

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.774/2002

Cuttack, this the 23rd day of June, 2004

CORAM:

HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

&

HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

K. Sunder Narayan, aged about 38 years, S/o late K.V.S. Prasad Rao, Opp. To Head Post Office Road, At/Po./Dist. Koraput. At present working as E.D. (G.D.S. Packer-cum-M.C) at Koraput Collectorate Sub-Post Office, Koraput under Asst. Supdt of Post Offices-in-Charge, Koraput Sub-Division, Koraput.....Applicant.

By the Advocate(s) Mr. D.K. Pattnaik.

-Vs-

1. Union of India, represented by its Director General Post, Dak Bhawan, New Delhi-110 001.

2. Senior Supdt. of Post Offices, Koraput Division, Town/Po. Jeypore, Dist. Koraput-764 001.

3. Assistant Superintendent of Post Office I/C, Koraput, Sub-Division, Koraput-764 020.....Respondent(s)

By the advocate(s) Mr. A.K. Bose.

ORDER (ORAL)

SHRI R.K. UPADHYAYA:

This application has been filed by Mr. K. Sunder Narayan under Section 19 of the Administrative Tribunals Act, 1985, seeking a direction to the respondents to give appointment to the applicant on the post of Extra Departmental (GDS-Packer-cum-Mail Carrier) (ED (GDS Packer-cum-MC) for short) . He also seeks a direction to the respondents to declare the Notification dated 29.5.2002 Annexure-5 as illegal.

2. The learned counsel of the applicant stated that the Notification dated 29.5.2002 Annexure-5 for the post of ED (GDS Packer-cum-MC) has been advertised to fill up the same by an OBC candidate. It has also been mentioned therein that if the OBC candidate is not available, then the same is to be filled up by a candidate belonging to SC/ST or other community in that order. The learned counsel stated that the earlier incumbent of the post was a general candidate. Therefore, the reservation of the post by the OBC was illegal. It was also stated that the applicant has worked for 10 years as Substitute. Therefore, he should have been regularized. In support of his contention, he has placed heavy reliance on the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Debika Guha and Ors. (AIR 2000 SC 3522).

3. The respondents have opposed the prayer of the applicant. In the reply filed, it has been stated that the vacancy of ED (GDS Packer-cum-MC) occurred consequent upon the promotion of the original incumbent as Postman. The applicant worked as Substitute of the regular incumbent upto 19.7.2002. After

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the vacation of the post by the regular incumbent on 19.7.2002, the applicant worked on the said post w.e.f. 20.7.2002 purely on temporary and provisional basis pending final selection on the post. The learned counsel of the respondents stated that as per existing instructions, the community for which the post will be determined is decided on the basis of the short fall of the particular community in the appointing unit. Therefore, the post was reserved for the OBC candidate. He stated that the substitutes cannot claim any preferential consideration in the matter of appointment. In any case, the applicant was considered along with others. In this connection, he invited our attention to Annexure R-1 wherein it had been pointed out that the applicant was a failed matriculate candidate. He did not submit any caste certificate. Therefore, he was not considered. It has specifically been recorded on 29.7.2002 that the applicant did not submit any caste certificate but had written as SEBC in his application. The respondents found that though the minimum qualification was 8th class pass but preferential qualification was matriculation. Since there was a matric OBC candidate amongst the applicants, he was considered for appointment. According to the learned counsel of the respondents, there was no procedural irregularity inasmuch as the applicant was also considered along with other candidates. As stop gap arrangement, the applicant was given ad hoc posting from 20.7.2002 to 18.10.2002, on the basis of which he could not claim regularization.

4. We have considered the arguments of the learned counsel for the parties and have perused the material available on record.

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5. Even though the respondents have considered the applicant along with others, but there is no categorical assertion on behalf of the respondents that they have considered the case of the applicant in the light of the Supreme Court decision, referred to above, which has observed as follows:

"The grievance before us in this appeal is in relation to an order passed by the Central Administrative Tribunal, Calcutta Bench holding that substitute Extra Departmental Agents of the Postal Department who have worked for 180 days or more in one calendar year continuously can claim to be regularized. The Tribunal gave a further direction that the appellants should determine on the basis of available records the period for which the respondents have worked continuously and if such period in any calendar year exceeds 180 days, neglecting short artificial breaks, should absorb them in future vacancies, provided they satisfy the eligibility conditions. When, similar matters came up before this Court in Writ Petition No. 1624 of 1986 and connected matters, this Court held that the claim on behalf of substitutes ordinarily is not entertainable but made it clear that, however, if they have worked for long periods continuously, their cases could be appropriately considered by the department for absorption. When this Court has already decided that there cannot be a legal claim on the basis that they have worked for 180 days continuously, it may not be necessary for us to consider that aspect of the matter. Indeed, if it is shown that they have worked for long periods continuously, it will be for the department to consider the same whether that was a proper case for absorption or not and pass appropriate orders. Thus, we think the whole approach of the Tribunal is incorrect in the light of the decision of this Court. Therefore, we set aside the order passed by the Tribunal. However, it is open to the appellants to examine the case of the respondents, if they have worked for long periods to absorb them, as the case may be. The appeal is allowed".


In the light of the above Supreme Court decision, we do not find any impediment in consideration of the respondents to consider the case of the applicant, if applicant approaches them with a representation in spite of our order in this O.A.

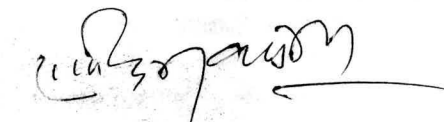
6. The applicant has claimed basically two reliefs before us. The first relief is relating to declaration of Notification dated 29.5.2002 as illegal. We find that the Notification was in conformity with the Departmental instructions. In any case,

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the applicant did not submit any caste certificate at the time of his consideration. Notification as such cannot be said to be as illegal.

7. So far as the second relief is concerned, the applicant seeks appointment to the post of ED (GDS Packer-cum-MC) which is lying vacant. This Tribunal cannot direct the respondents to appoint the applicant. At the most, the respondents could have been directed to consider his case. The applicant has been considered, as can be seen from the Annexure R-1 of the reply. The applicant does not hold preferential qualification of matriculation. Therefore, if persons having basic qualification with preferential qualification are available, he cannot get appointment for the post. Looked at from any angle so far as this O.A. is concerned (without prejudice to our observations in the preceding paragraph 5), the same is dismissed without any order as to costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(R.K. UPADHYAYA)
MEMBER (ADMN.)

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