

12

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 842 OF 1996
Cuttack, this the 24th day of April, 2000

Abani Bhusan Tripathy

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

24.4.2000
(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
24.4.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)
.....

Abani Bhusan Tripathy, aged about 42 years, son of late Ganeswar Tripathy of village Jaripur, Dist.Khurda, presently serving as LSG (PA), PLI Section, CPMG's Office, Orissa Circle, Bhubaneswar..... Applicant

Advocates for applicant - M/s Aswini Ku. Misra
J.Sengupta
B.B.Acharya
D.K.Panda
PRJ Dash

Vrs.

1. Union of India, represented through the Director General, Posts, Daktar Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
3. Sri Manoj Kumar Bose
4. Sri Pradush Kumar Mohanty
Sl.nos.3 and 4 are both in the office of CPMG, Bhubaneswar, Dist.Khurda.... ..Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the selection of respondent nos. 3 and 4 as Development Officer, Postal Life Insurance and also for a direction to Chief Post Master General, Bhubaneswar (respondent no.2) to reconsider the selection for the post taking into account seniority of all the eligible officers. The third prayer is for a direction to respondent no.2 to

14

promote the applicant with effect from the date respondent nos. 3 and 4 were promoted.

2. The applicant's case is that he joined as LDC in the office of Chief Post Master General, Orissa Circle, Bhubaneswar in 1978 and was promoted as UDC on ad hoc basis in February 1982. In 1985 he was regularised as UDC. In 1980 the applicant's services were placed at the disposal of Postal Life Insurance (PLI) Wing and he continued there till 1985. In 1985 he was repatriated back to the Department. The applicant has stated that as his performance in PLI Wing was satisfactory he was again called back. On 15.4.1996 a notice (Annexure-1) was issued calling for option from eligible officials for being considered for the post of Development Officer (PLI), Circle Office, Bhubaneswar. In the notice it was mentioned that two-third of the posts of Development Officer (PLI) were reserved for Postal Assistants and UDC working in Circle Office, Regional Offices and Postal Printing Press. It was mentioned that the selection would be made by the Selection Committee on the basis of seniority. Certain other conditions were also mentioned in the notice which provided that the persons selected should have aptitude for publicity work and they should have willingness to move out freely to the interior for canvassing business and instilling the idea of PLI on eligible Government employees. It was also mentioned that a Development Officer (PLI) is initially appointed for a period of three years which may be extended subject to fulfilment of conditions laid down. The petitioner applied for the post and he has stated that he was the second seniormost person to be considered for the post. He appeared at an interview on 25.7.1996 along with other candidates. Ultimately he found that respondent nos.3 and 4 have been

J. J. M.

15

15

selected, but the case of the petitioner has been ignored. He filed a representation stating that he was senior to the selected persons and has served PLI organisation for about 7 years and has never been communicated with any adverse entries during his service period of 17 years. The applicant has stated that his case was unjustly ignored and that is why he has come up in this petition with the prayer referred to earlier.

3. The departmental respondents in their counter have stated that the post of Development Officer (PLI) is a tenure post for which the normal tenure is for a period of three years. It is stated that in response to the notice at Annexure-1 13 officials including the petitioner applied for the post. Out of them 12 officials were found eligible. A Selection Committee consisting of Director of Postal Services, Assistant Post Master General (PLI) and Assistant Director (Staff) was constituted. In the interview on 25.7.1996 all the 12 candidates including the applicant were asked certain questions on PLI matters by the members of the Committee and basing on the performance of the candidates, respondent nos. 3 and 4 were considered more suitable than all other candidates including the applicant and on the recommendation of the Committee, respondent nos. 3 and 4 were appointed as Development Officers (PLI) and they joined on 30.7.1996. The departmental respondents have stated that the applicant was working as UDC in the Circle Office from 1982 till on his option he was made Time Scale Postal Assistant in the Circle Office. The departmental respondents have denied that on completion of his tenure in PLI Section he was repatriated to his parent office. They have stated that there was a change

S. J. M.

of Section in the office and the applicant worked in PLI Section like other Postal assistants in one of the seats assigned to him in the Circle Office. The departmental respondents have stated that in the circular dated 11.5.1994 at Annexure-7 enclosed by the applicant himself it is clearly mentioned that the post of Development Officer (PLI) will be filled up on the basis of recommendation of the Selection Board. As the Selection Board has recommended the case of respondent nos. 3 and 4 and had not recommended the name of the applicant, respondent nos. 3 and 4 have been rightly selected. They have also stated that averment of the applicant that his service is without any blemish is not correct. In order dated 18.3.1987 he was punished with withholding of one increment without cumulative effect for a period of two years. The departmental respondents have enclosed relevant portion of the Service Book of the applicant in which the punishment has been recorded and the applicant has signed. In the context of the above facts, the departmental respondents have opposed the prayer of the applicant.

4. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the departmental respondents and have also perused the records. Respondent nos. 3 and 4 have been issued with notice but they have neither appeared nor filed any counter.

5. The only point urged by the learned counsel for the petitioner is that admittedly the applicant is senior to respondent nos. 3 and 4 and in the notice at Annexure-1 it was clearly mentioned that

selection for the post of Development Officer (PLI) will be made from amongst the eligible volunteers through Selection Board on the basis of seniority. It is stated that in the process of selection in which the applicant was not recommended, his seniority has been ignored and this, according to the learned counsel for the petitioner, has rendered the selection of respondent nos. 3 and 4 liable to be quashed. In support of his contention, the learned counsel for the petitioner has relied on the following decisions:

- (i) State of Kerala v. N.M.Thomas, AIR 1976 SC 490;
- (ii) Jagathigowda, C.N. and others v. Chairman, Cauvery Gramina Bank and others, AIR 1996 SC 2733;
- (iii) B.V.Sivaiah and others v. K.A.Babu and others, AIR 1998 SC 2565; and
- (iv) K.C.Mishra v. Balasore Gramya Bank, 1993 (1) ATT 194.

We have gone through the above decisions. In N.M.Thomas's case (supra) the Hon'ble Supreme Court held that where basis for promotion is seniority-cum-merit, given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority. In Jagathigowda, C.N.'s case (supra) the matter for consideration of the Hon'ble Supreme Court was promotion in Regional Rural Banks. Initially the circular provided for promotion on the basis of seniority-cum-merit. The subsequent circular provided that the promotion should be made on the basis of comparative assessment of performance and accordingly it was held that promotion in question made after consideration of such performance cannot be challenged on the ground of violation of guidelines whereby promotions

are directed to be made on seniority-cum-merit basis. Both the above cases have been considered by the Hon'ble Supreme Court in B.V.Sivaiah's case (supra) where it was held that criterion of seniority-cum-merit postulates that given the minimum necessary merit requisite for efficiency of administration the senior even though less meritorious, shall have priority. For assessing minimum necessary merit, competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. In K.C.Mishra's case (supra) the Hon'ble High Court of Orissa held that where method of promotion is on the basis of seniority-cum-merit, promotion of a person on the basis of merit alone is an instance of infraction of rules. In the instant case even though in the notice at Annexure-1 it has been mentioned that selection will be made by the Selection Committee on the basis of seniority, in the notice itself certain other conditions have been mentioned and these are the following:

- (1) The volunteers should not be more than 45 years of age as on 1.7.96;
- (2) They should have aptitude for publicity work;
- (3) They should have familiarity with the rules and procedures/aims and objects of PLI;
- (4) They should possess sound health, good personality, patience, perseverance, willingness to move freely out of the headquarters to interior for canvassing business, etc.;

- 19
- (5) They should have ability to instill the idea of PLI on eligible Government employees;
- (6) Actual working experience in PLI branch, Circle Office will be a desirable qualification and the officials possessing such qualification may be given preference.

From the above it is clear that along with seniority the above conditions were also to be taken into consideration. One of the important conditions is familiarity with rules and procedures, and aims and objects of PLI. Therefore, it cannot be claimed that amongst the eligible volunteers the seniormost person necessarily has to be selected for the post of Development Officer(PLI). The Selection Committee had interviewed all the candidates including the applicant and put them questions regarding Postal Life Insurance and on the basis of their performance, respondent nos. 3 and 4 have been recommended and the applicant has not been recommended by the Selection Board. As one of the conditions mentioned above is familiarity with rules, procedure, aims and objects of Postal Life Insurance, the action of the Selection Committee in this regard cannot be found fault with. This is not a case where the instruction provided that merely on the basis of seniority a person has to be selected. If that be the case there is no need to have a Selection Committee at all. Moreover, the work of Development Officer (PLI) is for canvassing business like Development Officers of any other Insurance organisations and therefore only on the basis of seniority a person who volunteers cannot

S. S. S.

20

obviously be selected. The instructions also do not provide for this. In view of this, the contention of the applicant that he should have been selected on the basis of seniority alone is held to be without any merit.

6. Moreover, it is also to be noted that the post of Development Officer (PLI) is as such not a promotional post. This is a post so to say on deputation for which only volunteers who agree to take up the work are to be considered. The normal tenure is for a period of three years which may be extended. But there is no provision that a Development Officer (PLI) will be permanently absorbed in that post. Therefore, appointment to the post of Development Officer (PLI) is in the nature of secondment. No officer has a right to go on deputation to a particular post. As this is not a regular promotional post, on this ground also the applicant cannot make any grievance for his non-selection.

7. In consideration of all the above, the Original Application is held to be without any merit and is rejected. No costs.

24.4.2012
(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

24.4.2012
VICE-CHAIRMAN

AN/PS