

21
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 154 of 2011
Cuttack, this the 28th day of July, 2016

Pitabas Sahu

Versus

Union of India & Ors.

.....


Applicant


.....

Respondents

FOR INSTRUCTIONS

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


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

22
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00154 OF 2011
Cuttack, this the 28th day of July, 2016

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

.....

Sri Pitabas Sahu,
aged about 50 years, (Date of birth 04.06.1961),
Son of Baidhar Sahu of Vill/P.O-Khinda,
Via-P.S. Bantala, Dist-Angul,
at present serving as Gramin Dak Sevak(GDSMD/EDA),
Branch Post Office, Khinda, Dist-Angul.

.....Applicant

By the Advocate(s)-M/s. P.K. Mishra, S. Pattnaik.

-Versus-

Union of India, represented through

1. Secretary, Ministry of Communications, Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar.
3. Post Master general (Sambalpur Region) At/P.O. Dist-Sambalpur.
4. Superintendent of Post Offices (Dhenkanal Division) At/PO/Dist-Dhenkanal.
5. Inspector of Posts, Angul (East) Sub-Division, Angul.
6. Purusottam Sahu, GDSMD, Rasol Sub-Post Office, Dist Dhenkanal.
7. Nirmal Chandra Sahoo, GDS, MC, Kusumi Branch Office/ Hindol Road RS, Dist-Dhenkanal.
8. Sarat Kumar Sahoo, GDS BPM, Kandharsinga BO/Parjang, Dist-Dhenkanal.
9. Sohan Kumar Mahunta, GDS BPM, Bamuan B.O./Anlaberini, Dist-Dhenkanal.

.....Respondents

By the Advocate(s)-Ms. S.Mohapatra, Mr. D.K. Mallick.

.....



ORDER

A.K.PATNAIK, MEMBER (J):

The facts of the case absolutely necessary for deciding this matter are that the applicant was born on 04.06.1961. He was appointed as GDS/EDA on 29.03.1980. Respondent No.2 issued notification under Annexure-A/1 dated 19.10.2010 for holding departmental examination to the post of Postman from amongst the GDS employees. On the date of the notification, the applicant was about 49 years and four months. The applicant belongs to OBC category. In pursuance of the above notification, he submitted his application for being considered to the post of Postman. He appeared in the examination, which was held on 30.01.2011. On 03.03.2011, Respondent No.3 published the select list for promotion to the post of Postman. It is the case of the applicant that although he secured 3rd position on the basis of marks secured by him, he was debarred for getting promotion on the ground that he crossed the age of 50 years. Being aggrieved, he has filed this O.A. with the following reliefs:

- “i) The Hon’ble Tribunal may be pleased to quash the clause 3(b)(ii) of Annexure-A/1 dated 19.10.2010 relating to cut up date of upper age limit and selection list under Annexure A/3 dated 03.03.2011 so far as relates to Private respondents No. 6 to 9(UR).
- ii) The Hon’ble Tribunal may be pleased to direct respondents to recast the selection list afresh taking in to account the marks secured by the applicant vis-a-vis private Respondents No. 6 to 9 in the departmental examination held on 30.01.2011 for appointment as Postman.
- iii) And further, the Hon’ble Tribunal may be pleased direct the respondents to send the applicant to undergo training (practical and Theoretical) for his appointment/posting as Postman taking in to account the position in the

all

selection list with effect from the date the private respondents got such benefit.

- iv) And pass any other order/orders as deemed fit and proper in the interest of justice, equity and good conscience.

And for which act of your kindness the applicant shall as in duty bound and ever pray.”

2. For the sake of clarity and convenience, Annexure-A/1 dated 19.10.2011 is quoted herein below:

“To

All SSPOs/SPOs in Orissa Circle
All SSRM/SRMs in Orissa Circle.

Sub: Holding of Departmental Examination for promotion of Group-D/Mailman & GDS to Postman/mail-guard cadre for the vacancies of the year 2009 & 2010.

With reference to this office letter of even No. dated 19.08.2010, I am directed to intimated that the above said examination for promotion to Postman/Mali-guard cadre is scheduled to be held on 30.01.2011(Sunday). The detailed time schedule regarding submission of application by the candidates issue of Hall Permits, holding of Examination etc. are as follows.

