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O.A. No. 63 of 2008

Sri Suresh Chandra Sahoo Applicant

Vs.

Union of India & Ors. Respondents

Order dated: 22-01-2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

The applicant has filed this O.A. praying for a direction to the Respondents to appoint him to the post of Postal Assistant after declaring him eligible and selected for the same.

2. The short facts of the case are as follows:

The applicant, at present, is working as Gramin Dak Sevak under Beltikiri B.O. of Govindpur S.O., Dhenkanal. In pursuance of Annexure-A/1 notification, he applied for the post of Postal Assistant under the Unreserved Category to be filled by departmental quota for GD official. According to advertisement, only those GDS 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, of OC, SC,

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ST and OBC of the same year. Though the applicant had secured 56.48 marks, yet he was not provided with appointment on the grounds that the marks secured by him, i.e., 56.48 was less than the marks, i.e., 60.33 secured by the last direct recruit of U.R. candidate belonging to Aska Division. It is the case of the applicant that he having appeared at the examination in respect of Dhenkanal Division, the comparison now made for determining the eligibility or the yardstick fixed in respect of last recruit of Aska Division is unilateral and arbitrary and therefore, the same is not sustainable in the eye of law.

3. We heard Mr. P.K.Mohapatra, Ld. Counsel for the applicant and Mr. R.C.Swain, Ld. Additional Standing Counsel for the Respondents and perused the records.

4. Having regard to the above, the only point discernible is whether the marks secured by the last direct recruit of Aska Division could be the criterion to adjudge suitability or eligibility of the applicant, who belongs to Dhenkanal Division.

5. Admittedly, there was no direct recruitment for Postal Assistant for the year, 2005 in respect of Dhenkanal Division. It is also not in dispute that the applicant appeared

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at the examination for the post of Postal Assistant against the vacancy meant for departmental quota/GDS official. Further, there is no dispute that as per recruitment rules, only those GDS shall be eligible for being considered who have secured marks not below the marks secured by the last direct recruit of UR category selected in the year 2005. Since there was no direct recruitment for Dhenkanal Division in the year 2005, there was nothing wrong to refer the matter to the Postal Directorate, in pursuance of which, the matter has been clarified as per Annexure-R/4 dated 4.12.2007, clarifying that the marks secured by the GDS of the Units where no direct recruitment has taken place may be compared with the marks secured by the last direct recruit of the nearest recruiting Division or Unit in the Region/Circle where direct recruitment has taken place; failing which in any division or Unit where direct recruitment has taken place in the Region/Circle. In this context, it has been further clarified that the marks secured by GDS(UR) of Puri/Cuttack City/Cuttack North/Cuttack South/Balasore/ Mayurbhanj/ Sambalpur/ Sundergarh/ Bolangir/ Keonjhar/ Dhenkanal/Berhampur and Phulbani Units will be compared with the marks secured by the last

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direct recruit of Aska Division, i.e., 60.33. In the above clarification also, it has been clarified to compare the marks secured by the GDS officials where no direct recruitment has taken place with the marks secured by the last direct recruits of the Divisions, viz., Kalahandi, Koraput and RMS 'BG' Division. Viewed from this, the clarification so issued as per Annexure-R/4 is rational and wholesome. Besides, it is the settled position of law that in the absence of any statutory rules, executive instruction has to be read into the rules and accordingly, by applying clarifications or executive instructions (Annexure-R/4), in the absence of any specific provision in the Recruitment Rules in the matter of comparison of marks secured by the GDS official of the Unit or Division where no direct recruitment has taken place, the Respondents have not committed any illegality or irregularity, as submitted by the applicant. Accordingly, the point in issue is answered.

6. In the result, the O.A. being devoid of merit is dismissed. No costs.

Chapb
MEMBER (A)

Kappan
MEMBER (J)