

26

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NOs.298, 299, 300 & 457 of 2011
Cuttack, this the 13th day of May, 2013

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

...

O.A.NO.298 OF 2011

Debendra Nath Pradhan,
aged about 53 years,
S/o. late Upendra Nath Pradhan,
At/PO-Pallisahi,
PS-Mahanga,
Dist-Cuttack
Gramin Dak Sevak, R.M.S. (North) Division,
Cuttack, Town/Dist-Cuttack

...Applicant

By the Advocates: M/s.Ashok Mishra & S.C.Rath

-VERSUS-

Union of India represented through -

1. Secretary,
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan,
Sansad Marg,
New Delhi-110 001.

D.C. 12

27

2. Chief Post Master General,
Orissa Circle,
Bhubaneswar,
Dist-Khurda.
3. Senior Superintendent,
Railway Mail Service (North) Division,
Cuttack,
Town/Dist-Cuttack
4. Sub-Record Keeper,
Railway Mail Service (North) Division,
Cuttack,
Town/Dist-Cuttack
5. Srikanta Roul,
Aged about 51 years,
S/o. late Rama Ch.Roul,
Vill-Basani Kharida,
PO_Charmpha,
Via/Dist-Bhadrak,
GDS Mailman under SRO RMS'N' Division,
Bhadrak-756100.
6. Bidyadhara Nayak,
Aged about 49 years,
S/o. late Bhimsena Nayak,
At/PO-Mantira, Dist-Jajpur,
GDS Mail man under SRO RMS"N" Division,
Jajpur Road-755 019.
7. Prasan Kumar Samal,
Aged about 49 years,
S/o. late Ashit Samal,
At/PO-Mantira,

Allee 2

28

Dist-Jajpur,
GDS Mailman under SRO RMS 'N' Division,
Jajpur Road-755 019

Respondent/Interveners

(By the Advocates: Mr.U.B.Mohapatra, SSC
Mr.T.K.Mishra (Interveners)

O.A.NO.299 OF 2011

Pravat Kumar Pattnaik,
aged about 54 years,
S/o. late Bansidhar Pattnaik,
At- Barabari (Jagamara)
PS-Khandagiri,
Bhubaneswar,
Dist-Khurda
at present working as Gramin Dak Sevak, (Sr)
under office of Sub-Record Officer,
RMS, Bhubaneswar,
Dist-Khurda

...Applicant

(By the Advocates:M/s.Ashok Mishra & S.C.Rath)

-VERSUS-

Union of India represented through –

1. Secretary,
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan,
Sansad Marg,
New Delhi-110 001
2. Chief Post Master General,

Waleed

29

Orissa Circle,
Bhubaneswar,
Dist-Khurda.

3. Senior Superintendent,
Railway Mail Service (North) Division,
Cuttack, Town/Dist-Cuttack.
4. Sub-Record Keeper,
Railway Mail Service (North) Division,
Cuttack, Town/Dist-Cuttack.
5. Srikanta Roul,
aged about 51 years,
S/o. late Rama Ch.Roul,
Vill-Basani Kharida,
PO_Charmpa,
Via/Dist-Bhadrak,
working as GDS Mailman under SRO RMS'N' Division,
Bhadrak-756100.
6. Bidyadhara Nayak,
aged about 49 years,
S/o. late Bhimsena Nayak,
At/PO-Mantira,
Dist-Jajpur,
working as GDS Mail man under SRO RMS"N" Division,
Jajpur Road-755 019.
7. Prasan Kumar Samal,
aged about 49 years,
S/o. late Ashit Samal,
At/PO-Mantira,
Dist-Jajpur,
working as GDS Mailman under SRO RMS 'N' Division,

Aleek

30

Jajpur Road-755 019.

Respondent/Intervenors

(By the Advocates: Mr. S.B.Jena, ASC
Mr.T.K.Mishra (Intervenors))

O.A.NO.300 OF 2011

Kartik Chandra Singh,
aged about 52 years,
S/o. late Siba Prasad Singh,
At-Satapur,
PS-Mahanga,
Dist-Cuttack
working as Gramin Dak Sevak, R.M.S. (North) Division,
Cuttack, Town/Dist-Cuttack

...Applicant

(By the Advocates:M/s.Ashok Mishra & S.C.Rath)

-VERSUS-

Union of India represented through -

1. Secretary,
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan,
Sansad Marg,
New Delhi-110 001.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
Dist-Khurda.
3. Senior Superintendent,

Alles

Railway Mail Service (North) Division,
Cuttack, Town/Dist-Cuttack.

