

22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.243 of 2005
Cuttack, this the 28th day of June, 2007.

Biswajit Nayak ... Applicant
Versus
Union of India & 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 CAT or not? *yes*

(N.D.RAGHAVAN)
VICE-CHAIRMAN

[Signature]
(B.B.MISHRA)
MEMBER(A)

2

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.243 of 2005
Cuttack, this the 28th day of June, 2007.

C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR. B.B. MISHRA, MEMBER (A)

Biswajit Nayak, aged about 28 years, son of Madan Mohan Nayak of Village/Po-Tulasipur, PS: Bidanasi, Dist. Cuttack at present working as GDS BPM, Savamul BO in account with Jagatsinghpur Head Office, Jagatsinghpur.

..... Applicant.

By legal practitioner: M/s. B.K. Biswal, P.K. Padhi,
-Versus-

1. Union of India represented through the Secretary-cum- DG Posts, New Delhi.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. The Superintendent of Post Offices, Cuttack South Division, 15 Cantonment Road, Cuttack-753 001.

... Respondents.

By legal practitioner: Mr. P.R.J. Dash, ASC.

2

ORDER

MR.B.B.MISHRA, MEMBER(A):

Sixty Four unfilled vacancies of departmental quota in PA/SA cadres pertaining to the year 2003 and 2004 of different Recruiting Divisions were notified under Annexure-3 dated 28.03.2005 to be filled up by the existing GDS employees, by the Chief Postmaster General, Orissa Circle, Bhubaneswar. In the said Notification dated 28.03.2005 it was provided as under:

"The unfilled vacancies in PA/SA cadres under Departmental quota pertaining to the year 2003 and 2004 as given in Annexure-I&II to this letter shall now be filled up by the GDES employees of the Recruiting Division as per Revised Recruitment procedure for Direct Recruitment to PA/SA cadres circulated vide No.RE/6-1/2002 (RIg-IV) dtd.28.12.2004 who fulfill the following eligibility conditions:

1. They possess the minimum educational qualification of 10+2 standard (Senior Secondary, excluding vocational streams) and have put in a minimum service of 03 years as on last date fixed for receipt of applications which shall be intimated shortly.

✓

2. They should be within 28 years of age (33 years of SC/ST candidate and 31 years for OBC candidates and 38 years for PH candidates as on last date fixed for receipt of applications which shall be intimated shortly.
3. Only those GDS candidates shall be eligible for being considered for PA/SA cadres who have secured marks not below the marks secured by last Direct Recruit of the relevant category selected as the case may be of OCs , SCs, STs or OBCs.
4. Since the GDS employees are not Departmental Employees and treated as outside candidates, the Revised Recruitment Procedure circulated vide this office letter No. RE/6-1/2002 (Rlg-IV) dtd. 28.12.2004 shall be applicable for their consideration/selection to the unfilled vacancies in PA/SA cadres as furnished in Annexure-I & II to this letter."

2. Accordingly, for filling up of the 11 vacancies, the Superintendent of Post Offices, Cuttack South Division issued notification under Annexure-4 dated 06.04.2005 inviting applications from eligible GDS employees working under him and fulfilled the eligibility conditions stipulated

N

in the notification under Annexure-3. Following were the categories of vacancies notified under Annexure-4:

2003 OC-04 ST-02 SC-Nil Total=06

2004 OC-02 ST-02 SC-01 Total=05

3. Applicant belongs to OBC category and acquires the qualification of +2 in Science stream by securing 50% marks. He is working as GDSBPM under the Superintendent of Post Offices, Cuttack South Division since 19.12.2001. Therefore, pursuant to the notification under Annexure-4, he offered his candidature for being considered against one of the vacancies of PA/SA. But while other GDS employees were noticed to appear in the test, nothing was intimated to the Applicant. On enquiry, he came to know that his candidature was rejected on the ground of his being over aged on the last date of receipt of application, his date of birth being '30.06.1996'. Since the date of the test was fixed to 05.06.2005 and there was no response on his representation dated 24.05.2005, he approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying the following:

"8. Relief(s) Sought for :-

- 78
- 4-
- i. To direct the respondents to make provision for reserving posts for OBC candidates in the unfilled vacancies of department quota in respect of Cuttack South Division as notified under Annexure-4 and quash Annexure 3 & 4;
 - ii. To declare that the rejection of the application of the applicant to appear the Postal Assistant Recruitment Examination is illegal, improper;
 - iii. And pass any other order/orders as deems fit just and proper in the interest of justice."

Pending final decision on the Original Application, also he has prayed for the following interim direction:

"9. Interim order if any, prayed for:-

Direct the respondent Nos. 2 and 3 to issue Hall Permit in favour of the applicant to appear the PA/SA Examination which is to be held on dtd.5.6.2007;

OR

Stay the Recruitment Examination of Postal Assistant/SA till disposal of this OA."

4. The matter was listed on 03.06.2005. This Tribunal while issuing notices to the Respondents to file counter as an ad-interim measure directed as under:

h

82

-5 ✓

"Without prejudice to the claims of the rival parties, that may arise to be adjudicated at the final hearing of the case, the Respondents are hereby asked/directed to allow the Applicant to appear in the written/aptitude test (which is scheduled to be held on 05.06.2005 in course of recruitment of Postal Assistant/Sorting Assistant in Orissa Postal Circle. The Respondents should also take the test of the knowledge of typing on computer and data-entry in computer of the Applicant, without prejudice to the claims of rival parties to be adjudicated at the final hearing of this case. However, the result of the said test of the Applicant should be kept in a sealed cover. Respondents may complete the recruitment process; but they should not give any appointment (from out of the said select list) without obtaining leave e of this Tribunal."

5. Pursuant to the above directions of this Tribunal, the Applicant was permitted to sit in the examination on the date and time fixed earlier.

6. Besides opposing the stand of the Applicant in the counter filed by the Respondents on 7th September, 2005, by filing MA No. 568 of 2005, they have sought for vacation of the interim order dated 03.06.2005. The aforesaid MA No. 568 of 2005 was listed on 27.09.2005 and

✓

29

-6-

on consideration of the rival submissions of the parties, the Respondents were given liberty to declare the results and fill up the consequent vacancies with further direction that the appointment so made shall be subject to the outcome of this Original Application.

