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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.794 of 2010

Order reserved on: 12-12-2012
Order pronounced on: 14-12-2012

CORAM

HON'BLE DR.RAMESH CHANDRA PANDA, MEMBER (A)
HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Dhyan Soren,
Aged about 39 years,
S/o.Late Sukul Sore,
Vill./Po-Kakharusole,
Dist.Mayurbhanj
PIN -757014
GDSMC of Hatapur BO,
Via-Ghanteswar,
Dist.Bhadrak,
Orissa,
PIN-756 129

....Applicant

(By the Advocate : M/s.P.K.Padhi, M.P.J.Roy, M.Rout, J.Mishra K.Sharma)

-Versus-

1. Union of India.
Through its Director General of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi-110 001.
2. Chief Postmaster General,
Orissa Circle,
At/Po.Bhubaneswar,
Dist.Khurda,
PIN-751 001.



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3. Superintendent of Post Offices,
Bhadrak Division,
At/PO/Dist. Bhadrak,
Orissa-756 100.

.....Respondents

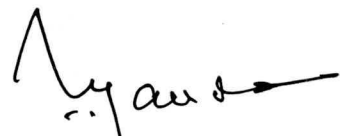
(By the Advocate: Mr.U.B.Mohapatra)

O R D E R

Dr. Ramesh Chandra Panda, Member (A):

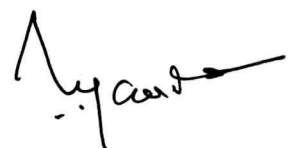
Shri Dhyan Soren, Applicant herein, has instituted the present Original Application praying to quash Annexure-A/5, whereby the Respondents have changed the allocation of vacancies of the ST reserved community and has prayed to command the Respondents to finalize the selection as per the vacancies position declared in Annexure-A/4, whereby 3(three) ST vacancies out of 8(eight) were intimated on 27.01.2010. He has also sought the Tribunal to direct the appointment of the Applicant in the cadre of Postman from the date other selected candidates joined in their respective posts with all consequential benefits including the pay and back wages retrospectively.

2. In order to adjudicate the above issues, it would be appropriate to narrate the relevant facts in brief. In the Bhadrak Postal Division/ Unit, there are totally 30 sanctioned posts of Postman. Vide letter dated 27th January, 2010, the Superintendent of Post Offices, Bhadrak Division issued the circular indicating the total number of vacancies as '08', comprising of UR-01, SC-01, ST-03 and OBC-02. This circular was meant to conduct the Departmental Examination for



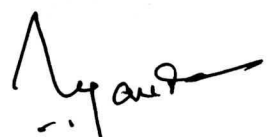
promotion of Gr.D/GDS to Postman/ Mail Guard cadre for the vacancies of the year 2006, 2007 and 2008. The above circular was issued with reference to the guidelines issued by the Office of the Chief Postmaster General Orissa Circle dated 28.10.2009. According to the time schedule prescribed for the Departmental Examination the date of holding the examination was indicated to be 31.01.2010. It is the case of the Applicant that he belongs to ST community and has been working as GDS MC w.e.f. 19.9.2000. He applied for the said post and participated in the examination for the post of Postman held on 31.01.2010. But the 3rd respondent vide letter dated 26th April, 2010 changed the vacancy position of the respective categories and against 3(three) vacancies meant for ST indicated in the letter dated 27th January, 2010 was changed to 'nil' as a result of which the applicant who was a successful candidate was deprived of getting appointment in the ST reserved category. Being aggrieved, he represented to the 2nd respondent in his representation dated 10.05.2010. He received his mark sheet on 30.09.2010 for the Postman Examination as per which he secured total '129' marks. He further represented on 08.10.2010 and personally met the concerned respondent on 27.10.2010 and having been unsuccessful in his various attempts, he has instituted the present OA.

3. Shri P.K.Padhi, Learned Counsel appearing on behalf of the Applicant submits that the 3rd respondent has in a mala fide manner and



in colourable exercise of power has changed the vacancy position after holding the examination but just before the publication of result. As per the earlier notification of vacancies, there were 3(three) ST vacancies of Postman and had those vacancies been kept alive and filled up, the Applicant would have been appointed to the said post of postman. But for the fact that the 3rd respondent in an arbitrary manner and unilaterally changed the vacancy across various reserved categories and while increasing the vacancies for UR, SC and OBC categories has indicated for ST category as 'nil' the applicant has been denied as a ST candidate. This action, the learned counsel for the applicant submits, is in violation of the well established principle of law that number of vacancies notified earlier to be filled up in the departmental examination for promotion could not be changed by colourable exercise of power in an arbitrary manner. He, therefore, urges that the OA should be allowed and the relief prayed for should be granted to the Applicant.