4. Sub-Record Keeper,
Railway Mail Service (North) Division,
Cuttack, Town/Dist-Cuttack.
5. Srikanta Roul,
aged about 51 years,
S/o. late Rama Ch.Roul,
Vill-Basani Kharida,
PO-Charmpa,
Via/Dist-Bhadrak,
Working as GDS Mailman under SRO RMS'N' Division,
Bhadrak-756100.
6. Bidyadhara Nayak,
aged about 49 years,
S/o. late Bhimsena Nayak,
At/PO-Mantira,
Dist-Jajpur,
working as GDS Mail man under SRO RMS"N" Division,
Jajpur Road-755 019.
7. Prasan Kumar Samal,
aged about 49 years,
S/o. late Ashit Samal,
At/PO-Mantira,
Dist-Jajpur,
working as GDS Mailman under SRO RMS 'N' Division,
Jajpur Road-755 019.

Respondent/Interveners

(By the Advocates: Mr.U.B.Mohapatra, SSC
Mr.T.K.Mishra (Interveners)

Alced

32

O.A.NO.457 OF 2011

Antaryami Jena,
aged about 52 years,
S/o. late Bhajendra Jena,
At-Poparada,
PO-Nayabazar,
PS-Madhupatna,
Dist-Cuttack
working as Gramin Dak Sevak,
under office of Sub Record Officer,
RMS, 'N' Division,
Cuttack,
Dist-Cuttack

... Applicant

(By the Advocates: M/s. Ashok Mishra & S.C. Rath)

-VERSUS-

Union of India represented through –

1. Secretary,
Ministry of Communications & IT,
Department of Posts,
Dak Bhavan,
Sansad Marg,
New Delhi-110 001.
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar,
Dist-Khurda.
3. Senior Superintendent,

Alled

33

Railway Mail Service (North) Division,
Cuttack,
Town/Dist-Cuttack.

4. Sub-Record Keeper,
Railway Mail Service (North) Division,
Cuttack,
Town/Dist-Cuttack.
5. Srikanta Roul,
aged about 51 years,
S/o. late Rama Ch.Roul,
Vill-Basani Kharida,
PO_Charmpa,
Via/Dist-Bhadrak,
working as GDS Mailman under SRO RMS'N' Division,
Bhadrak-756100.
6. Bidyadhara Nayak,
aged about 49 years,
S/o. late Bhimsena Nayak,
At/PO-Mantira,
Dist-Jajpur,
working as GDS Mail man under SRO RMS"N" Division,
Jajpur Road-755 019.
7. Prasan Kumar Samal,
aged about 49 years,
S/o. late Ashit Samal,
At/PO-Mantira,
Dist-Jajpur,
working as GDS Mailman under SRO RMS 'N' Division,
Jajpur Road-755 019.

Respondent/Interveners

(By the Advocates: Mr.S.B.Jena & Mr. T.K.Mishra & A.K.Swain (Interveners))

Jena

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

Since all the four Original Applications mentioned above arise out of common cause of action under similar facts and circumstances, this common order is being passed.

For the sake of convenience, the facts enumerated in O.A.No.298 of 2011 are being referred to.

2. Applicants in O.A.Nos.298, 299 and 300 were all appointed as E.D.Mailman under the Respondents on temporary basis with effect from 21.12.1983, 1.4.1982 and 18.12.1982, respectively, whereas applicant in O.A.No.457/2011 was appointed as E.D.Mailman with effect from 20.11.1991 on regular basis. While working as such, applicants in O.A.Nos.299,300 and 457 of 2011 were all directed to work in the existing Gr.D/Mailman vacancies, which according to them are promotional posts vide order dated 12.3.2003. In so far as applicant in O.A.No.298/2011 is concerned, as it appears, he has

Alca

35

not been so directed. Be that as it may, vide order dated 31.12.2008 (Annexure-A/4) all the applicants were issued with orders to work as paid substitute against the vacancies of Gr.D posts and according to them, they have been continuing as such till date. While the matter stood thus, a gradation list of G.D.S. was prepared and corrected upto 30.6.2009(Annexure-A/2). As it reveals from the record, the names of all the applicants figure at Sl.No.35, 7, 15 and 60 respectively. It is the case of the applicants that there being existing vacancies in Gr.D posts from the years 2003 to 2008, the Respondents, for the reasons best known, did not take any step to convene DPC for promoting them and by now, in face of letter dated 27.1.2011 (Annexure-A/5) issued by Respondent No.1 to all the Circle Heads laying down the new Recruitment Rules wherein it has been directed for taking action to fill up the vacancies on the basis of latest Recruitment Rules for the post of MTS, they are going to adversely affected. According to applicants, in Para-2 of the said letter, it has been indicated that in order to initiate

Alco

36

action to fill up the vacancies of the year 2009 and 2010, the circle may work out the vacancies falling under various modes of filling up as provided in the recruitment Rules. It has been submitted by the applicants that there are 8 number of vacancies for the year 2009 and 7 number of vacancies for the year 2010. In this connection, the applicants have raised a point that had the Respondents filled up the vacancies from the year 2003 to 2008, certainly applicants could have been promoted before attaining the age of 50 years. Based on this, they have laid a claim that in the event the vacancies of the year 2009 and 2010 being filled up, they cannot be promoted since they have already crossed the prescribed age limit of 50 years. In the circumstances, the applicants have sought the following relief.