7. In this Original Application the crucial question for consideration as to whether there should be reservation of posts for OBC candidates, as to whether the Respondents were justified in rejecting the candidature of the Applicant being over-aged and as to whether the Applicant is entitled age relaxation being an OBC candidate as against the vacancies meant to be filled up by OC candidates. It was the specific stand of the Respondents in the counter that these 11 vacancies of PA/SA were meant to be filled up from amongst the eligible feeder cadre employees of the Postal Department. Since adequate eligible employees were not available, as per the Rules, notification was issued for filling up of these promotional vacancies by GDS employees following the revised recruitment procedure for direct recruitment. Therefore, following the instructions of the DOP&T OM No. 36012/22/93-Estt.(SCT) dated 22.10.1993, no vacancy was earmarked for OBC candidates. As per DOP&T OM No. 36011/1/98-Estt.(Res.)

✓

30

-7✓

dated 01.07.1998 (Annexure-R/4) (printed in Swamy's Reservation and Concession in Government Services) only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting SC/ST/OBC candidates, the SC/ST/OBC candidates are to be counted in reserved vacancy. Such candidates would be deemed as unavailable for consideration as reserved vacancy. In furtherance to the aforesaid instructions of the DOP&T, the Respondent No.2 issued instructions in letter dated 12.05.2005 (Annexure-R/5) that age relaxation to SC/ST/OBC/PH candidates is admissible in respect of severed post as per rule. But while considering the reserved candidates against OC vacancy, the age relaxation is not applicable. The GDS candidate of OBC community can be taken against the vacancy meant for OC but age relaxation is not permissible for such candidates. The Applicant was recruited to the post of GDS as an OC candidate. No vacancy was reserved for OBC candidate. The date of birth of Applicant being 30.06.1996 he was aged about 28 years, 10 months 2 days as on last date of receipt of Applicant. As per the Recruitment Rules the candidates should be within 28

✓

years of age on the last date of receipt of application. Since the Applicant had already crossed the maximum age of 28 years meant for OC GDS candidates, he was not found eligible to be considered as OC candidate to compete against OC quota for which no admit card was issued to him. On the above grounds, they have opposed the prayers of the Applicant.

8. Applicant in his rejoinder while refuting the stand taken in the counter, has stated that when the Respondents have decided to fill up the unfilled promotional quota by GDS employees treating them as outsiders through direct recruitment process, it is deemed that the vacancies have been converted to direct recruitment quota. Therefore, like SC/ST, there should have been percentage of reservation for OBC candidates. He has further stated that while filling up promotional posts, as per the Rules, Respondents are to provide reservation to the extent of 7.5% for ST and 15% for ST but while filling up of the posts on direct recruitment, they are to provide reservation to the extent of 23% for ST and 15% for SC. But from the number of vacancies reserved for SC & ST candidates it cannot be said that these are promotional vacancies. By stating so, he has reiterated his prayer made in the OA. Respondents have

✓

32 ✓

9-

also filed additional counter to the rejoinder filed by Applicant.

9. Applicant through MA Nos. 43 and 112 of 2007 have brought to our notice the letters dated 08.01.2007 and 29.01.2007 (Annexure-9 & 11)) of the CPIO & Dy. Director General (Estt.), Department of Posts, New Delhi stating as under:

- "2. In continuation of my letter dated 08.01.2007, it is reiterated that the quantum of reservation for OBC in case of direct recruitment to Group C & D posts normally attracting candidates from a locality or region in respect of Orissa is 12%.
3. The left over promotion quota vacancies of PA/SA filled by GDS is in essence a direct recruitment with the only exception that it is restricted to GDS with specific conditions. Moreover, neither GDS are departmental employees nor it is in line of promotion to PA/SA. Therefore, reservation as applicable to Direct Recruits is applicable."

10. Respondents by filing reply to the MAs have clarified that revised Recruitment Rules of PA/SA cadre was issued on 10.11.2004. The notification for filling up un-filled vacancy was circulated by CPMG(O) Circle on 28.03.2005. In the said notification, no post was reserved for OBC community. The Applicant sought information under RTI Act on 15.1.2007 and the reply under RTI Act was issued by DG Post on

R

3

- 10 -

08.01.2007 and 29.01.2007. The instruction dated 29.01.2007 has not been incorporated in the Notification which was issued on 28.03.2005. Since the vacancies are for the year 2003-2004 and the instruction issued vide DG posts letter was dated 29.01.2007 the same has no application to the present case.

11. Heard the rival submissions of the parties and with their aid and assistance perused the materials placed on record.

12. Learned Counsel for Applicant has argued that giving age relaxation to reserved candidates is a constitutional provision and, therefore, a reserved candidate is entitled to the benefit of age relaxation even against the vacancy meant for OC candidate. He has argued that by giving wrong interpretation to the instructions under Annexure-R/4, the Respondents want to get the approval of this Tribunal of the intentional and deliberate wrong committed by them in depriving the applicant his right to be considered for the post. During argument, he has clarified that this instruction, under Annexure-R/4 clearly provides that in case a reserved candidate qualifies in the test by securing marks higher than any general candidate, he cannot be adjusted against the post reserved for him. therefore, this instruction has no bearing to the present case. His next contention is that according to the Respondents, the quantum of reservation for OBC in case of direct recruitment to Group C & D posts is 12% and the left over

12

32

- 11 -

promotion quota vacancies of PA/SA to be filled by GDS come under direct recruitment and the principles of reservation as applicable to direct recruitment vacancies is also applicable to this case. Therefore, by not making reservation for OBC while issuing notification for filling up of 11 vacancies, the Respondents have not only harassed the Applicant but also violated the mandate provided in the Constitution and various instructions issued by the Government in regard to making reservation of the vacancies/posts for different reserved communities.

13. On the other hand Learned Additional Standing Counsel by relying on the decisions of the Chandigarh Bench of the CAT rendered in the case of **Sanjeev Kumar Sharma v. Union of India and others**, ATJ 1006 (3) 262 and the decisions of the Hon'ble High Court of Orissa in the case of **Ranjit Kumar Patnaik v. CAT and others** (WPC No. 10299 of 2006 disposed of on 18.09.2006) has argued that since the instructions under Annexure 9 and 11 have been issued in the year 2007 the same have no application to the vacancies of 2003 and 2004 and, therefore, this was hardly any help to the Applicant. He has also argued that since there was no vacancy earmarked for OBC, the Respondents have rightly not allowed any premium in regard to age-relaxation to the Applicant who belongs to OBC community against the vacancies meant to be filled up ^{by} OC candidates.

✓

89

12

14. Before dealing with various contentions advanced by the parties, for just appreciation of the matter, we would like to quote the relevant portion of the instructions under Annexure-R/4 which runs as under:

"3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidate shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies (C.I.Deptt.of Per & Trg, OM No. 36111/1/98-Estt.(Res.) dated 1-7-1998)."

