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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O. A. NO. 784 OF 2010

Cuttack, this the 08th day of Sept^r, 2014


Indrajit Patel & Others Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C. MISRA)
MEMBER (Admin.)


(A.K. PATNAIK)
MEMBER (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

1. Indrajit Patel,
aged about 52 years,
S/o. Jogeswar Patel,
Vill: Belmunda,
P.O.: Samarsingha,
Via/P.S.-Kolabira,
Dist-Jharsuguda-786 213,
At present working as ACT, NYKS at Bhubaneswar
2. Basanta Kumar Mishra,
aged about 46 years,
S/o. Sri Pratap Chandra Mishra,
At: Ashok Nagar-5,
P.O.: Berhampur,
Dist-Ganjam,
At present working as ACT, NYKS at Bhubaneswar
3. Sasanka Sekhar Mohapatra,
aged about 43 years,
S/o. Binod Kumar Mohapatra,
At: Amalapada (Chapala Nivas),
P.O./Dist: Dhenkanal-759001
At present working as ACT, NYKS at Dhenkanal
4. Ashok Kumar Sahu,
aged about 45 years,
S/o. Late Duryodhan Sahu,
At: Baghra Roadm Ward No.10,
P.O.: Baripada,
Dist-Mayurbhanj
At present working as ACT, NYKS at Baripada
5. Kailash Chandra Mohanty,
aged about 47 years,
S/o. Late Indramani Mohanty,
At: Nakhiguda,
P.O.: Bhawanipatna,
Dist-Kalahandi ,
At present working as ACT, NYKS at Sambalpur

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6. Saroj Kumar Pattnaik,
aged about 45 years,
S/o. Late Managovinda Pattnaik,
At/Po:Pithapur, Via:Bhograi,
Dist:Balasore-759001
At present working as ACT, NYKS at Cuttack
7. Subas Chandra Manna,
aged about 43 years,
S/o. Late Rakhal Chandra Manna,
At:Giri Bhawan,
P.O.:Sahadevkhunta,
Dist:Balasore ,
At present working as ACT, NYKS at Balasore
8. Sushant Kumar Sahu,
aged about 47 years,
S/o. Late Baranidhi Sahu,
At/P.O.: Randha, Via:Golanth,
Dist-Ganjam,
At present working as ACT, NYKS at Berhampur
9. Sudam Charan Sabat,
aged about 49 years,
S/o. Pravakar Sabat,
At:Lanjipali,
P.O.: Berhampur,
Dist-Ganjam
At present working as ACT, NYKS at Phulbani.
10. Dutia Banchhor,
aged about 40 years,
S/o. Late Kanhu Banchhor,
Vill: Potalpada,
P.O.: Berhampur,
Dist-Bolangir,
At present working as ACT, NYKS at Bhawanipatna
11. Suvendra Nath Sahoo,
aged about 40 years,
S/o. Fakir Charan Sahu,
At:Berhampur,
P.O.: Charirakaba,
Via: Salipur,
Dist-Cuttack
At present working as ACT, NYKS at Puri



12. Sri Bipin Bihari Jena,
aged about 44 years,
S/o. Bikal Charan Jena,
At: Khandamunda,
P.O.: Nuapada,
Dist-Balangir,
At present working as ACT, NYKS at Bolangir

13. Udaya Shankar Behera,
aged about 42 years,
S/o. Late Radhakanta Behera,
At : Mandarbagichapada,
P.O.: Bhawanipatna,
Dist-Kalahandi
At present working as ACT, NYKS at Nuapada

...Applicants

(Advocates: M/s. M.M. Basu)

VERSUS

Union of India Represented through

1. Secretary Ministry of Youth Affairs and Sports,
C. Wing, Sastri Bhawan,
New Delhi-110001.
2. Nehru Yuva Kendra Sangathan,
Represented by its Director General,
Core-IV, 2nd Floor,
Scope Minor Complex,
Laxmi Nagar District Centre,
Vikash Marg,
New Delhi-110092.
3. The Zonal Director (P.A.O.),
Nehru Yuva Kendra Sangathan,
N-2/45, IRC Village,
Bhubaneswar,
Dist: Khurda-751015.
4. The Zonal Director,
Nehru Yuva Kendra Sangathan,
N-2/45, IRC Village,
Bhubaneswar,
Dist: Khurda-751015.

... Respondents

(Advocate: Mr. R.C. Behera)



ORDER

A.K.PATNAIK, MEMBER (JUDL.):

All the Applicants are at present working as Accounts Clerk Cum Typists (in short 'ACTs')CT in Nehru Yuva Kendra Sangathan located at different places in the State of Odisha. Earlier, they have filed OA No. 118 of 2009 praying therein as under:

- (a) Leave be granted to file this application jointly under Rule 4 (5) (a) of the CAT (Procedure) Rule, 1987 having same cause of action;
- (b) To quash the advertisement published vide Annxure-4 series in respect of fresh selection for the entire vacant post of DYC on deputation basis;
- (c) To direct the Respondent No.2 to hold DPC and to give promotion to the present applicants in the post of DYC;
- (d) To direct the Respondent No.2 to modify the advertisement published vide Annexure-4 keeping in view the DOPT instruction of the Govt. of India and also keeping in view the sanctioned order passed by the Ministry of Finance;
- (e) To direct the Respondents produce relevant record with copy to the Ld. Advocate of the applicant;
- (f) Any other order or further orders and/or direction(s) as to this Hon'ble Tribunal deem fit and proper."

