

O. A. No. 632 of 2002

ORDER DATED 23.06.2004.

Not being appointed on transfer as Extra Departmental Gramin Dak Seva Branch Post Master of Harianka Branch Post Office on the strength of the Director General of Posts letter No. 43-27/85-Pen (EDC & Trg.) dated 12th September, 1988, the Applicant Bishnu Charan Nayak (Extra Departmental Delivery Agent/GDSDA of the said Post Office) has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 wherein he has challenged the consequential Notification issued (by the Respondents-Department) inviting applications for filling up of the said post of EDBPM/GDSBPM under Annexure-6 dated 11.12.2001.

2. As revealed from the materials placed on record, the post of EDBPM/GDSBPM of Harianka Branch Post Office fell vacant on 4.10.2001 (consequent upon retirement of the permanent incumbent on his attaining the age of retirement/of 65 years) and the Applicant was kept in charge of the post of EDBPM/GDSBPM (in addition to his own duty of EDDA/GDADA) of the said post Office. It is the case of the Applicant that although he made several representations (to the Respondents) to appoint him as EDBPM/GDSBPM the same was not considered, despite the fact that he fulfills the requisite eligibility for being appointed

as EDBPM/GDSBPM of the Post Office in question.

3. Respondents, by filing a counter, submitted that they have not received any representation except the one under Annexure-7 dated 10.12.2001. It has been disclosed by the Respondents that neither the name of the Applicant was sponsored by the Employment Exchange nor he had submitted his application (pursuant to the public Notification dated 11.12.2001 in the prescribed form by giving all required documents and that he simply made a representation on 10.12.2001; which was received by the Respondents only on 11.12.2001 and by that time, notification had already been issued to recruit persons (as EDBPM/GDSBPM of the post Office in question) from open market. It has further been disclosed by the Respondents that names/applications received from the candidates sponsored from Employment Exchange/in response to public Notification were considered and that one Kumari Shradhanjali Rath having been found more suitable was selected and appointed since 29.07.2002.

4. We have heard Mr. P. K. Padhi, Learned Counsel appearing for the Applicant and Mr. Anup Kumar Bose, Learned Senior Standing Counsel for the Respondents and perused the materials placed on record.

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O.A. No. 632/2002

5. It is seen that question of transfer of an existing EDA to another vacant post (on the strength of the letter of the Director General of Posts (referred to above) had received due consideration by various Benches of this Tribunal. In the case of Santosh Kumar Sahani Vs. Union of India and others (O.A. No. 196 of 2000, decided on 26.07.2001) and that of Kailash Chandra Das Vs. Union of India and others (O.A. No. 64 of 1999 decided on 11.02.2000) the Division Bench of this Tribunal (at Cuttack) held that once notifications are issued by the Department to recruit persons from Open market, it cannot go back to consider the case of an existing EDDA for being posted as EDBPM by ignoring the candidates of open market. The Bangalore Bench of this Tribunal, while dealing with a similar case involving prayer for appointment (on transfer) of an existing EDDA as EDBPM (O.A. No. 181 of 1999 decided on 06.04.1999) held that the willingness of all the existing EDAs have to be obtained before proceeding to fillup the posts. The views of the Bangalore Bench (supra) get support from the clarification issued on 11.08.1994 by the Director General of Posts. D.G.'s Circular dated 12.09.1988 reads as follows:-

".....However, it has now been decided that exception may be made in the following cases:

(i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions".

12

O.A. No. 632/2002

The clarificatory circular dated 11.08.1994 of D.G. of Posts reads as follows:-

"....After taking into consideration the basis features of the ED system and other relevant consideration, it has been decided that the existing word 'place' occurring between the words "....in any office in the same" and "if one of the existing Extra Departmental Agents" shall be substituted by the words "recruiting unit". In other words, in place of "or in any office in the same place", the words "in any office in the same recruitment unit" will be substituted".

6. On a harmonious reading it appears that an existing EDA can be appointed against an ED post of the same place/same recruitment unit, provided he is suitable.
7. In the present case the Respondents denied the assertions of the Applicant that he submitted representations before issuance of notification (for recruiting persons from Open market) and no rejoinder has been filed thereto by the Applicant. Had the Applicant made an application prior to recruitment notification, then his case could have been considered by the Authorities/Respondents. Applicant miserably failed to substantiate his plea that, prior to recruitment Notification, he had made any such representation. Even after Notification, the Applicant being a Departmental candidate, had not offered his candidature in the prescribed form giving all documents. Therefore, there was nothing wrong on the part of the Respondents in taking steps to fillup the post in a regular manner.

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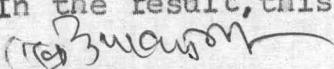
O.A. No. 632/2002

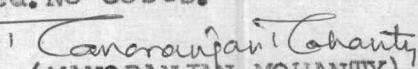
The decision (rendered in the case of Achyuta Kumar Pradhan Vs. Union of India in OJC No. 8355 of 1999) of the Hon'ble Orissa High Court that was dated 21.06.2000 and relied upon by the learned Counsel for the Applicant, is not applicable to this case; as in that case even though the Applicant had applied much prior to the Notification inviting applications from open market candidates for his posting/appointment on transfer and he was advised to make fresh application after publication of the Notification, his case was kept pending. But here, in the case in hand, the Applicant neither made any such application prior to Notification nor submitted his application pursuant to Notification for his posting/appointment on transfer or offering his candidature.

8. Apart from the above, the Applicant has not made the selected candidate as a party in this Original Application and in absence of the selected candidate as a party in this Original Application, no order, adversely affecting her interest, can be passed in this case.

9. In view of the discussions made above, apart from the merit, this Original Application also fails on the ground of non-joinder of necessary and proper party.

In the result, this O.A. is dismissed. No costs.

  
(R.K. UPADHYAYA)  
Member(Admn.)

  
(MANORANJAN MOHANTY)  
Member(Judl.) 23/06/04