(1) Time schedule of Departmental Examination:

i)	Last date fixed for submission of the application by the candidate in the prescribed proforma to his immediate controlling authorities concerned	20.12.2010
ii)	Last date fixed for receipt of applications at the Divisional Office.	28.12.2010
iii)	Last date fixed for completion of scrutiny work of applications received from the candidate.	05.01.2011
iv)	Last date fixed for issue of Hall Permits to the eligible candidates.	10.01.2011
v)	Last date fixed for submission of information regarding exact No. of candidates (both departmental & GDSs) permitted to appear the examination along with proforma report in the prescribed proforma.	15.01.2011
vi)	Last date fixed for submission of the No. and detail particulars of the APS candidates permitted to appear the examination.	20.01.2011
vii)	Date of holding the examination.	30.01.2011

Wll

(2) Method of filling up of the vacancies.

(A) Postman Cadre

(a) 50% of vacancies in a year in Postman/Village Postman cadre shall be filled up by promotion of Group-D officials who qualify in the departmental examination against the departmental quota vacancies failing which by the GDS on the basis of their merit in the examination.

(b) The remaining 50% of the vacancies in this cadre which is meant for outsider's quota shall be filled up from among the GDS in the following manner.

(i) One half of the 50% of the vacancies shall be filled up through departmental examination from among the GDS who have completed a minimum of 5(five) years of satisfactory service as on the 1st January of the year in which the examination is held and are within the upper age limit of 50 years with 5 years relaxation for SC/ST candidates as on 1st July of the year in which the examination is held on the basis of their merit in the examination.

(ii) The remaining half of the 50% of the vacancies shall be filled up from among the GDS with minimum of 15 years of satisfactory service on the basis of their seniority in GDS cadre failing which by the GDS on the basis of departmental examination.

(B) Mail Guard Cadre:

(i) 75% of the vacancies in Mailguard cadre shall be filled up by promotion from among the Mailman/Group-D etc. through Departmental Examination failing which by GDS through departmental examination.

For Mailguard examination the other conditions regarding age and educational qualifications etc. are the same.

(3) Eligibility condition to apply for the examination.

(a)(i) Group-D officials who are permanent with satisfactory record of service are eligible to appear the departmental examination for promotion to postman/Mailguard cadre.

(ii) There is no age limit for the Group-D officials for appearing the above examination.

(b)(i) In case of EDAs (now GDS candidates), they should have completed a minimum of 5 years of satisfactory service as on 01.01.2011.

(iii) the upper age limit for EDAs shall be 50 years (55 years for SC/ST & 53 years for OBC candidates) as on 01.07.2011.

Alle

(C) the EDAs who are on deputation to APS as group-D will be considered for departmental examination/Promotion with reference to their seniority as obtaining in EDAs cadre of the division from which they have proceeded on deputation. Their deputation to APS as Group-D will have no significance so far as their eligibility for departmental examination/promotion etc. are concerned.

(4) Educational Qualification

(i) Educational qualification for appearing departmental examination for promotion to Postman/Mailguard cadre has been raised to matriculation stand for all EDAs who are recruited on or after 25.09.1987 as envisaged under Directorate letter No. 10-6/86-PCC/SPB-1 dated 28.04.1988 but for EDAs(now GDS) who were in service on or before 25.09.1987 would be eligible to appear in the Postman/VPM/MG examination without obtaining matriculation qualification as required vide Directorate letter No. 60-62/92-SPB-I dated 22.12.1993.

(ii) A minimum educational qualification of 8th pass has been prescribed for GDS under 2.5% seniority quota as instructed vide Directorate letter No. 44-29/94-SPB-I(pt.) dated 19.05.1995.

(5) General conditions

(i) The departmental examination shall be common for both Group-D and GDSs.

(ii) Reservation benefit has been provided to OBC candidates in case of recruitment of EDAs to the cadre of Postman/Mailguard cadre.

(iii) The departmental examination may be conducted in the division where no vacancies are declared if volunteers are there for likely shortfall vacancies in other divisions, along with the examination in other divisions where there are vacancies declared, if shortfall is anticipated. In this connection, the candidates of the divisions where there are no vacancy will have to be specifically told that departmental examination is only for anticipated shortfall vacancies in other divisions.(Directorate letter No. 44-9/99-SPB.I dated 26.07.1999.).

(iv) The Mailguard examination need not be held in such RMS divisions where no vacancies exist(Vide dated Letter No. 44-16/95-SPB.I dated 31.07.1995.