2. The Respondents contested the case and after giving in-depth consideration to the matter, this Tribunal, vide order dated 31st July, 2009 disposed of the matter relevant portion of the order is quoted herein below:

"5. Unless it is proved before this Tribunal with sufficient material or rather with the Recruitment Rules or the promotional rules that the post of Accounts Clerk Cum Typists is the feeder grade for promotion to the post of DYC and the applicants have a right to be considered for promotion to the cadre of DYC, this Tribunal cannot interfere with the process of filling up the posts of DYC as per Annexure-A/4 series. In the circumstances, we see that the OA is devoid of any merit so far as the prayers made in para 8() (b) & (d) of the OA are concerned. With regard to prayer (c), it is the Department which has to convene and hold the meeting of the Departmental Promotion Committee on the basis of the Service Rules and the Applicants may file fresh representation before the Department."



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Thereafter, the Applicants submitted representation dated 18.09.2009 which was considered and disposed of the Respondent-Department vide order dated 19.05.2010 relevant portion of which is quoted herein below:

“Where as per the approved Recruitment Rules (RRs) for the post of DYC, the Method of Recruitment is 90% by direct recruitment and 10% by promotion failing which by transfer on deputation (including short-term contract). Ten percent (10%) of the posts of DYC earmarked to be filled by promotion are being filled accordingly from time to time, by promoting the eligible employees in the feeder grade. At present, there are certain vacancies in the grade of DYC which, as per the RRs are required to be filled up by direct recruitment. The filling up of these vacancies is likely, to take some time. Therefore, solely for the purpose of a stop-gap arrangement, and also for smooth functioning of office work, respondent has initiated action to fulfill the vacant posts by appointment of eligible officials of State Government, Semi-Govt. Institutions/Autonomous bodies on transfer on deputation basis for a limited period as prescribed under rules. Nor are these employees to be absorbed in the organization. These candidates would be reverted back to their parent departments on completion of their tenure/ as and when regular candidates become available.

Whereas the post being held by the applicants is a junior clerical level post of the organization in the pay band and grade pay as applicable to Group ‘C’ employees of the Central Government, the post of District Youth Coordinator (DYC) is a senior executive level post in the pay band and grade pay as applicable to Group ‘A’ employees of the Central Govt. the post being held by the applicants is not the feeder grade of DYC. The applicants, therefore would be promoted to their promotional post on their turn, as and when the vacancy arises, and on meeting the eligibility criteria.”

3. Being aggrieved by the said order of rejection dated 19.05.2010; the applicants have again moved this Tribunal in the instant OA with the following reliefs:

- “(a) Leave be granted to file this application jointly under Rule 4(5) (a) of the CAT (Procedure) Rules, 1987 having same cause of action;
- (b) To quash the impugned order under Annexure-7 and the advertisement published vide Annexure-13 in respect of fresh

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appointment of the entire vacant post of DYC on direct recruitment basis;

- (c) To direct the Respondent No.2 to give promotion to the present applicants in the post of DYC with all consequential benefits;
- (d) To direct the Respondent No.2 to modify the advertisement published vide Annexure-13 keeping in view of the DOPT instruction of the Govt. of India and also keeping in view of the sanctioned order passed by the Ministry of Finance;
- (e) To direct the Respondents to produce relevant records with copy of the learned Advocate of the applicants;
- (f) Any other order or further order(s) and direction(s) as to this Hon'ble Tribunal deem fit and proper."

4. The Respondents have filed their counter opposing the claim of applicants both on merit and maintainability of this OA. Applicants have also filed rejoinder. The case of the Applicants is that the Respondents rejected their claim without affording them any opportunity of being heard and without taking into consideration the facts that the post of Accounts Clerk Cum Typist has been treated as the feeder grade of DYC; they were appointed as ACTs in the Management cadre and discharging their duties in the field programmes at various levels viz; District, State and National; no other posts except ACT and Youth Coordinators are available in District Offices and in absence of Youth Coordinators in the District Offices, the ACTs are discharging all the duties and responsibility of Youth Coordinators; without considering the length of their service as ACT and that they are entitled for promotion to the post of DYC after completion of ten years regular service as per Rules. It has further been stated that persons joined as LDC in the Sangathan much after them i.e. in the year 1992 were given promotion to the post of DYC during the year 2009 and therefore the advertisement issued to fill up all the vacancies of DYC is in violation of DoP&T instruction that too without obtaining prior approval of the Government; without



taking into consideration their grade pay and without considering the fact that an employee has a fundamental right to be considered for promotion in terms of Articles 16 of the Constitution of India. Hence it has been stated that the order rejecting the representation being illegal and arbitrary the same is liable to be set aside and they are entitled to the relief claimed in this OA.

