

O.A. No. 403 of 2006

Order dated: 23.07.2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)

Hon'ble Mr. C.R.Mohapatra, Member (A)

The applicant has approached this Tribunal for the second time having ~~been~~ passed in a test conducted by the Department for the post of Mail Guard in the Postal Department. In the present O.A. the applicant has challenged the order dated 4.8.2005, by which the Superintendent, R.M.S., K-Division, Jharsuguda has cancelled the result of Mail Guard Examination held on 25.3.2001.

2. The case of the applicant is that in pursuance of notification dated 18.01.2000 for the post of GDS (Mail Guard), the applicant having filed an application appeared at the examination which was held on 25.3.2001 and resultantly, he was selected for the post of Mail Guard. However, the notification having been cancelled, the applicant filed O.A. No. 821/02. On hearing the parties, this Tribunal by the order dated 23.12.2004 directed as follows:

“in the aforesaid premises,  
the impugned order at Annexure-3 is  
hereby quashed being without  
jurisdiction.”



Subsequent to the above order, the applicant filed representation under Annexure-A/4 and, on receipt of that representation, the present impugned order has been passed on the ground that there was no vacancy meant for outsider quota in K-Division in the year 2000 for absorption of the applicant.

3. Pursuant to the notice issued by this Tribunal, a counter has been filed for and on behalf of the Respondents. The stand taken in the counter-reply is that there is no vacancy to absorb the applicant. The further stand taken by the Respondents is that advertisement made in the year 2000 and the examination conducted on that basis was without any clear-cut vacancy in the post of Mail Guard and hence, that advertisement itself was irregular.

4. We have heard Mr. J.Sengupta, Ld. Counsel for the applicant and Mr. S.B.Jena, Ld. Additional Standing Counsel appearing for the Respondents.

5. Mr. Sengupta, Ld. Counsel appearing for the applicant drawing our attention to Paragraph 20 of counter-reply filed for and on behalf of the Respondents contended that there was vacancy of Mail Guard in K-2 Division and it is now handled by a person as substitute on the ground that

this post was not declared vacancy by the Screening Committee. He further contended that if that vacancy was there it was not proper for the Respondents in issuing the present impugned order taking the stand that there was no vacancy to absorb the applicant. That apart, the Ld. Counsel submitted that even after the judgment of this Tribunal, no selection has been made to the post of Mail Guard in the Division at all for outsider quota.

6. On the contrary, ld. Counsel for the Respondents relying on the counter-reply submitted that even if a vacancy, as pointed out by the Ld. Counsel for the applicant, was available in K-2 Division, it has not so far been declared vacant by the Screening Committee so as to accommodate the applicant as per the direction given by this Tribunal.

7. Having been considered all aspects of the matter, we are of the view that the ends of justice would be met by directing the Respondents, viz. Nos. 2 and 3, to find out the vacancy position as mentioned in Paragraph 20 of the counter-reply and as pointed out by the Ld. Counsel for the applicant and declare that post vacant by the Screening Committee in order to accommodate the applicant against that post as per the selection already made on the basis of

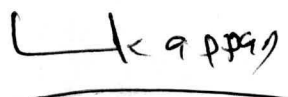


examination conducted pursuant to notification of 2000 provided that there is no senior candidate to the applicant on the waiting for appointment. Ordered accordingly. This exercise shall be completed within a reasonable time, at any rate, within three months from the date of receipt of this order.

8. Last but not the least, we would like to observe that the applicant, if so advised, may sue the authorities in the department for having issued a bald notification inviting applications and also subjecting the applicant to test and in the end canceling the said notification on the ground that no vacancy is available and thereby making the applicant undergo sufferings and mental agony notwithstanding he having been declared qualified in the test.

9. With the above observation and direction, this O.A. is disposed of. No costs.

  
MEMBER (A)

  
MEMBER (J)