(v) When the vacancies are announced for separate quotas, a mention may be made under the Departmental

Wlll

quota that the unfilled vacancies will be added to the GDSs quota and the GDS quota will be increased to that extent. No separate examination can be held for GDS & departmental candidates (Dte. Letter No. 44-44/82-SPB.I dated 25.09.1989.

(vi) There will be no limit to the number of chances allowed to a Group-D official or EDA for appearing in the Postman's examination provided he/she is within the prescribed age limit (Dte. letter No. 44-31/87-SPB.I dated 28.08.1990).

(vii) An examination fee of Rs.5/- will be charged from all the applicants whether they are from Group-D or EDAs. The amount of Rs. 5/- may be charged from APS personnel also and the same be credited against the major head "1201-Postal receipts-800 -other receipts-22-other items.(Directorate letter No. 44-31/87-IPB.I dated 13.3.1991.)

(6) The contents of this letter may please be circulated among all concerned at once including APS candidates, if on deputation to APS and application from them should be called for accordingly in the prescribed proforma (specimen copy enclosed.)

(7) The heads of the unit/division will call for the applications in the prescribed proforma (enclosed). Scrutinize those application as per rules in force and then issue Hall permits to the eligible candidates by the scheduled date. A specimen copy of the proforma for issuing Hall permit is enclosed. The candidates should also be instructed to submit two copies of recent passport size photographs duly attested along with their applications duly filled in the prescribed proforma. One copy of the photograph will be pasted on the application form at the space provided for the purpose and another photograph to be used at the time of issue of hall permit.

(8) Immediately after issue of Hall Permits a list of candidates separately for departmental candidates & EDAs should be prepared in the prescribed proforma enclosed and the same should be submitted to this office by the scheduled date. The name of the departmental candidate as well as EDAs should be furnished in the separate proforma report in order of their seniority in their respective post/cadre. At the end of list/proforma report a summary should be drawn as follows.

(A)(i) Total No. of departmental candidates (such as Group-D, Mailman etc.) applied for the examination.

All

(ii) Total No of departmental candidates permitted to appear the examination.

(iii) Total No of departmental candidates not permitted to appear the examination.

(B)(i) Total No. EDAs/GDS applied for the examination.

(ii) Total No of EDAs/GDS permitted to appear the examination.

(iii) Total No. of EDAs/GDS not permitted to appear the examination.

(9) The SSPOs/SPOs/SSRM/SRMs concerned in charge of the unit/ division will conduct the examination under their supervision for their respective unit in their Divisional Headquarter as per following programme and time table.

Papers	Subject	Day & Date	Time of Examination	Duration
Paper-A	(i) Making entries either in Postman's Book (For Postman Examination only) (ii) Preparation of mail list filling up of mail abstract and writing up daily report (for MG only) Total marks=50	30.01.2011	10.00 to 10.45 hrs.	45 minutes
Paper-B	Arithmetic of 10 th standard of Board of Schools Education. Total marks=50	-do-	11.00 to 12.30 hrs.	90 minutes
Paper-C	Writing of dictation in English language of matriculation standard and also in the regional language. Total marks=50	-do-	13.00 hrs to 13.30 hrs	30 minutes

The venue fixed for the examination should be intimated to this office in time.

(a) The examination should be conducted strictly in accordance with the rules and regulations as contained in appendix-37 of P&T manual Vol. IV.

(b) At the conclusion of the examination, the centre supervisors concerned will arrange to send the following reports/documents to the undersigned immediately for further action.

(i) Absentee and present statement of candidates permitted to appear the examination.

all

(ii) Necessary certificate of the Centre Supervisor & the Invigilators.

(iii) Diagram of the seating arrangement in the Examination Hall.

The community wise vacancy position in Postman/MG cadre will be notified on receipt of the same from all units concerned.

The receipt of this letter should be acknowledged by return of post positively to the undersigned.”

3. Respondents have filed their counter and in nutshell, according to them, there was no vacancy meant for the OBC category for the vacancy year 2009-10. The applicant appeared at the examination on 30.01.2011 and secured 135 marks in the examination and 3rd position in the merit list. As there was no vacancy under OBC category, the applicant was treated as UR candidate. In the vacancy circular in clause 3(b)(ii), it was specifically made clear to the candidate that age of the candidate **“must be within 50 years as on 01.07.2011”**. As the age of the applicant exceeded 50 years as on 01.07.2011 for which he could not be selected although he stood 3rd in the merit list. Respondents have admitted that that candidates securing less marks than the applicant were selected against UR category because they were within the age limit of 50 years as on the cut of date, i.e. 01.07.2011. At the cost of repetition, it has been stated that age of the applicant as on the cut of date was 50 years and 27 days. The examination was held on 30.01.2011 and as such as per the rules the cut of date was shown on 01.07.2011. Hence, the allegation of unjust and colourable exercise of power by the Respondents by fixing the cut of date as 01.07.2011 is baseless. Accordingly, Respondents have prayed for dismissal of this O.A.



4. Heard Mr. S. Pattnaik, Ld. Counsel for the applicant, and Mr. D.K.Mallick, Ld. Addl. Central Govt. Standing Counsel appearing for the Respondents-UOI.

5. Reiterating the stand taken in the O.A., Ld. Counsel for the applicant vehemently prayed for the relief claimed in the O.A., which has been, at the outset, opposed by the Ld. Counsel for the Respondents on the ground of the applicant having participated in the selection knowing fully well the cut of date he is estopped to challenge the same at this belated stage. Hence, the Ld. Counsel for the Respondents, has prayed for dismissal of the O.A.

6. We are in agreement with the submission of the Ld. Counsel for the Respondents that the propounded law is that a candidate having participated in the selection in pursuance of a notification knowing fully well the conditions mentioned therein, he/she is estopped to veer round and challenge the very procedure adopted by the authorities concerned after declaration of the result. It would suffice to quote the decision of the Hon'ble Apex Court passed in the case of **Madras Institute of Development Studies and another Vs. Dr. K. Sivasubramaniyan and others (2016) 1 SCC (L&S) 164**, which is as under:

“17. From a reading of the necessary qualifications mentioned in the Rules and the advertisement, it is manifest that a candidate must have a good academic record with a doctoral degree with 5 years experience in research/teaching at University or National level research Institute.

18. The contention of the respondent no.1 that the short-listing of the candidates was done by few professors bypassing the Director and the Chairman does not appear to be correct. From perusal of the

Wle

documents available on record it appears that short-listing of the candidates was done by the Director in consultation with the Chairman and also senior Professors. Further it appears that the Committee constituted for the purpose of selection consists of eminent Scientists, Professor of Economic Studies and Planning and other members. The integrity of these members of the Committee has not been doubted by the respondent- writ petitioner. It is well settled that the decision of the Academic Authorities about the suitability of a candidate to be appointed as Associate Professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction. Having regard to the fact that the candidates so selected possessed all requisite qualifications and experience and, therefore, their appointment cannot be questioned on the ground of lack of qualification and experience. The High Court ought not to have interfered with the decision of the Institute in appointing respondent nos. 2 to 4 on the post of Associate Professor.

19. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.

20. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.

21. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Athropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the

all

Court held:-

"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.

This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: "It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

22. In Madan Lal & Ors. vs. State of J & K & Ors. (1995) 3 SCC 486, similar view has been reiterated by the Bench which held that:-

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned.

Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate

Wll

takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla¹ it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

23. In Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed:- "We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection.

The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

24. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others, (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under:-

"In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the

Wll

Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."


25. So far as the finding recorded by the Division Bench on the question of maintainability of the writ petition on the ground that the appellant Institute is a 'State' within the meaning of Article 12 of the Constitution, we are not bound to go into that question, which is kept open.

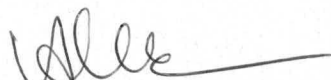
26. Taking into consideration the entire facts of the case and the law laid down by this Court in a catena of decisions, we are of the definite opinion that the Division Bench has committed grave error in law by passing the impugned judgment reversing the order passed by the learned Single Judge.

27. We, therefore, allow these appeals, set aside the impugned judgment and order passed by the Division Bench in Writ Appeal No.167 of 2008 and hold that the writ petitioner-respondent has no merit in the case inasmuch as there is no illegality in the decision dated 14.08.2006 taken by the appellant-Institute for appointment of aforesaid respondent nos. 2 to 6 to the post of Associate Professor."

7. Fixing the cut of date for any examination falls within the domain of the authorities as a matter of policy and the Tribunal being not the appellate authority or the examining authority, as the case may be, lacks jurisdiction to interfere on the same especially when in the present case it is not the case of the applicant that such fixation of cut of date is de hors the rule.

8. In view of the facts and law enumerated above, we find no merit in this O.A. Accordingly, the same is dismissed. No costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)