- i) To quash the letter dt. 27.1.2011 in terms of para-2 contained in Annexure-5
- ii) To direct the Respondents to consider the case of the applicant for promotion to the post of MTS for the vacancies of the year 2003 to 2010.

Alles

37

iii) To pass any other order/orders as would be deemed fit and proper in the circumstances of the present case.

3. Opposing the prayer of the applicants, Respondents-Department have filed their counter. It has been submitted that one of the promotional avenue of lowest category of staff, i.e., G.D.S. post is Group-D post which is at present designated as Multi Tasking Staff (in short MTS). According to Respondent-Department, as per Rules, 50% of the said promotional posts shall be filled by way of direct recruitment from amongst GDS of the recruiting division on the basis of selection-cum-seniority and the other 50% by way of different method. Although they have not replied on the specific point urged by the applicants as to what prevented them from filling up of the vacancies of Gr. D posts caused in the Department from the year 2003-2008 which has a prejudicial effect on the promotional prospects of the applicants, but they have submitted that based on the latest Recruitment Rules for the post of MTS, the applicants having crossed the prescribed age limit of 50 years are not eligible to be

Allee

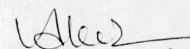
28

considered for promotion to MTS and as such, all the OAs being devoid of merit is liable to be dismissed.

4. Over and above the counter filed by the Respondent-Department as stated above, Interveners have also filed their counter raising the point of locus standi of the applicants as they do not have any cause of action to approach this Tribunal. They have submitted that the latest Recruitment Rules as notified vide Annexure-A/1 dated 27.1.2011 being a policy decision of the Government of India and not in discountenanced with the Constitution of India in any manner whatsoever nor there being any violation of the fundamental rights of the applicants by the operation of such Recruitment Rules, all the Original Applications are liable to be dismissed.

5. Applicants have not filed any rejoinder to the counter filed by the Respondent-Department as well as Intervener-Respondents.

6. We have heard the learned counsel for the respective parties and perused the materials on record as well as the



39

citations/decisions relied on. We have also given our anxious thoughts to the arguments advanced at the Bar.

7. It is not in dispute that the applicants being Gramin Dak Sevaks are governed under Rule-(i) "vacancies in Subordinate Offices" vide Annexure-5. However, it is the case of the applicants that by the implication of Para-2 of Annexure-5 they having crossed the prescribed age of 50 years are not eligible for being considered to the post of MTS. For the sake of clarity, Paragraph-2 of Annexure-A/5 is quoted hereunder.

"2. In order to initiate action to fill up the vacancies of the year 2009 and 2010 the Circles may work out the vacancies falling under various modes of filling up as provided in the Recruitment Rules. Wherever applicable the vacancies may be assessed Division/Unit wise. The direct recruitment vacancies of the erstwhile Group 'D' not cleared under Annual Direct Recruitment Plans of the years 2005, 2006, 2007 and 2008 should not be taken into consideration while assessing the vacancies".

8. We have gone through the above rulings. It is the categorical instruction in Para-2 above that "the direct recruitment vacancies of the erstwhile Group 'D' not cleared


Walter

40

under Annual Direct Recruitment Plans of the years 2005, 2006, 2007 and 2008 should not be taken into consideration while assessing the vacancies of the year 2009 and 2010. Respondent-Department in the counter have not made it clear as to what all the direct recruitment vacancy of the erstwhile Group D in the year 2005, 2005, 2007 and 2008 cleared under Annual Direct Recruitment Plans and if so, whether the applicants having regard to the vacancies of those respective years and having come within the prescribed age of 50 years could be considered for the post of MTS. At the same time we cannot lose sight of the submission made by the learned counsel that had the applicants been considered against Gr.D posts in the nick of the time from the year 2003 to 2008, certainly they could have been appointed to Gr.D posts. This submission of the learned counsel for the applicants holds no water in view of the fact that he has not brought anything before this Tribunal as to what prevented them from raising this point then and there.

Alced

9. For the reasons discussed above, while we are not inclined to accede to the prayer of the applicants for quashing Annexure-A/5 dated 27.1.2011, we direct the Respondent-Department to bring to light the rest of the Direct Recruitment vacancies of erstwhile Group D of the years 2005, 2006, 2007 and 2008 which had been cleared under Annual Direct Recruitment Plans and in that event to consider the case of the applicants for MTS having regard to the other provisions Recruitment Rules and keeping in mind the undisputed fact that they have been continuing as substitute paid Gr.D as on date and to pass a reasoned and speaking order within a period of 120 days from the date of receipt of this order. With the aforesaid observations and directions all the OAs stand disposed of by leaving the parties to bear their own costs.


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


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