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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 216 OF 2002
Cuttack this the 7th day of Oct. 2004

Manoj Bihari Nayak ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

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

Y
8/10/04
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Suba
(B.N. SGT)
VICE-CHAIRMAN

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CORAM:

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

Manoj Bihari Nayak, 22 years,
Son of Narasingh Naik, vill: Behidarpatta
Sasan, Kukudapalli, Sambalpur

... Applicant

By the Advocates

M/S. A.K. Mishra
J. Sengupta
P.R.J. Dash
D.K. Panda

- VERSUS -

1. Union of India represented through Director General of Posts, Dak Tar Bhawan, New Delhi
2. Chief Postmaster General, Orissa, Bhubaneswar
3. Superintendent of Post Offices, Sambalpur Division, Sambalpur
4. Asst. Supdt. of Post Offices (In-charge)
Sambalpur East Sub Division, Sambalpur

... Respondents

By the Advocates

Mr. A.K. Bose, SSC

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O R D E R

MR. B.N. SQM, VICE-CHAIRMAN: This Original Application has been filed by the applicant (Shri Manoj Bihari Nayak) challenging the order passed by Respondent No. 4 asking him to show cause as to why his appointment should not be cancelled.

2. The case of the applicant ^{is that} he belongs to O.B.C. community and after passing the Matriculation examination he was selected for the post of Gramin Dak Sevak Mail Deliverer-cum-Mail Carrier (in short GDSMD-cum-MC),

Kukudapali Branch Office. He was appointed to that post after undergoing necessary training. However, by letter dated 4.4.2002, Respondent No.4 informed him that due to some administrative reasons the selection could not be finalized by 31.12.2001 by the appointing authority, that after review of the selection file, Res.No.3 vide his letter dated 26.3.2002 had observed that the vacancy should have gone to the other community (O.C.) that being the first appointment for the year 2002, as per the instructions issued by the Regional Office, Sambalpur and in the circumstances, he was asked to shew cause as to why his selection as GDSMD-cum-MC, Kukudapali B.C. should not be cancelled. The applicant was given 30 days time to show cause. It is in this background the applicant has approached the Tribunal for quashing the said impugned notice dated 4.4.2002 (Annexure-4) inter alia praying for direction to Respondents-Department to treat his selection and appointment to the post in question legal and valid one.

3. The Respondents have filed a detailed counter opposing the prayer of the applicant. They have submitted that as per the instructions issued by the Department, the first appointment should go to the other community (OC) and the next appointment should only go to the reserved community, which has the highest short-fall. In the circumstances, filling up of the post in question by a reserved category candidate was found to be not in order by Respondent No.3, who issued instructions to Res.No.4 to rectify the mistake and in consequence thereof,

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notice to show cause was issued to the applicant. They have also found out that the appointing authority had failed to mention in the notification the community for which the post was earmarked. It is in this background, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

4. The arguments put forth by the Respondents have been challenged by the applicant by filing a rejoinder, wherein he has taken the stand that Res. No. 3 had no competency to review the selection. He has submitted that the reservation is made by taking into consideration the vacancies existing in a Division and that reservation being a constitutional guarantee, filling up of the post by a reserved candidate cannot be called to be illegal. He has also submitted that the review is not available with the higher authority, by quoting the decisions of this Tribunal in O.A.Nos. 512/97, 674/98 and 299/99 - disposed of on 4.10.2000.

5. We have heard the learned counsel for the parties and perused the materials placed on record.

6. The issues involved in this O.A. are two folds. Firstly, whether the next higher authority has the power and authority to review the recruitment action taken by Res. No. 4 and secondly, whether being the first vacancy for the year 2002, the vacancy should have been filled up by an O.C. candidate.

7. In support of his contention that the higher authority is not competent to review the decision taken

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by the subordinate authority, in this case, Res.No.4, learned counsel for the applicant brought to our notice the decision rendered by this Tribunal in O.A.Nos.512/97, 674/98 and 299/99 (disposed of on 4.10.2000).