15. From the above, it is clear that age-relaxation can be allowed to the reserved candidates only against the

12

vacancies ear-marked for them and not as against the vacancies meant to be filled up by OC category candidates. Hence, we have no hesitation to hold that rejection of the candidature of the applicant on the ground of over-aged is not contrary to Rules.

16. In regard to providing percentage of reservation for OBC, in the left over promotion quota vacancies of PA/SA to be filled by GDS, it is no more in dispute in view of the clarification under Annexure-9 and 11. The only question that has to be answered as to whether the clarification/instructions issued under RTI Act to the Applicant is applicable to the present selection undertaken for the vacancies of the year 2003 and 2004. In this connection, we would like to observe that the letter under Annexure 9 and 11 are clarification of the Rules already in existence. It is seen that at one hand clarification was made under Annexure-9 and 11 by the Respondent No.1 stating that left over promotion quota vacancies of PA/SA filled by GDS is in essence a direct recruitment and reservation as applicable to direct recruits is applicable and, on the other hand by filing counter it has been stated that since these are promotional vacancies, benefit of reservation cannot be given to OBC category employees. Clarification pre supposes existence of order and rule which is not clear from the letters under Annexure-9 & 11.

✓

17. In view of the controversy stated above, we call upon Respondent No. 1 i.e. Secretary cum Director General of Posts, New Delhi to review the matter especially with regard to making reservation for OBC category for the present selection and take a view on the same within a period of 90(ninety) days from the date of receipt of copy of this order and communicate the result thereof to the Applicant. Till a decision is taken in the matter the order of this Tribunal dated 27.09.2005 shall remain in force.

18. In the result, with the observations and directions made above, this OA stands disposed of by leaving the parties to bear their own costs.

SEE PAGE 15
(N.D.RAGHAVAN)
VICE-CHAIRMAN

SEE PAGE 15
(B.B.MISHRA)
MEMBER(A)

KNM/PS.

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

19. After going through the proposed order written by my learned brother Shri B.B.Mishra, Administrative Member, with due regards, I differ from his views taken and the decision arrived at by him, vide paragraphs 15, 16, 17 and 18, for the following reasons:

- (a) The relevant materials available on record have not been considered and appreciated by him duly or properly;
- (b) The issues which arise for determination of the Tribunal have not been formulated, far less decided by him;
- (c) The observation/finding in paragraph 15 :

"15. From the above, it is clear that age-relaxation can be allowed to the reserved candidates only against the vacancies earmarked for them and not as against the vacancies meant to be filled up by OC category candidates. Hence, we have no hesitation to hold that rejection of the candidature of the applicant on the ground of over-aged is not contrary to Rules."

has been recorded by him in a very casual manner, to say so with utmost respect to him.

I, therefore, feel it necessary to briefly narrate the facts of the case as averred by the parties and decide the issues raised.



20. Brief facts of the case of the applicant are these: The applicant joined the post of Gramin Dak Sevak Branch Post Master (hereinafter referred to as 'GDSBPM'), Savamul Branch Office in account with Jagatsinghpur Head Office under Cuttack South Division, on 19.12.2001. The office of the Chief Postmaster General, Orissa Circle, Bhubaneswar, by letter dated 28.03.2005 (Annexure 3) addressed to all the Senior Superintendents of Post Offices, the Superintendents of Post Offices, the Senior Superintendent of Railway Mails, and the Superintendent of Railway Mails, intimated that the unfilled vacancies in Postal Assistant (P.A.)/Sorting Assistant (S.A.) cadres under Departmental quota pertaining to the years 2003 and 2004, as given in Annexures I and II to the said letter. Should be filled up by the Gramin Dak Sevak (GDS) employees of the Recruiting Divisions as per the Revised Recruitment procedure for Direct Recruitment to PA/SA cadres circulated vide No.RE/6-1/2002(Rlg-IV) dated 28.12.2004(Annexure 2) who fulfill the eligibility conditions laid down in the letter dated 28.03.2005. The eligibility conditions to be fulfilled by the GDS employees are: (i) They possess ~~the~~ the minimum educational



40

qualification of 10+2 standard (Senior Secondary, excluding vocational streams) and have put in a minimum service of 03 years as on last date fixed for receipt of applications; (ii) They should be within 28 years of age (33 years for SC/ST candidates and 31 years for OBC candidates and 38 years for PH candidates as on ^{the last} last date fixed for receipt of applications; and (iii) Only those GDS candidates shall be eligible for being considered for PA/SA cadres who have secured marks not below the marks secured by last Direct Recruit of the relevant category. It has been clearly mentioned in the said letter dated 28.3.2005 that since the GDS employees are not Departmental Employees and treated as outside candidates, the Revised Recruitment Procedure circulated vide letter dated 28.12.2004 shall be applicable for their consideration/selection to the unfilled vacancies in PA/SA cadres.

20.1 Pursuant to the letter dated 28.3.2005 of the office of the Chief Postmaster General, Orissa Circle, the Superintendent of Post Offices, Cuttack South Division (Respondent No. 3), by letter dated 6.4.2005 (Annexure 4) addressed to all the Post Masters and Sub-Post Masters as well as to all the



GDSSPMs/BPMs under his Division, while enclosing therewith the letter dated 28.3.2005 (Annexure 3), invited applications from GDS officials for filling up the vacancies in PA/SA cadres in the Division for the years 2003 and 2004. The breakups of the vacancies for the 2003 were: "OC 04, ST 02, SC Nil Total 06", and for the year 2004 were: "OC 02, ST 02, SC 01 Total 05".

20.1 The applicant belongs to Other Backward Class (OBC) category. Having put in more than three years of service as GDSBPM and possessed the minimum qualification of 10+ 2 (Science) standard securing 50% marks and being aged 28 years 10 months (date of birth 30.6.1976) as against the maximum age limit of 31 years for OBC candidate, the applicant submitted his application in the prescribed form, along with the required documents, by Registered Post on 19.4.2005, i.e., by the due date.

20.2 The selection procedure as applicable to Direct Recruitment candidates is also applicable to GDS employees for appointment against the unfilled departmental quota. The selection procedure for Direct Recruitment has been set forth in the Prospectus issued by the office of the Chief Postmaster



General, Orissa Circle. Clause 5 of the said Prospectus provides that a merit list of the candidates will be prepared on the basis of marks in the aggregate secured by them in 10+2 or 12th Class examination. Clause 5.3 thereof prescribes that out of the merit list, candidates equal to 10 times of vacancies (for each community separately as per the vacancies reserved for each community) will be called for to appear at the Aptitude Test. Only 18 applicants had applied for the 11 unfilled vacancies of Cuttack South Division.