4. After receipt of the notice from the Tribunal, the Respondents have entered appearance through the Senior Standing Counsel Shri U.B.Mohapatra and have submitted their counter affidavit on 28.03.2011. It is stated that the Department has prescribed the method of filling up of the vacancies of Postman cadre as per which 50% of the vacancies in a year are to be filled up by promotion of Gr. D officials who qualify in the departmental examination against the departmental



quota/vacancies failing which by GDS on the basis of respective merit in the examination. The remaining 50% of the vacancies are to be filled up through outside quota from among GDSs in the prescribed manner. It is submitted that for Odisha Postal Circle, the percentage has been prescribed for reserved communities under promotional quota of Departmental candidates and Direct Recruitment quota outsider's quota of GDS indicating as 16% for SC, 22% for ST and 12% for OBC. In the direct recruitment quota for GDSs are 15% for SC, 7.5% for ST promotional quota of departmental candidates (Gr.D Officials). It is the case of the Respondents that as per the judgment of the Hon'ble Supreme Court in the cases of **R.K.Sabharwal Versus State of Punjab**, [AIR 1995 SC 1371] and **J.C.Mallick Versus Ministry of Railways**, [(1978) SLR 844], the Department is to follow the post based roster instead of vacancy based roster. According to the post based roster, year wise vacancies for 2006, 2007 and 2008 under promotional quota and direct recruitment quota are 3, 2, 3 and 2, 1, 2 respectively. It is submitted that keeping in view various reserved categories and shortfall of representation of reserved communities, 10 vacancies were distributed as '2' approved vacancies under Direct Recruitment quota and '8' vacancies under promotional quota. As per the above distribution, it was contended that no vacancy could be located in accordance with the vacancy based roster for ST reserved category and, therefore, the



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mistake having been noticed by the concerned authority a fresh letter was issued on 26th April, 2010 as per which the number of vacancies allotted for UR, SC and ST were '7', '1', and 'nil' respectively. It is, therefore, submitted that no illegality or irregularity or violation of Constitutional provision has been made by the 3rd respondent and, therefore, the OA deserves to be dismissed.

5. Having heard the rival contentions, we perused the pleadings and relied on judgments. The principal issues which came up for consideration and determination are (a) whether the letter dated 27th January, 2010 indicating ST vacancies as '3' or letter dated 26th April, 2010 indicating the ST vacancy as 'nil' is valid? and (b) whether the Respondents have correctly followed the roster point as per the reservation percentage fixed for the post of postman?.

6. We may consider the principal issue. It is an admitted fact that letter dated 27th January, 2010 indicating three vacancies for ST for promotion of GDS to Postman cadre of 2009 was issued. The said position was changed by cancellation of the letter dated 27th January, 2010 and issue of letter dated 26th April, 2010. It is not in dispute that the examination for the post was held on 31st January, 2010. These admitted facts and chronological events would disclose that once the departmental examination was over the number of vacancies in various reserved categories were changed whereby three ST vacancies indicated

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in the earlier circular was changed to 'nil' by the second letter. Issue is whether the Respondents could be entitled to change the same. Arguments of the Learned Counsel for the Respondents are that vacancy based roster would show that there are no ST vacancies and vacancies in other categories are to be increased. Therefore the second circular dated 26th April, 2010 was necessary to be issued correcting the wrong facts on vacancies indicated in the earlier circular dated 27th January, 2010.

7. In this context, it must be noted that well settled position in law is that it is not legally appropriate to change the rules in the game where the game has commenced. The selection process for promotion began in calling for applications and notifying the vacancies in various reserved categories interalia indicating ST vacancies as three by letter dated 27th January, 2010 to which the applicant along with others applied and even the examination was held on 31.10.2010. But before the publication of the result of the examination, vacancy position reservation wise was changed. Explanation given by the Respondents in the reply affidavit does not show how the error on three vacancies reserved for ST became 'nil'. The change seems to be confusing and intriguing as the respondents do not have convincing answer. In our view, such change having affected the applicant, illegality and irregularity has crept in the selection process.

Agarwal


8. One more angle has been brought out during the course of final hearing i.e. whether the post based roster or the vacancy based roster needs to be followed by the Respondents. It has been well settled in the service jurisprudence that the post based roster is the right method by which the reserved vacancies need to be identified and selection process should be conducted to fill up those vacancies. Law has been well settled in the cases of R.K.Sabharwal's (supra) and J.C.Mallick's (supra) as per which the reservation of job for reserved categories (SC, ST and OBC) should apply to the post and not to the vacancy. It has further been held that the vacancy based roster can operate till such time the reserved categories in the cadre reaches prescribed percentage of reservation. Respondents could not demonstrate to convince us as to whether post based roster has been followed to identify the vacancies in different reserved categories or vacancy based roster has been continued till the required percentage of reservation is reached for the reserved communities. This being the anomalous position of the Respondents, it would not be proper for us to issue any specific or positive direction in this regard.

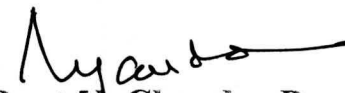
9. Looking into the totality of the facts and circumstances of the case and the well settled position in the matters of filling up of the vacancies reserved for SC, ST and OBC on the basis of post based roster, it would be appropriate to remit the case back to the Respondents



to re-examine the core issue and identify whether the letter dated 27th January, 2010 indicating the ST vacancies as '3' is correct or the letter dated 26th April, 2010 showing ST vacancy as 'nil' is correct. In case the ST vacancies exist as per the post based roster and as per law laid down by the Hon'ble Apex Court, it would be open for the Respondents to re-examine and reconsider the case of the Applicant for the Post of Postman, as per the result of the Departmental Examination held on 31.01.2010 and if he is found suitable as per merits he will be entitled to be posted w.e.f. the date others so selected have been posted. In case the decision of the respondents goes against the Applicant, he will be entitled to a reason order. Let the exercise as ordained above be completed within a period of three months from today.

10. In terms of the above orders, observations and directions, this OA is disposed of leaving the parties to bear their respective costs.


(A.K. Patnaik)
Member (Judl.)


(Dr. Ramesh Chandra Panda)
Member (Admn.)