8. With regard ^{to the} second issue, the Respondents have relied on the circular issued by Res. No.2 dated 20/26.8.1998 (Annexure-R/1). In that letter it has been stated that "in order follow the 50% reservation while the first appointment will be made from O.C. community, the next appointment should go to the reserved community in order of high short-fall and the same procedure should be followed alternatively". By referring to the letter dated 13.11.1997 issued by Res.No.1 regarding appointment of E.D. Agents and answering the question of appointment made to the ED post, the Respondents have submitted that it is the prerogative of the administration to review the cases of appointments made in contravention of the executive or administrative instructions and on that score, authority higher than the appointing authority is divested with powers to review those appointments made de hors the rules. They have stated that while rectifying the mistake, the principles of natural justice should be complied with by giving the G.D.S. a show cause notice and should be heard before passing any order adversely affecting him/her. It has also been mentioned that there is no need to invoke G.D.S.(Conduct & Service) Rules while passing final orders in such cases.

9. We have gone through our decision dated 4.10.2000

in the aforementioned OAs. At the outset, we would like to say that the facts of those cases and the one involved in the instant case are distinguishable. In the earlier OAs orders of termination issued under Rule-6 of EDAs(Conduct & Service) Rules were under challenge. After considering the facts and circumstances of those cases, the orders of termination were not held sustainable under law. But the opinion was expressed that if a selection is made and complaint is received against the selection, obviously an officer superior to the appointing authority has the power to inquire into the complaint and take appropriate action. It was also held that the higher authority has the power to issue direction to the appointing authority and so long as the appointing authority applies its mind and takes independent view on the show cause submitted by the appointee, such action could not be called in question. However, we would like to note here that reviewing the cases of appointments by an authority higher than the appointing authority is governed by the instructions issued by the Ministry of Communications, Department of Posts, in their letter dated 13.11.1997. Elaborate procedure has also been laid down there for guidance of the reviewing authority and the appointing authority to rectify the cases of erroneous appointments. It has also been noted that there is no need to invoke the provisions of E.D.As(Conduct & Service) Rules while passing final order in such cases, because, these are the matters of rectification of recruitment actions and not involving conduct of an E.D.

functionary. We would, therefore, say that since the OAs relied upon by the applicant concerned applicability of Rule-6 of D.D.As (Conduct & Service) Rules, the decision in those case is not applicable to the instant case. On the other hand, we would hold that by virtue of the instructions issued by the D.G.Posts dated 13.11.1997, a system has been put in place to constantly review the cases of recruitments by the higher authority to ensure rule of law in all cases and that such an arrangement is justified on grounds of administrative exigency.

10. On our direction, the learned Sr. Standing Counsel had placed before us the community-wise distribution of posts of E.D.As in Sambalpur (East) Division during the relevant period. From the data made available to us, it appears that at the time of notification of vacancy, the OC and SC quotas were oversubscribed whereas there was short-fall of 3% under S.T. quota and 6.20% under OBC quota. That being the position of reservation, there is no doubt that the post which had fallen vacant should have been notified to be filled up by an OBC candidate. The contention of the Respondents is that the appointing authority having not followed the reservation policy, as laid down, it was incumbent on the part of the higher authority to annul the recruitment in terms of D.G.Posts letter No. 10/1/82/Vig.III dated 19.7.1982. In the circumstances, we would hold that the decision of the appointing authority to fill up the post by an OBC candidate was rightly arrived at. In fact, in their ruling dated 20.8.1999 issued by the Respondent No.2 that first appointment of the year will be made from OC community should not have been made

applicable in this case as the reservation in the matter of appointment to EDAs is post based and not vacancy based. Hence, the reliance placed on the letter dated 20.8.1999 was wrong and in fact, Respondent No.2 should consider withdrawal of that letter consequent upon introduction of post based reservation in recruitment.

11. In the result, the O.A. succeeds. Accordingly, we direct the Respondents to withdraw the notice dated 4.4.2002 (Annexure-4) issued to the applicant and the applicant be appointed to the post in question on a regular basis subject fulfilment of other conditions of appointment.

There shall, however, be no order as to costs.

Subal
07/10/04
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Suboy
(B.N. SOM)
VICE-CHAIRMAN

BJY