20.3 Though the applicant was eligible in all respects to be listed for the recruitment examination, Respondent No.2 arbitrarily and whimsically deleted the name of the applicant from the list of short-listed candidates published in the Notice Board. The applicant came to know that his name was not included in the list of short-listed candidates on the plea that he had exceeded 28 years of age. According to the applicant, his name was not included in the list of short-listed candidates in clear violation of the letter dated 28.3.2005 (Annexure 3) issued by the office of the Chief Post Master General, Orissa Circle, which prescribed under eligibility condition (ii) that the GDS



employees belonging to OBC should be within 31 years of age. Being aggrieved, the applicant made a representation dated 24.5.2005 (Annexure 7) to Respondent No.3 pointing out the illegality in the rejection of his candidature and requesting him to allow him to appear at the recruitment examination scheduled to be held on 5.6.2005. .

20.4 As per the Government of India decisions, 12% of the posts in Groups C and D cadres are reserved for OBC in the State of Orissa. The total vacancies in the Cuttack South Division being 11, at least one post in the cadre of PA should have been reserved for OBC in as much as the filling up of the unfilled vacancies of departmental quota in PA/SA cadres by the eligible GDS employees is by way of initial recruitment..

20.5 The applicant has urged that recruitment to PA/SA cadres from GDS employees being a direct recruitment, the Departmental Respondents should have maintained roster and provided reservation to OBC candidates in accordance with the reservation policy of the Government of India. The applicant has also urged that he, having fulfilled the eligibility conditions,



✓ 44
should have been called to appear at the recruitment examination.

20.6 In the above background, the applicant, in this O.A., has prayed for the following relief:

“8. Relief(s) Sought for:

It is therefore humbly prayed that the Hon'ble Tribunal may kindly be pleased to:

- (i) direct the respondents to make provision for reserving posts for OBC candidates in the unfilled vacancies of department quota in respect of Cuttack South Division as notified under Annexure 4 and quash Annexures 3 and 4;
- (ii) declare that the rejection of the application of the applicant to appear the Postal Assistant Recruitment Examination is illegal, improper;
- (iii) And pass any other order/orders as deems fit just and proper in the interest of justice.”

21. The Respondents have filed a detailed counter contesting the claim of the applicant. They have stated that the recruitment to the cadre of Postal Assistant is held as per the Recruitment Rules published under GSR-18E dated 9.1.2002 and circulated vide DG, Posts, New Delhi letter No. 60-29/98-SPB-I dated 15.01.2002 (Annexure R/1). There is no provision of reservation for promotion for OBC community as per Department of Personnel & Training O.M. dated 22.10.1993 (Anenxure R/2). The unfilled vacancies of Departmental quota in



PA/SA cadres are filled up by the eligible GDS employees on promotion. While notifying the 11 (5 for 2003 and 6 for 2004) unfilled vacancies of Departmental quota for the years 2003 and 2004, Respondent No.3 in his letter dated 6.4.2005 did not mention any post to have been reserved for OBC community. The revised recruitment procedure was issued by the Director General, Posts, vide letter dated 10.11.2004 (Annexure R/3). As per the Department of Personnel & Training O.M. dated 1.7.1998 (Annexure R/4), only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies and when a relaxed standard is applied in selecting in SC/ST/OBC candidates, the SC/ST/OBC candidates are to be counted in reserved vacancies. As per letter dated 12.5.2005 (Annexure R/5) issued by Respondent No.2, the Chief Postmaster General, Orissa Circle, the age relaxation to SC/ST/OBC/PH candidates is admissible in respect of reserved post as per rule and that while considering the reserved candidates against OC vacancy, the age relaxation is not applicable. It was further clarified in the said letter ^{- that id.} ~~dated~~ the GDS candidates of OBC community



could be taken against the vacancy meant for OC, but age relaxation was not permissible for such candidates. As there was no vacancy for OBC community and the applicant had already crossed the maximum age limit, i.e., 28 years meant for OC GDS candidates, he was not found eligible to be considered as OC candidates to compete against OC quota. The selection for the post of PA from GDS employee is coming under promotion quota vacancy and it cannot be taken as initial recruitment.

22. The applicant has filed a rejoinder to the counter and the Respondents have also filed a reply to the applicant's rejoinder.

23. After the hearing was concluded and order reserved on 11.1.2007 the applicant filed Misc. Application Nos. 43 and 112 of 2007 praying for acceptance of additional documents enclosed to the same. The Respondents were allowed to file objection to the said MAs. After filing of objections by the Respondents, the learned counsels for the parties were heard. It is pertinent to mention here that along with MA No. 112 of 2007 the applicant has filed letter dated 29.1.2007 issued by the CPIO



5X
& Dy. Director General (Estt), Department of Posts, New Delhi, which states that the left over promotion quota vacancies of PA/SA filled by GDS is in essence a direct recruitment with the only exception that it is restricted to GDS with specific conditions, that neither GDS are departmental employees nor it is in line of promotion to PA/SA, and that therefore reservation as applicable to Direct Recruits is applicable. The Respondents along with their objections to the said MAs have filed letters dated 12.5.2005 and 28.3.2005. The letter dated 12.5.2005 was already filed by them as Annexures R/5 to their counter and the letter dated 28.3.2005 was already filed by the applicant as Annexure 3 to the O.A.

24. From the pleadings of the parties the following issues arise for our determination:

- (1) Whether under the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules 2002 (Annexure R/1) and letter dated 28.3.2005 (Annexure 3) issued by the Chief Postmaster General, Orissa Circle, and the letter dated 6.4.2005 (Annexure 4) issued by the



Superintendent of Post Offices, Cuttack South Division, the applicant-GDS, who belongs to OBC community, is eligible to apply and entitled to be considered for recruitment to the PA/SA cadre against the unfilled vacancies of departmental quota?

- (2) Whether the filling up of unfilled vacancies of departmental quota in PA/SA cadres by the eligible GDS employees is done by way of promotion or direct recruitment?
- (3) Whether reservation of vacancy for OBC community is applicable to the recruitment of GDS employees to the cadre of PA/SA against the unfilled vacancies of departmental quota in the said cadre?
- (4) Whether the applicant is entitled to any relief?

