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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 273 OF 2002
CUTTACK THIS THE 22nd DAY OF Sept' 2005

Naba Kishore Dhal *Applicant(s)*

-VERSUS-

Union of India & Ors. *Respondents*

FOR INSTRUCTIONS

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

22/09/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

22/09/05
(B.N. SOM)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 273 OF 2003
Cuttack this the 22nd day of September, 2005

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)**

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Naba Kishore Dhal, aged about 49 years, S/o. Sujan Dhal of village/PO Alara, Via: Narasinghpur, Dist-Cuttack – at present working as G.D.S. M.D., Alara B.O. in account with Narasinghpur S.O., Cuttack

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Applicant

By the Advocates

M/s. B.K. Biswal
S.K. Samal

-VERSUS-

1. Union of India represented through the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda
2. Superintendent of Post Offices, Cuttack South Division, 15 Cantonment Road, Cuttack-1
3. S.D. (P) Athagarh Sub-Division, At/PO-Athagarh, Dist-Cuttack
4. Manoranjan Senapati, Postman (Under Training) of Village/PO-Narasinghpur, Dist-Cuttack

Respondents

By the Advocates

Mr. B. Dash, A.S.C.

ORDER

MR. B.N.SOM, VICE-CHAIRMAN: Naba Kishore Dhal (applicant) has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, calling in question the inaction of Respondent Nos. 1 to 3 in the matter of filling up the vacancy

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of Postman for the year 2001 from amongst G.D.S. on seniority basis. The applicant, during pendency of the O.A. had filed a Misc.Ap;plication for amendment of the O.A., which was allowed vide our order dated 15.2.2005.

2. The undisputed facts of the case are that the applicant was appointed as G.D.S.M.D. of Alara B.O. and was eligible for promotion to the grade of Postman under the provisions of Recruitment Rules for the post and that the Res. No.3 had notified one vacancy of Postman in O.C. category under departmental quota for the year 2001. The notification of the vacancy was issued by Res. No.1 by his letter No.RE/30-22/01 dated 12.11.2002 addressed to all the Superintendent of Post Offices, Orissa Circle and the said authorities were directed to circulate the said vacancy position both in respect of departmental/outsidere, among all concerned, at once without fail. The grievance of the applicant is firstly, that the vacancy position was not communicated to the Branch Post Master of Alara B.O. under whom he was working, and, secondly, that the vacancy being a single vacancy for the year 2001 should have been filled up from GDS on seniority basis. His contention is that he having put in service for more than 24 years had a fair chance of selection had the vacancy been filled up under seniority quota. He has, therefore, alleged that the authorities have flouted the regulations governing the recruitment of Postman from the rank of GDS and, therefore, their action is not sustainable in the eye of law. His further contention is that the decision for filling up the single vacancy for the year 2001 on merit basis by holding examination was arbitrary being contrary to law. Lastly, that he was not given enough time to prepare for the examination as he was not issued with any call letter for the examination and that Res.2

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vide his telegraphic message dated 13.12.2002 permitted the applicant to provisionally appear for the Postman examination held on 15.12.2002 at Stewarts Science College, Cuttack.

3. Per contra, the Respondents have vehemently refuted the allegations made by the applicant. The main thrust of the argument of the Respondents is that the applicant's reliance on the letter No.RE/30/13/75-Ch.II (Corr) dated 2.8.1995 (Annexure-A/2) is based on erroneous understanding of the clarification of the recruitment rules. Submitting a copy of the Recruitment Rules for promotion of Group-D/EDAs, as contained in that letter, the learned Addl.Standing Counsel for the Respondents clarified that in terms of the provisions of the Recruitment Rules, 50% of the posts will be filled up by promotion from amongst Group D officials, who have put in three years service and the other 50% by ED Agents/GDS of the recruiting Divisions or Units, i.e., 25% on the basis of seniority in service and subject to their passing the departmental examination failing which by GDS on the basis of merit in the departmental examination and 25% from amongst GDS on the basis of the merit in the departmental examination. Further, it has been clarified by the DG Posts through his letter No.44-44/82-SPB I dated 7.4.1989 that the unfilled vacancies of departmental quota (i.e., the quota for the Group D officials of the department) will be added to the quota for EDAs (now GDS) and that such unfilled vacancies will be added to one half of the quota meant for ED candidates (GDS) on merit only. It is on the strength of this order governing the recruitment to Postman cadre, Res.1 had notified one vacancy under O.C. category for Postman cadre by his letter dated 12.11.2002 (Annexure-R/1) for Cuttack (South) Division. They have further disclosed in

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their counter that the applicant had participated in the examination but he could not qualify in the test on account of which he could not be selected for promotion. Subsequently, the Respondents, by supplying information during hearing have disclosed the marks obtained by the applicant in the examination held on 15.12.2002 to show that while he had secured pass marks in Paper A & B, but he had failed to secure pass marks in Paper C, which resulted in his non selection. They have, therefore, submitted that the application is devoid of merit.

4 We have heard the learned counsel of both the sides and have perused the records placed before us. Having regard to the rival submissions, we have no doubt that the plea of the applicant that vacancy for the year 2001 could not have been advertised under merit quota is devoid of merit. The Respondents, by producing the policy letter dated 7.4.1989 regarding recruitment to Postman cadre from amongst ED Agents (GDS) (Para-8) have made the matter more conspicuous that any post in 50% quota earmarked for Group D remaining vacant during the year shall be added to the GDS category under merit quota. This being the policy of the Department, which has been in existence at least since April, 1989, it is not open to the applicant to challenge its vires after having participated in the examination. We, therefore, have no hesitation to hold that the applicant has not been able to make out a case to declare the examination held by the Respondents for recruitment to the cadre of Postman for the year 2001 under merit quota for GDS category as bad in law.

5. We, however, find that the other allegation with regard to lack of knowledge about the holding the examination has ~~having~~ considerable force. In support

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of ~~the~~^{his} contention, he has produced a letter that he had received from the Branch Postmaster, Alara in response to his letter dated 24.3.2004 informing him that no notification relating to holding of Postman examination for the year 2001 was ever sent by Narasinghpur S.O. to his BO. We further find that the applicant by his letter dated 4.12.2002 had then sent a representation to the Superintendent of Post Offices, Cuttack South Division alleging non receipt of the circular regarding holding of examination on 15.12.2002, in response to which, Res.2 permitted him to appear in the examination. It was also admitted in the said Phone Message dated 13.12.2002 that he was permitted to appear "if the reason cited by him is found to be genuine and due to the circumstances beyond his control". The Respondents have not disclosed either in the counter or during oral submission, whether any inquiry was undertaken by Res.2 to find out the genuineness of the allegation of non receipt of the notification made by the applicant. On the other hand, the applicant, by furnishing letter dated 25.3.2004 issued by the Branch Postmaster, Alara B.O. has submitted before us that notification regarding holding of the examination was never received by that B.O. In the absence of any rebuttal forthcoming from the Respondents' side, we have no hesitation to hold that the circular regarding holding of examination was not issued to all concerned as directed by Res.No.1 vide his letter dated 12.11.2002. As it is unfair to expect of a candidate to compete effectively with 48 hours notice, the applicant is entitled to relief on this ground. We, therefore, direct the Respondents to hold a fresh examination for filling up of the departmental quota vacancy for the year 2001 for which examination was held on 15.12.2002 again after giving due notice to all eligible GDS candidates, as per the examination rules laid down in this regard. The Respondents are further directed to complete the process of

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notifying the vacancy, conducting examination and announcement of results thereof within a period of 90 days from the date of receipt of this order.

With these observations and directions, this O.A. is disposed of. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN