

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A. NO. 564 & 576 to 587 OF 2004
Cuttack, this the 10th day of November, 2005.

VERSUS

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No
6. Whether it be circulated to all the Benches of CAT? No

Indians
(B.N.SOM)
VICE-CHAIRMAN

J. Mohanty
10/1/2005

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.564, & 576 to 587 OF 2004
Cuttack, this the 10th day of November, 2005

CORA M:-

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

BISWAMBAR NAYAK & ORS. **APPLICANT**

VERSUS

UNION OF INDIA & ORS. **RESPONDENTS.**

For the Applicants : M/s. K.P.Mishra, J.K.Khandayatray,
S.Moapatra, C.Mallick, Advocates.

For the Respondents: Mr. U.B.Mohapatra, SSC (Res.Nos.1 to 3)

M/s. S.Patra-1, M.Mohanty, Advocates
(Respondent Nos. 4 to 8)



ORDER

MR. M.R.MOHANTY, MEMBER(JUDICIAL):-

All the thirteen Applicants are working as Postal Assistant/Accountant in the Postal Department of the Government of India. As per the policy decision, the Respondents in order to fill-up 66.66% vacancies in the Lower Selection Grades, conducted a First Track Promotion Examination, during 2003. Although Applicants appeared the said Examination, the Respondents, without declaring the result of such examination, issued a fresh notification under Annexure-3 dated 18.12.2003 for holding the said First Track Promotion examination from 26.5.2004 to 28.5.2004. The grievance of the Applicants are that due to slackness of the Respondents, in regard to circulation of the notification among the eligible candidates, the Applicants were kept away (for they could not submit their application nor could they appear the test) and that no heed having been paid by the Authorities, to the grievances raised by the Applicant, they have approached this Tribunal in the present Original Application under section 19 of the Administrative Tribunals Act, 1985.

2. Respondent-Department by filing a counter, disclosed that the result of the test (that was conducted from 25.05.2003 to 27.05.2003) having been declared on 22.07.2004, promotion had already been given

to the successful candidates in the Lower Selection Grade. It is the case of the Respondents that calendar of examination, in question, for the year 2004, was issued/circulated to all concerned in Cuttack City Division during December of 2003 in a routine manner and that having failed to respond to the same, at the right time/ within the stipulated period, the Applicants can have no grievance to consider their cases even through a special examination.

3. Respondent Nos. 4 & 7 have also filed their counter(more or less adopting the counter filed by the Departmental Respondents) stating therein that since the Applicants did not opt for being considered along with them, in the competitive departmental examination, they lost their right to say any thing with regard to the selection made by the Departmental Respondents.

4. Applicants have also filed rejoinder reiterating their submissions made in the Original Application. It has been alleged therein that the Respondent Department, intentionally, (in order to debar the Applicants from appearing in the said Examination) kept the Examination Notification out of the knowledge of the Applicants; for which the Applicants could not apply and get an opportunity to compete along with others for such promotion.

5. We have heard Mr. K.P.Mishra, learned counsel appearing for the Applicants; Mr.U.B.Mohapatra, learned Senior Standing Counsel

appearing for the Union of India/Respondent-Department and Mr. S.Patra-1, learned counsel appearing for the Respondent Nos. 4 to 8 and perused the materials placed on record.

6. It has been submitted by the learned counsel appearing for the Applicants that had the Notification under Annexure-3 been given wide publication, Applicants would have applied to face the Departmental Examination/test and that as per the law, the Respondents were duty bound to give wide publication of such notification . He has further submitted that had the notification been given wide publication, more eligible candidates would have applied and, in that event, best candidates could have been selected. He has also submitted that by virtue of non circulation of the notification, in question, the very aim and object of the policy, to fill up the posts on merit basis, has been given a complete go bye and, therefore, learned counsel appearing for the Applicants reiterated the prayer for giving a special chance to the Applicants to sit in the examination.

7. On the other hand, learned counsel appearing for the Respondent Department submitted that, as per the Rules, the notification was sent to the head of the concerned Post Offices; who, in turn, circulated it to the other subordinate Branches. In this connection, he has also produced the letter of the Senior Postmaster of Cuttack GPO and the letter of the Postmaster of Chandini chowk HPO, Cuttack certifying that

the notification was not only pasted in the office notice Board, it was also circulated to all other units of the Department ; in response to which, many candidates, including Respondents 4 to 8, had applied for the post, in question.

8. Now the points for consideration is as to what are the mode of circulation and as to whether the same has been adhered to or not. In order to reach a positive findings on this aspect, it is worthwhile to extract below the instructions in which the mode of circulation has been given out by the Department:-

“RULE 149-(DIRECTOR-GENERAL’S CIRCULARS) OF CHAPTER- 2 OF THE MISC. RULES:-

Sub-Rule (1) xxxx xxxx
Sub-Rule (2) xxxx xxxx

Sub Rule (3) In the case of postal officials, circulars will be sent direct to head postmasters for their own offices and for distribution to supervising officers, sub postmasters and branch postmasters. Head Offices will be supplied by the Head of the Circle with a distribution list showing the number of copies to be supplied to the different classes of officers mentioned above and the number to be retained for office use. In post offices, the circulars should be distributed among the different officials and filed in accordance with the following instructions-

(a) Presidency officers and other large head offices selected by a Head of the Circle will be supplied with a copy of every circular for the Postmaster, each of the Deputy and Assistant Postmasters and for the clerk in charge of each department. For other head offices, a copy will be supplied only to the postmaster and to each of the Deputy and Assistant Postmasters or to

the head clerk if there is no Deputy or Assistant postmaster in the office;

(b) xxx xxx xxx
(c) Immediately on receipt of supplies, a copy of every circular should be made over to each Deputy and Assistant postmaster or the head clerk who will have it filed in the guard book kept by him. xx xxxx xxxx.

Sub Rule 5. Postal notices will be issued apart from, and not as annexures to the Director-General's circulars; and, except in the case of certain large head offices selected by the Head of the Circle only two copies of each such notice will be supplied to a post office, one for exhibition on the office notice board and the other for record. To each mail office, only one copy of the notice will be supplied for exhibition on the office notice board."

9. From the letters of the Senior Superintendent of Post Offices of Cuttack City Division, Senior Postmaster of Cuttack GPO, and Postmaster Chandinichowk H.O, as produced by the learned Senior Standing Counsel, it goes without saying that the notification in question was circulated to all concerned and the examination was conducted on the basis of the applications received from the willing candidates having the eligibility etc. Therefore, we are not impressed with the arguments of the learned counsel appearing for the Applicants that the notification was not circulated to all concerned.

The Applicants plead no other lacunae in the process of selection except the grounds discussed above. We may add here that in case such plea of the candidates is accepted, then there will be no end to it. Even candidates applied beyond the time limit fixed in an

advertisement are not eligible to be considered. Since Applicants missed the bus, due to their callousness they have to wait till next selection.

10. In the above said premises, we find no merit in these O.As.

which are accordingly dismissed. No costs.


(B. N. SOM)
VICE-CHAIRMAN


10/11/2006
(M.R.MOHANTY)
MEMBER(JUDICIAL)