25. Issue No.(1): It is the admitted case of the parties that recruitment to the cadre of PA/SA is done under the Department of Posts (Postal Assistants & Sorting Assistants) Recruitment Rules, 2002 (hereinafter referred to as "the Recruitment Rules")



made by the President of India in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. The Recruitment Rules were notified/ published under GSR 18(E) dated 9.1.2002, vide Annexure R/1 to the counter. The method of recruitment, age limit, qualifications and other matters relating to the said posts are specified in columns (5) to (14) of the Schedule appended to the Recruitment Rules. Column 11 prescribes the method of recruitment as follows:

- “(a) 50% by direct recruitment.
- (b) 50% by promotion through limited departmental competitive examination failing which the unfilled vacancies shall be offered to Gramin Dak Sevaks of the Recruiting Divisions or Units subject to their fulfilling the following conditions and if vacancies remain unutilized by the Gramin Dak Sevaks, they shall be filled by subsequent direct recruitment of other open market candidates, fulfilling the age and qualification condition laid down in Columns 7 and 8:
 - (a) They possess the minimum educational qualification of 10+2 standard (senior secondary excluding vocational streams) and have put in a minimum service of 3 years.
 - (b) Only those Gramin Dak Sevaks shall be eligible for being considered who have secured marks not below the marks secured by the last direct recruit of the relevant category selected, as the case may be or other communities, Scheduled

[Signature]

Castes, Scheduled Tribes, or Other Backward Classes of the same year.

- (c) They should be within 28 years of age (33 years for Scheduled Castes or Scheduled Tribes communities and 31 years for Other Backward Classes community) as on the crucial date fixed for the direct recruitment of the same year.

NOTE: The procedure for recruitment shall be governed by the administrative instructions issued by the Department from time to time. “

From the above, it is clear that 50% of the posts in the cadre of PA/SA are filled by direct recruitment and 50% by promotion through limited departmental competitive examination. The unfilled vacancies under 50% promotion quota are offered to the Gramin Dak Sevaks of the Recruiting Division or Unit subject to their fulfilling the conditions laid down under column 11. If any unfilled vacancies under 50% still remain unutilized, the same will be filled by subsequent direct recruitment of other open market candidates fulfilling the age and qualifications laid down in Columns 7 and 8. Column 11(b)(c) prescribes the age limit of 28 years of age for the Gramin Dak Sevaks to become eligible to be considered for recruitment to the PA/SA cadre and further prescribes upper age limit of 33 years for Scheduled Castes or



Scheduled Tribes communities and 31 years for Other Backward Classes community) as on the crucial date fixed for the direct recruitment of the same year.

25.1 The Chief Postmaster General, Orissa Circle, by letter dated 28.3.2005 addressed to all the Divisional Heads, including Respondent No.3, the Superintendent of Post Offices, Cuttack South Division, in the matter of filling up of unfilled vacancies of departmental quota in PA/SA cadres by the eligible GDS employees of the Recruiting Divisions pertaining to the years 2003 and 2004, also reiterated the same eligibility conditions as contained in the Recruitment Rules. It was clearly laid down in the said letter dated 28.3.2005, vide eligibility condition (ii) that the GDS employees should be within 28 years of age (33 years for SC/ST candidates and 31 years for OBC candidates and 38 years for PH candidates) as on the last date fixed for receipt of applications.

25.2 Pursuant to the said letter dated 28.3.2005 issued by the Chief Postmaster General, Orissa Circle, the Superintendent of Post Offices, Cuttack South Division (Respondent No.3), by



his letter dated 6.4.2005 (Annexure 4), notified the unfilled vacancies of the departmental quota in PA/SA cadre by the eligible GDS employees of the Recruiting Division pertaining to the years 2003 and 2004 and invited applications from GDS employees, in response to which the applicant made his application. The copy of the said letter dated 28.3.2005 was enclosed to the letter dated 6.4.2005 (Annexure 4) issued by the Superintendent of Post Offices.

25.3 A combined reading of the Recruitment Rules, the letter dated 28.3.2005 issued by the Chief Post Master General, Orissa Circle, and the letter dated 6.4.2005 issued by the Superintendent of Post Offices, Cuttack South Division, makes it amply clear that a GDS employee belonging to OBC community, who is within 31 years of age, is eligible to apply and entitled to be considered for recruitment to the PA/SA cadre against the unfilled vacancies of departmental quota.

25.4 The Respondents' plea is that since there was no vacancy earmarked for OBC community, the age relaxation was disallowed to the applicant who belonged to OBC community



and applied for being considered against vacancies meant to be filled up by OC candidates. In support of their plea, the Respondents have placed reliance on letter dated 12.5.2005 (Annexure R/5) which states that maximum age limit to the GDS for the unfilled vacancies of PA/SA cadre for the years 2003 and 2004 is 28 years, that the relaxation to SC/ST/OBC/PH candidates in the respective reserved posts is admissible as per rule, that in OC vacancies the age relaxation is not applicable, and that GDS candidates of OBC community can be taken against vacancy meant for OC without age relaxation. This letter was issued by the office of the Chief Post Master General, Orissa Circle (Respondent No.2) in response to the letter dated 11.5.2005 of the Superintendent of Post Offices, Cuttack South Division (Respondent No.3). This letter is an intra-departmental communication and hardly carries any principle having universal application, more particularly when it runs counter not only to the provisions contained in the statutory Recruitment Rules but also to the letter dated 28.3.2005 issued from the office of the Chief Post Master General, Orissa Circle (Respondent No.2). The letter dated 1.7.1998 of the Department



✓ 54
2
of Personnel & Training (Annexure R/4), relied on by the Respondents, has not laid down that ~~that~~ in the absence of any post reserved/earmarked for ~~the~~ any reserve community, the age relaxation is not allowable to a reserve community candidate when he applies for being considered against a post meant to be filled by OC candidate. In consideration of all this, I reject this plea of the Respondents in this regard.

25.5 In view of the clear provision contained in the Recruitment Rules that subject to fulfilling other eligibility conditions, GDS-employees belonging to OBC candidates within 31 years of age are eligible to apply and entitled to be considered for recruitment to the cadre of PA/SA against the unfilled vacancies of Departmental quota, I have no hesitation to hold that the applicant, whose date of birth was 30.6.1976 and whose age was 28 years 10 months as against the maximum age limit of 31 years as on the last date of receipt of applications, was very much eligible to apply and entitled to be considered for recruitment to the PA/SA cadre against the unfilled vacancies of Departmental Quota. Therefore, the Respondents have acted



illegally in rejecting the applicant's candidature on the ground of his having crossed 28 years of age.

