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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.637 of 2011
Cuttack, this the 01st day of August, 2014


Ajay Kumar MohapatraApplicant

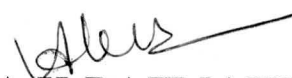
-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No
2. Whether it be referred to PB for circulation? No


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


(A.K.PATNAIK)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 637 of 2011
Cuttack, this the 07th day of August, 2014

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)

HON'BLE MR. R. C. MISRA, MEMBER (Admn.)

.....

Sri Ajay Kumar Mohapatra, aged about 50 years, S/o. Late Purna Chandra Mohapatra resident of At-Matimandap Sahi, Po. Puri HO, PS-Puri Town, Dist. Puri, PIN-752001 now working as GDS Packer cum MC of SCS College, SO of Puri Town.

...Applicant

(Advocates: Mr.P.K.Padhi)

VERSUS

Union of India Represented through –

1. The Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Postmaster General, Orissa Circle, At/Po.Bhubaneswar, Dist. Khurda 751 001.
3. Sr. Superintendent of Post Offices, Puri Division, At/Po/Dist. Puri, 752001.
4. The Assistant Superintendent of Post Offices I/C, Puri Sub Division, At/Po/Dist.Puri 752001. .

... Respondents

(Advocate: Mr.R.C.Swain)

ORDER

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

Short facts of the case are that Respondents vide notification dated 19th October, 2010 invited application for

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holding departmental examination for promotion of Group D/Mail & GDS to Postman/Mail Guard cadre for the vacancies of the year 2009-2010. There were eleven vacancies for the year 2009 and eight vacancies for the year 2010. The eligibility condition to apply for the said examination was provided as under:

- (a)(i) Group-D officials who are permanent with satisfactory record of service are eligible to appear the departmental examination for promotion to Postman/Mail Guard cadre;
- (ii) There are 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;
- (ii) 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;
- (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

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departmental examination/ promotion etc.
are concerned.”

2. Admittedly, the Applicant belongs to UR community and crossed the upper age limit of fifty years as on 01.07.2011. Therefore, in pursuance of the applications received, Respondents called upon the GDS employees who are within the age limit but not the applicant as he has crossed the upper age limit to appear the test. Being aggrieved, the applicant submitted representation challenging the cutoff date fixed in the advertisement on various grounds. Alleging inaction in considering his representation, he filed OA No. 324 of 2011. The said OA was disposed of by this Tribunal on 19th May, 2011 with direction to the Respondents to consider and communicate the decision to the applicant within a stipulated period. In compliance of the said order of this Tribunal, the Respondents vide letter dated 22.7.2011 (Annexure-A/10) communicated the reason of not calling him to appear at the

Alleged

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selection and being aggrieved by the said decision, the applicant again filed the present Original Application with the following prayer:

“.....to quash Annexure-A/10 and to direct the Respondents to consider the case of the applicant for promotion to Postman cadre under seniority quote, to place him in correct position as the candidate under seniority quota enblock seniority to the candidates who are selected on merit with all consequential benefits including back wages/financial benefits with due interest and costs.”

3. The reason of rejection of the representation of the applicant, assigned by the Respondents in their letter dated 22.7.2011 reads as under:

“This is regarding OA No. 324 of 2011 filed in Hon’ble CAT, Cuttack Bench by Shri A.K.Mohapatra, GDS Packer-Cum-MC, SCS College SO under Puri Division in connection with the Departmental Examination for promotion to Postman Cadre held on 31.01.2011.

The Hon’ble CAT, Cuttack Bench has disposed of the OA on 19.05.2011 with direction to the Chief PMG (Respondent No.1) to consider the representation of the applicant and to pass a reasoned order in terms of Rules/Directions/Guidelines within



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a period of 45 days from the date of receipt of the order.

The contention of the applicant is that while he was expecting promotional benefits on the basis of his seniority in GDS cadre, he was debarred from appearing in the Departmental Examination for promotion to the cadre of Postman held on 31.01.2011 on the ground that he had crossed the upper age limit of 50 years as on 01.07.2011 which was fixed as the cutoff date for determining the age limit in the circular letter No.RE/30-22/2009 dated 19.10.2010 issued by Circle Office, Bhubaneswar for holding the said examination for the vacancies for the years 2009 and 2010 and that he would have got the opportunity of appearing in the said examination had the examinations held in time for the relevant years.

The applicant has preferred representation:

1. To promote him Postman cadre ~~on~~ on the basis of his position in the seniority list of GDS;
2. To modify the cutoff date to make him eligible for the Examination for promotion to Postman Cadre.

Rule 2(ii) of Department of Post (Postman, Village Postman and Mail Guards) Recruitment Amendment Rules, 1994 published in the Gazettee of India on 25.02.1995 says as follows:

“For Extra Departmental Agents the upper age limit shall be 50 years with 5 years relaxation for the Scheduled Castes/Scheduled Tribe candidates as on 1st July of the year in which the examination is held and he should have completed a minimum of 5 years of satisfactory service as on 1st January of the year in which the examination is held.”



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The examination was held on 31.01.2011 and the cutoff date for determining the upper age limit in respect of GDS was correctly fixed to 01.07.2011 in accordance with the aforesaid Rules and this was clearly mentioned in para 3 (b) (ii) in the circular letter No. RE/30-22/2009 dated 19.10.2010 issued by Circle Office, Bhubaneswar for holding the said examination.

Recruitment is an administrative process to fill up the vacancies at the time of need and have to be complied with to ensure that there is transparency in the process. Taking into consideration these guidelines, it is found that the representation of the applicant has no merit and hence is rejected.”

4. Respondents by reiterating the stand taken in the letter of rejection, as aforesaid, resist the claim of the Applicant and have prayed that this OA being devoid of any merit is liable to be dismissed.

5. We have heard Mr.P.K.Padhi, Learned Counsel appearing for the Applicant and Mr.G.Singh, Learned Additional CGSC appearing for the Respondents and perused the materials placed on record.



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6. In the case of *Union of India and others V. Vipinchandra Hiralal Shah*, (1996) 6 SCC page 721, their Lordships in paragraph 11 held as under:-

“11. It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the State Civil Service officers who fulfil the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the ommittee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration for selection in that year.”





7. In the case of **Vijay Singh Charak v Union of India and others**, 2008 (1) SLJ page 4 the Department drawn the select list clubbing of vacancies. Appellant therein, therefore, became ineligible. He has challenged the same before the concerned High Court. Hon'ble High Court did not interfere in the matter. The matter was carried to Hon'ble Apex Court and the Hon'ble Apex Court held that panels have to be made year-wise and vacancies of different years cannot be clubbed. This was also the view taken by the Hon'ble High Court of Orissa in the case of **State of Odisha and others Vrs Manoj Kumar Panda and others** in W.P. (C) Nos. 22778, 18654, 22778 and 18473 of 2012 and W.P.(C) No.16434 of 2013 disposed of in common order dated 30.08.2013.

8. It is the specific case of the applicant that if selection is held for preparing year wise panel then he will be within the age and cannot be debarred from being



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considered. In so far as holding the examination, entire responsibility is thrust upon the Regional Director of the Postal Department to hold selection for filling up of the posts under the quota from GDS employees once in a year. Therefore, for non-holding the selection in time neither the applicant nor any of such GDS employees is responsible and, as such, for such delay, if an employee is debarred from his legitimate right for consideration it will be against the mandate enshrined in Article 14 and 16 of the Constitution of India. The entire case of the applicant revolves round fixation of cutoff date 01.07.2011 for the vacancies of the year 2009-2010. Further we find no logic in fixing the cutoff date as 01.07.2011 when the vacancies were/are of the year 2009-2010. In view of the law laid down above, we find substantive force in the contention of the Applicant that due to holding the examination belatedly by clubbing the vacancies in one lot and thereby depriving

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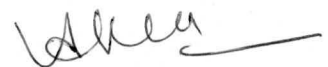
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the applicant due to over age cannot be countenanced in law. At the same time we find that it is not the case of the Applicant that in view of the above illegality, the entire selection has to be made afresh. Therefore, we direct the Respondents to consider the case of the applicant for the post in question if he fulfills the eligibility condition within the cutoff date one would become eligible, had the examination been done in the year 2009 and 2010 and on such consideration if the applicant is found fit for promotion then to take further action as per Rules. The entire exercise shall be completed within a period of 120 days from the date of receipt of copy of this order.

9. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.



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



(A.K.Patnaik)
Member (Judicial)