5. The contention of the Respondents is that the Recruitment Rules of NYKS were introduced in the year 1998. As per the RRs there are 04 posts of Junior Accountant. The method of Recruitment to the post of Junior Accountant is 100% by promotion from feeder grade of ACT with three years regular service in the grade/cadre. The Applicants are holding the post of Account Clerk Cum Typist (ACT) in the pay scale of Rs.4000-6000/- (pre revised). They are eligible to get the financial up gradation under ACP scheme to Rs.4500-7000/- attached to their lowest promotional post. Revised RRs came into effect from 08.11.2010 known as NYKS RRs(Amended) Rules, 2010. As per the amended RRs the promotional avenues for the post of ACT are as under:

Sl.No.	Posts	Next Promotion posts
1	Assistant Accounts Officer (Rs.6500-200-10500) GP Rs.4200	Accounts Officer GP Rs.4600/-
2	Junior Accounts Officer (Rs.5500-175-9000)GP Rs.4200/-	Assistant Accounts Officer
3	Junior Accountant (Rs.4500-125-7000) GP Rs.2800/-	Junior Accounts Officer
4	Accounts Clerk Typist (Rs.4000-100-6000) under 6 th CPC GP Rs.2400/-	Junior Accountant

An employee has to meet the prescribed eligibility criteria for promotion and he can be promoted to his next higher grade in the given hierarchy of post only. The ACTs have been granted promotions from time to time to their promotional post of



Junior Accountant. Thus, the post of Junior Accountant exists in NYKS and it is the promotional post for the post of Accounts Clerk Typist (ACT). Further case of the Respondents is that as per the amended RRs the posts of DYC are to be filled up by 90% through Direct Recruitment and 10% through promotion failing which by short-term contract. There are 509 sanctioned posts of DYC/Assistant Directors in NYKS out of which 450 posts are to be filled up by direct recruitment. At present 191 posts are lying vacant. As such 10% of the total cadre posts come to 45 which have been proposed to be filled up through direct recruitment. The applicants are working as ACT in the pay scale of Rs.4000-6000/- (pre revised 5th CPC). Under 6th CPC their GP is Rs.2400/-, whereas the pay scale attached to the post of DYC is Rs.8000-13500/- (pre revised 5th CPC). Under the 6th CPC their GP is Rs.5400/-. The post of ACT is not the feeder cadre post for promotion to DYC. As per the existing/amended RR notified on 08.11.2010 the channel of promotion of ACT is totally different and the DYC is not the promotional channel of ACT. The immediate promotional post of ACTs is to the post of Junior Accountant. Further it has been stated that as filling up the vacancies is likely to take some time, for smooth functioning of the office work action has been taken to fill up the posts by appointment of eligible officials of State Govt./Semi Govt. Institutions/ Autonomous bodies on transfer on deputation basis for a limited period as prescribed under rules. These employees are not to be absorbed in the organization. The said employees would be reverted back to their parent departments on completion of their tenure as and when regular candidates become



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available. On the above grounds the Respondents have prayed that there being no illegality in the order of rejection this OA is liable to be dismissed.


6. Learned Counsel appearing for respective parties have reiterated the stand taken in their respective pleadings and having heard them at length we have also gone through the materials placed on record. One can claim the benefit provided he/she is entitled to the same as per Rules. Similarly, it is not for this Tribunal to direct for filling up of vacancies merely because an employee is eligible for promotion. It is for the Respondents to decide whether the vacancies need to be filled up and at what point of time. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision and it is well within the domain of the authority manning the department to decide as to which of the posts are the feeder cadre of promotional posts. These are the policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. It is not the case of the Applicants that the Respondents have filled up the vacancies of ACTs by promoting the employees who are junior to them. It is also not the case of the Applicants that the Respondents are trying to encroach upon the vacancies which are meant to be filled up by way of promotion from amongst the eligible employees in the feeder grade. Rather it is the specific case of the applicants that they are working as ACT and it is the case of the Respondents that the posts of ACT are not the feeder cadre of DYC. The post of LDC is not also in the equal stream of DYC. No exclusive




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material has been placed on record to convince that the post of ACT is the feeder cadre of DYC. Placement in another pay scale by virtue of financial up gradation under ACP scheme cannot bring an employee within the purview of feeder cadre so as to claim promotion to next higher grade to which he is not entitled to nor the same was the promotional channel of the employee concerned. Therefore, we find no illegality in taking step to fill up the required percentage by way of open advertisement to meet the administrative requirement thereby in the order rejecting the representation of the applicant.

7. In view of the discussions made above, we find no merit in this OA.

This OA is accordingly dismissed by leaving the parties to bear their own costs.


(R.C.Misra)
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)