26. Issue No.(2): As per the Recruitment Rules, 50% of the posts in the PA/SA cadre are filled by way of direct recruitment and 50% by promotion through limited departmental competitive examination, failing which unfilled vacancies shall be offered to Gramin Dak Sevaks of the Recruiting Divisions or if vacancies remain unutilized by the GDS, they shall be filled up subsequent direct recruitment of other open market candidates. There is no doubt that 50% of the posts are earmarked for being filled by promotion through limited departmental competitive examination. If the Department fails to fill that 50% by promotion in full through LDCE, the unfilled vacancies shall be offered to the Gramin Dak Sevaks subject to their fulfilling the conditions with regard to the educational qualification of 10 + 2 standard (Senior Scondary), the minimum service of 3 years, the securing of marks not below the marks secured by the last direct recruit of the relevant category selected, and the age limit. After their appearing at the recruitment examination and coming out successful, they are to be appointed to the post of PA/SA. There



is also provision in the Recruitment Rules that after adopting the above method of filling the unfilled vacancies of the Departmental quota, if the vacancies still remain unfilled, they shall be filled by subsequent direct recruitment of other open market candidates fulfilling the conditions laid down in columns 7 and 8. It is thus clear that the 50% of the posts, meant to be filled by promotion through limited departmental competitive examination, are earmarked for Postman, Mail Guards, etc., who are departmental candidates working in the Department of Post itself. When this 50% vacancies are not fully filled by promotion, the unfilled vacancies are offered to the Gramin Dak Sevaks. It has been clearly mentioned in the letter dated 28.3.2005 (Annexure 3) issued by the office of the Chief Post Master General, Orissa Circle, that since the GDS employees are not Departmental Employees and treated as outside candidates the Revised Recruitment Procedure circulated vide letter dated 28.12.2004 shall be applicable for their consideration/selection to the unfilled vacancies in PA/SA cadre. The letter dated 28.12.2004 (Annexure 2) is the letter issued by the office of the Chief Post Master General, Orissa Circle, to all the Divisional



✓ X
5

Heads and the Regional Heads of the Orissa Circle, whereby the D.G., Posts' letter dated 10.11.2004 on the subject of Revised Recruitment procedure for Direct Recruitment to PA/SA cadres. The letter of the DG, Posts, dated 10.11.2004 is at Annexure R/3 to the counter, which prescribed the Revised Recruitment procedure for PA/SA in the enclosure thereto. In view of this, it is clear that filling up the unfilled vacancies of the departmental quota by the GDS employees is done by way of direct recruitment and not by way of promotion. Another aspect of the matter is that promotion of an incumbent is made only in his own Department/Office. As pointed out above, the Respondents have clearly mentioned that GDS employees are not Departmental Employees and treated as outside candidates and therefore, the Revised Recruitment Procedure is applicable for their consideration/selection to the unfilled vacancies in PA/SA cadres. Column 9 of the Schedule to the Recruitment Rules states that the age and educational qualification prescribed for direct recruits will not apply to the case of promotion. The other provision of the Recruitment Rule, vide column (9) is that if the vacancies under the 50% quota still remain unutilized, the same



shall be filled by subsequent direct recruitment of other open market candidates. Taking all these factors into consideration, I am of the considered view that though the unfilled vacancies of the 50% promotion quota are filled either by GDS employees or by subsequent direct recruitment of other open market candidates, the filling up of the same is in the nature of direct recruitment. In this connection, I would like to refer to the letter dated 29.1.2007 (Annexure 11) issued by the CPIO & Dy. Director General (Estt.), Department of Posts, New Delhi, the relevant portion from which reads thus:

“3. The left over promotion quota vacancies of PA/SA filled by GDS is in essence a direct recruitment with the only exception that it is restricted to GDS with specific conditions. Moreover, neither GDS are departmental employees nor it is in line of promotion to PA/SA. Therefore, reservation as applicable to Direct Recruits is applicable.”

In consideration of the above, I have no hesitation to hold that the filling up of unfilled vacancies of departmental quota in PA/SA cadre by the eligible GDS employees is done by direct recruitment and not by promotion.

26.1 I have gone through the decision cited by the learned Additional Standing Counsel appearing for the Respondents in



59 ✓
the case of Sanjeev Kumar Sharma v. Union of India and others, 2006(3) ATJ 262 In the said case, the applicant was aggrieved by Respondent No.3's notification dated 15.4.2006 inviting applications from eligible/ willing Gramin Dak Sewaks (GDSs) for filling up vacancies of departmental quota of PA/SA for the year 2003. The break up of vacancies was OC - 4, SC - 2 and **OBC -1.** One of the eligibility condition of GDSs is that they should be within 28 years of age (33 years of SC and 31 years of OBC) as on 9.9.2005. It was contended on his behalf that the eligibility condition regarding age of 28 years had to be linked to ^{- year 2003 -} the 2003 instead of 2005. The Chandigarh Bench of the Tribunal accepted the contention of the applicant therein and quashed the notification to the extent it prescribed the eligibility age condition for GDS candidates as within 28 years as on 9.5.2005 instead of the year 2003. The issue raised in the Sanjeev Kumar Sharma's case (supra) is not the same as in the instant case and therefore, the decision is of no help to the Respondents' case. Rather, it is clear from the judgment in the case of Sanjeev Kumar Sharma (supra) that in the notification ^{for}

Side

reservation of vacancy for OBC community was earmarked and age limit for OBC candidates was ^{- at 31 -} 31.

27. Issue No.(3): In view of my finding on issue No.(2) and in view of the Respondents' stand that the Government of India policy of reservation of vacancy is applicable to direct recruitment, I hold that reservation of vacancy for OBC community is applicable to the recruitment of GDS employees to the cadre of PA/SA against the unfilled vacancies of departmental quota in the said cadre.

28. Issue No. (4): The applicant has prayed for a direction to the Respondents to make provision for reserving posts for OBC candidates in the unfilled vacancies of departmental quota in respect of Cuttack South Division as notified under Annexure 4. and quash Annexures 3 and 4. In view of my findings on issue nos. ⁹ ((3) and (4) that the filling up of unfilled vacancies of departmental quota in PA/SA cadre by the eligible GDS employees is done by way of direct recruitment and that the reservation of vacancy for OBC community is applicable to the recruitment of eligible GDS employees to the cadre of PA/SA



against the unfilled vacancies of departmental quota, I find substantial merit in his prayer for issuance of a direction to the Respondents to make such provision. So far as his prayer for quashing Annexures 3 and 4 is concerned, I find it difficult to accede to the same in as much as the same were issued by the Respondents notifying the unfilled vacancies of the departmental quota for the years 2003 and 2004. The selection and appointment have been long over and the selected persons must have joined the posts. The Tribunal, by order dated 27.9.2005 passed on the MA No.568 of 2005 filed by the Respondents for vacation of the order of stay dated 3.6.2005, gave opportunity to the Respondents to declare the results and fill up the vacancies and directed that appointment so made shall be subject to the outcome of this O.A. In the facts and circumstances of the case, it would meet the ends of justice if a direction is issued to the Respondents to provide reservation for OBC community in the unfilled vacancies to be filled by eligible GDS employees before the next occasion arises by taking an appropriate decision. Consequently, the interference with Annexures 3 and 4 is not called for.



