental examination for promotion to the cadre of Postman held on 9.7.1995, the Respondents did not offer them appointment as Postman. They have,

therefore, approached this Tribunal to direct the Respondents to appoint them as Postman in any Division of the Circle.

2. The Respondents have filed counters to the O.As. refuting the claims of the applicants. All these four O.As. having raised common questions of law and fact, we are proceeding to dispose of the same in this common order, although they have been heard separately. However, for the purpose of convenience, we are referring to the detailed facts and submissions made by the learned counsels for the parties in O.A.No. 664 of 1996.

3. In O.A.No. 664 of 1996, it is admitted by the Respondents that the applicant, while working as EDBPM, Biragovindapur, appeared in the departmental examination held on 9.7.1995 for promotion to the grade of Postman under merit quota reserved for Extra Departmental employees. The Respondents have stated that although the applicant qualified in the examination, he could not be given promotion, because of non-availability of vacancy in Keonjhar Postal Division, However, the Respondents had obtained willingness of the applicant to be absorbed in the higher grade in any other Division where surplus vacancy would be available. But that also could not happen as no vacancy was found surplus in any of the Divisions.

4. Mr.P.K.Padhi, the learned counsel for the applicant, submitted that the Respondents, after obtaining option from the applicant to be absorbed in any other Division, could not have denied promotion to him. In the circumstances, the question arises whether the Respondents by issuing the letter at Annexure R/4 seeking option from the qualified candidates to be absorbed in any other Division

which had short-fall of candidates constitutes an inviolable contract for appointment. We have accordingly given our anxious thoughts to the point raised. We have perused the letter at Annexure R/4 issued by Respondent No.1 to all the Division Heads to call for option from the qualified candidates for filling up surplus vacancies by the candidates who have qualified in the departmental examination for appointment in any other Division and are available for redeployment. We have also heard Mr.A.K.Bose, the learned Senior Standing Counsel, appearing for the Respondents, about the procedure followed by the Respondents in filling up vacancies of Postman under outsider quota. He has stated that 50% of the outsider quota vacancies in the Postman cadre is to be filled up by ED employees, which should be divided into two halves; one half of the 50% of the vacancies will be filled by examination on merit and the remaining one half of the said 50% of the vacancies by seniority of ED employees in the Division according to their length of service. The qualified candidates are given appointment to the extant vacancies are notified in their parent Division. In case qualified candidates are not available in a particular Division, but vacancies are available to be filled up, the qualified candidates of other Divisions who have given their willingness to be absorbed against such vacancies, are offered appointment and for this purpose, the Circle office(Respondent No.1) prepares a list of qualified candidates who have exercised their option to be absorbed in other Divisions. This list of qualified candidates is maintained according to their length of service and also community-wise. In the case of the applicant, it was stated by the Respondents, he could not be appointed in his own Division because of lack of

vacancy. He also could not be absorbed in other Division, because there were 31 qualified candidates who had exercised their option to be absorbed in any other Division and out of this group, as many as 30 ED employees, who qualified in the examination, were senior to the applicant in the list of optees in terms of length of service and even they also could not be absorbed because of lack of vacancies.

5. We have also perused Annexure R/5 notifying allotment of as many as 11 surplus qualified candidates under ST quota from the combined merit list on Circle basis to be absorbed in Divisions outside their parent Division. We have perused the letter issued by Respondent No.2 to the applicant at Annexure 1 calling for his willingness to be considered for absorption in any other Division. In that letter the applicant was clearly informed that as he could not be promoted in his parent Division, it had been decided that should he be willing, he could be considered for appointment in other Division where there could be short-fall of candidates. In the circumstances, he was asked that should he be willing to work "anywhere in the Circle", he should furnish his willingness within five days of the date of receipt of that letter. It was also stated that if he did not exercise his option by 8.1.1996, it would be presumed that he was not interested to be considered for promotion to the post of Postman. This letter surely was neither in the nature of a contract between Respondent No.2 and the applicant, nor did it constitute any assurance to the applicant that there was a vacancy available and he was being considered against that vacancy. The letter was more in the nature of an enquiry to make an earnest effort by the administration for his appointment to a promotional post, should one be available. The Respondents by filing their counter and also

during oral submission have given enough information to show that if the applicant could not be promoted to the higher grade of Postman that was only on account of non-availability of a vacancy in that grade and for no other reasons. It has also been submitted by the Respondents that there were 30 other qualified candidates who were senior to the applicant according to the length of service and out of them, there were 23 candidates who had secured more marks than the applicant in the examination. They have also submitted, at Annexure R/8, a list of all qualified candidates with the length of service to show that if the applicant could not be offered promotion to Postman cadre, that was on account of non-availability of enough number of vacancies to cover his case and nothing else. We see no reason to disagree with the Respondents on the facts of the matter.

6. The other point raised by the applicant was that the Respondents should not have held fresh departmental examination in the following year before absorbing the candidates who qualified during 1995. The Respondents have pointed out that there is no system of maintaining waiting list of qualified candidates as the examination for promotion to the grade of Postman is conducted every year. As the Recruitment Rules do not provide for maintenance of waiting list, the Respondents were correct in stating that the plea made by the applicant is not tenable and the applicant was not entitled for appointment against any future vacancy.

7. In view of the above facts and circumstances of the case and the provisions of the Recruitment Rules, we hold that the action taken by the Respondents for obtaining option/willingness from the qualified candidates did not vest any right

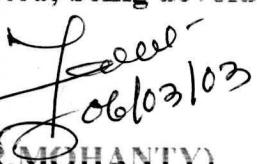
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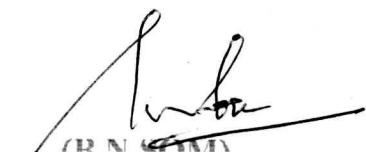
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with the candidates to claim appointment to the grade of Postman. It only gives them an opportunity to be considered for appointment to the promotional post outside their parent Division.

8. In the said premises, all the four Original Applications fail and are rejected, being devoid of merit. No costs.


06/03/03
(M.R.MOHANTY)

MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

AN/PS