28.1 In so far as the prayer of the applicant for declaring the rejection of his candidature to appear at the recruitment examination as illegal and improper, is concerned, I hereby conclude, on the basis of my findings on issue No. (1), that the Respondents have acted illegally in rejecting the candidature of the applicant and therefore, the Respondents are bound to re-do the recruitment examination after taking into consideration the candidature of the applicant along with all other candidates. However, the persons selected and appointed to the posts should continue to hold their respective posts till the process of fresh recruitment examination is over and a select panel is prepared and appointment made. In the event ^{- of sb. - being her.} the applicant ~~is~~ selected, he is entitled to be appointed to the PA/SA cadre with effect from the date the earlier selected persons were appointed pursuant to the vacancy circular dated 6.4.2005 (Annexure 4), in response to which the applicant had made the application and his candidature was rejected, but actual financial benefits will be paid to him from the date of his joining. The entire exercise shall be completed by the Respondents within six months ^{from the} date of their receipt of a copy of this order. ^{her.}


her.

67

-40-

20.

In the result, the Original Application is allowed. No costs.


(N.D. RAGHAVAN)

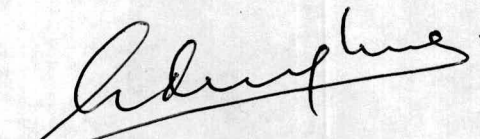
VICE-CHAIRMAN

In view of our difference in opinion, we make a reference to the Hon'ble Chairman under Section 26 of the Administrative Tribunals Act, 1986, for decision on the following points:

- or not, on the facts and in the circumstances of the case*
- (i) Whether the findings and the decisions arrived at by the Administrative Member or the findings and the decisions arrived at by the Vice-Chairman are correct ?


(B.B. MISHRA)

ADMINISTRATIVE MEMBER


(N.D. RAGHAVAN)

VICE-CHAIRMAN

62

O.A.No. 243/2005

ORDER DATED: 19.09.2007

This case has been referred to the third Member as dissent views have been expressed by the Hon'ble Administrative Member and Hon'ble Vice-Chairman in order dated 28.06.2007.

Briefly stated, the applicant is one of the aspirants for the post of PA/SA for which applications were called for. He being an OBC candidate, and of 31 years of age, had applied for the said post. The Applicant, at the time of filing of application was GDS employee. The vacancies to be filled up were the unfilled promotional vacancies thrown open to GDS employees.

Respondents rejected his candidature on account of he being stated to be over-aged. They rely upon Annexure-A/3 and A/4 order. It is by way of challenge of Annexure-A/3 and A/4 order that the Applicant is seeking following relief:

"i) to direct the Respondents to make provision for reserving posts for OBC candidates in the unfilled vacancies of department quota in respect of Cuttack South Division as notified under Annexure-4 and quash Annexure- 3 and 4.

ii) to declare that the rejection of the application of the applicant to appear the Postal Assistant Recruitment Examination is illegal, improper....."

Respondents have contested the O.A. Apart from making certain preliminary objections, they have stated vide para 11(4) that the vacancies of unfilled

department quota vacancy i.e. unfilled promotional quota vacancy to be filled in from GDS employees to be treated as on promotion. According to the Respondents there were 11 vacancies for the year 2003 and 2004. Since there is no separate OBC quota for promotional quota vacancy, according to the Respondents, the applicant is not eligible as he is admittedly above 28 years of age. The applicant has filed his rejoinder as well as certain other M.As. in which certain additional documents have also been added. Annexure-A/11 is one such additional document filed by the applicant and the same inter alia reads as follows:

"2. In continuation of my letter dated 08.01.2007, it is reiterated that the quantum of reservation for OBC in case of direct recruitment to Group C & D posts normally attracting candidates from a locality or region in respect of Orissa is 12%.

3. The left over promotion quota vacancies of PA/SA filled by GDS is in essence a direct recruitment with the only exception that it is restricted to GDS with specific conditions. Moreover, neither GDS are departmental employees nor it is in line of promotion to PA/SA. Therefore, reservation as applicable to Direct Recruits is applicable."

The Tribunal heard the matter and the Hon'ble Administrative Member has held as such:

" 15. From the above, it is clear that age-relaxation can be allowed to the reserved candidates only against the vacancies ear-marked for them and not as against the vacancies meant to be filled up by OC category candidates. Hence, we have no hesitation to hold that rejection of the candidature of the applicant on the ground of over-aged is not contrary to Rules.

16. In regard to providing percentage of reservation for OBC, in the left over promotion quota vacancies of PA/SA to be filled by GDS, it is no more in dispute in view of the clarification under Annexure-9 and 11. The only question that has to be answered as to whether the clarification/instructions issued under RTI Act to the Applicant is applicable to the present selection undertaken for the vacancies of the year 2003 and 2004. In this connection, we would like to observe that the letter under Annexure 9 and 11 are clarification of the rules already in existence. It is seen that at one hand clarification was made under Annexure-9 and 11 by the Respondent No.1 stating that left over promotion quota vacancies of PA/SA filled by GDS is in essence a direct recruitment and reservation as applicable to direct recruits is applicable and, on the other hand by filing counter it has been stated that since these are promotional vacancies, benefit of reservation cannot be given to OBC category employees. Clarification pre supposes existence of order and rule which is not clear from the letters under Annexure-9 and 11.

17. In view of the controversy stated above, we call upon Respondent No.1 i.e. Secretary cum Director General of Posts, New Delhi to review the matter especially with regard to making reservation for OBV category for the present election and take a view on the same within a period of 90(ninety) days from the date of receipt of copy of this order and communicate the result thereof to the Applicant. Till a decision is taken in the matter the order of this Tribunal dated 27.09.2005 shall remain in force..."

Differing from the opinion, the Hon'ble Vice-Chairman has come to a different conclusion and the same is as under:

".... 24. From the pleadings of the parties the following issues arise for our determination:

(1) Whether under the Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules 2002 (Annexure-R/1) and letter dated 28.3.2005

(Annexure-3) issued by the chief Postmaster General, Orissa Circle, and the letter dated 6.4.2005 (Annexure-4) issued by the Superintendent of Post Offices, Cuttack South Division, the Applicant-GDS, who belongs to OBC community, is eligible to apply and entitled to be considered for recruitment to the PA/SA cadre against the unfilled vacancies of departmental quota?

(2) Whether the filling up of unfilled vacancies of departmental quota in PA/SA cadres by the eligible GDS employees is done by way of promotion or direct recruitment?

(3) Whether reservation of vacancy for OBC community is applicable to the recruitment of GDS employees to the cadre of PA/SA against the unfilled vacancies of departmental quota in the said cadre?

(4) Whether the applicant is entitled to any relief?

25.5 In view of the clear provision contained in the Recruitment Rules that subject to fulfilling other eligibility conditions, GDS-employees belonging to OBC candidates within 31 years of age are eligible to apply and entitled to be considered for recruitment to the cadre of PA/SA against the unfilled vacancies of Departmental quota, I have no hesitation to hold that the applicant, whose date of birth was 30.6.1976 and whose age was 28 years 10 months as against the maximum age limit of 31 years as on the last date of receipt of applications, was very much eligible to apply and entitled to be considered for recruitment to the PA/SA cadre against the unfilled vacancies of Departmental Quota. Therefore, the Respondents have acted illegally in rejecting the applicant's candidature on the ground of his having crossed 28 years of age.

26.1 I have gone through the decision cited by the learned Additional Standing Counsel appearing for the Respondents in the case of Sanjeev Kumar Sharma v. Union of India and others, 2006(3) ATJ 262. In the said case, the applicant was aggrieved by Respondent No.3's notification dated 15.4.2006 inviting applications from eligible/willing Gramin Dak Sewaks (GDSs) for filling up vacancies of departmental quota of PA/SA for the year

2003. The break up of vacancies was OC-4, SC-2 and OBC-1. One of the eligibility condition of GDSs is that they should be within 28 years of age (33 years of SC and 31 years of OBC) as on 9.9.2005. It was contended on his behalf that the eligibility condition regarding age of 28 years had to be linked to the year 2003 instead of 2005. The Chandigarh Bench of the Tribunal accepted the contention of the applicant therein and quashed the notification to the extent it prescribed the eligibility age condition for GDS candidates as within 28 years as on 9.5.2005 instead of the year 2003. The issue raised in the Sanjeev Kumar Sharma's case (supra) is not the same as in the instant case and therefore, the decision is of no help to the Respondents' case. Rather, it is clear from the judgment in the case of Sanjeev Kumar Sharma (supra) that in the notification for reservation of vacancy for OBC community was earmarked and age limit for OBC candidates was at 31.

27. Issue No.(3): In view of my finding on issue No.2 and in view of the Respondents' stand that the Government of India policy of reservation of vacancy is applicable to direct recruitment, I hold that reservation of vacancy for OBC community is applicable to the recruitment of GDS employees to the cadre of PA/SA against the unfilled vacancies of departmental quota in the said cadre.

28.1 In so far as the prayer of the applicant for declaring the rejection of his candidature to appear at the recruitment examination as illegal and improper, is concerned, I hereby conclude, on the basis of my findings on issue No.(1), that the Respondents have acted illegally in rejecting the candidature of the applicant and therefore, the Respondents are bound to re-do the recruitment examination after taking into consideration the candidature of the applicant along with all other candidates. However, the persons selected and appointed to the posts should continue to hold their respective posts till the process of fresh recruitment examination is over and a select panel is prepared and appointment made. In the event of the applicant being selected, he is entitled to be appointed to the PA/SA cadre with effect from the date of earlier

69
- 6 -
selected persons were appointed pursuant to the vacancy circular dated 6.4.2005 (Annexure-4), in response to which the applicant had made the application and his candidature was rejected, but actual financial benefits will be paid to him from the date of his joining. The entire exercise shall be completed by the Respondents within six months from the date of their receipt of a copy of this order."

The Counsel for the Applicant argued that once the highest authority in the Respondent Organization namely, the Director General has clearly specified that the left over promotion quota vacancies of PA/SA filled up by GDS is in essence Direct Recruitment with the only exception that it is restricted to the GDS with specific conditions, all the conditions/concessions available for a Direct Recruitment shall equally apply to the recruitment in question. Accordingly, there shall be provisions for OBC quota and the concession in age relaxation for OBC candidates shall be available.

Counsel for the Respondents, on the other hand, submitted that the application is premature in as much as the applicant did not wait after filing his representation dated 24.5.2005 but rushed to the Tribunal. As such, the order passed by the Administrative Member directing the Respondents to take a decision in the matter is most appropriate.

6
Arguments were heard and documents considered. The Recruitment Rules provide for two modes of recruitment prescribing 50% each, one is by way of direct recruitment from the open market, the other 50% is by way of promotion of Gr. D employees; a rider has been laid down that in case there are unfilled vacancies for

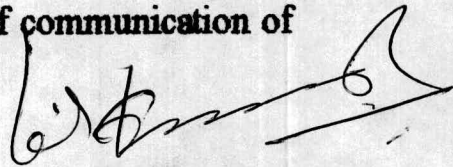
promotion quota, the same shall be filled up considering applications from the open market in the next recruitment. The Recruitment Rules thus provide that unfilled vacancies of the promotion quota are to be filled up by GDS first and remaining, if any, from open market. It is exactly in giving their clarification of the above provision that the Director General vide Annexure-A/11 has stated that filling up of the vacancies by GDS employees is in essence a Direct Recruitment. This goes to show that all the conditions and concessions available as for the Direct Recruitment should be made available in respect of those vacancies, which are required to be filled up by calling applications from GDS employees fulfilling the requisite qualification. As such, undoubtedly there should be necessary quota for OBC as well. The number of vacancies for 2003 is said to be six and for 2004 to be 5 as is shown in paragraph 6 of the counter. No provision has been made therein in respect of OBCs. Here, exactly an error has been committed by the Respondents in not allocating quota for OBCs. The Hon'ble Vice-Chairman has allowed this O.A. on the basis of his views vide para 28.1 (extracted above). I am in respectful agreement with the views expressed by the Hon'ble Vice-Chairman and accordingly, the directions given therein namely, allowing the applicant to participate in the examination and in case he is selected he should be treated to have been appointed with effect from the date the earlier selected persons were appointed pursuant to the vacancy circular dated 06.04.2005, shall hold good and this exercise shall be completed by the Respondents within

69

u A

- 8 -

a period of six months from the date of communication of
this order. No costs.


(Dr. K.B.S.RAJAN)
MEMBER (JUDL.)