

5

O.A.No.232/2009

ORDER DATED 29th JANUARY, 2010

Coram:


Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

Heard Sh. P.K. Chand, Ld. Counsel for the Applicant and Sh. S. Mishra, Ld. Addl. Standing Counsel for the Respondents.

2. The applicant appeared for a competitive test for selection to the post of Postman in pursuance to the application invited by the Department, as per the Departmental Examination conducted on 08.10.06 for promotion to the said cadre for the vacancies occurred during 2003, 2004 and 2005 of Cuttack North Division. Out of the 12 vacancies, 7 posts are meant for candidates belonging to unreserved community and 5 posts are meant for ST candidates. Though the applicant figured in the rank list at Sl. No.9, yet there being 7 vacancies, he was not issued with the offer of appointment. Hence the applicant has filed this Original Application.

3. The Original Application has been admitted by this Tribunal and notice ordered. In pursuance to notice a counter has been filed for and on behalf of the Respondents, in which it is stated that as the vacancies were earmarked for U.R. quota has been fixed as 7, and the name of the applicant appeared at Sl. No.9 in the list, he could not be included in the panel.



4. We heard the Ld. Counsel for the parties and perused the materials placed on record. The main points canvassed before us by the applicant are that though there were 7 vacancies to be filled up from U.R. quota when he had received an answer to a petition filed under R.T.I. Act the name of one Sh. Arun Ku. Nayak was not included in the panel, which has^{not} been so included purposefully to ignore the applicant. The second point argued is that if the panel is to be held for the next coming selection, the applicant should also be given appointment in the said selection. We have considered this claim in the light of the counter filed for and on behalf of the Respondents. It is clearly stated in paragraph 7 & 8 of the counter that there were only 7 vacancies to be filled up from U.R. quota and the applicant's name being at Sl. No.9 he could not be appointed. That apart, the reason for not appearing the name of Arun Ku. Nayak in the Select List as contended by Ld. Counsel for the applicant is that his name was kept in the sealed cover and subsequent to the opening of the sealed cover it was found that Arun Ku. Nayak had secured more marks than the applicant. Hence the name of Arun Ku. Nayak was also included. Further it is stated in Paragraph 8 & 9 of the counter is as follows:-

“ 8. That, the averments made in Para-4.5 of the Original Application are disputed and denied. It is humbly submitted that since no departmental candidate qualified in the examination, twelve (12) posts under departmental quota were diverted to outsider merit quota. All together thirteen (13) posts i.e. 8 posts for

33

7

-3-

unreserved category and 5 posts of ST category were there to be filled up. Any candidates whether he/she belongs to OC community or reserved community who qualify in the examination may find place in the merit list and can be selected. Unreserved category includes all community and the candidates irrespective of community who secured highest marks were placed in the merit list as per their merit. In the merit list there were four (4) candidates from OC and four (4) from OBC community as per their order of merit. Hence there was no violation of rules in the selection process. Thus the averments made by the applicant are not sustainable in the eye of law.

9. That, the averments made by the applicant in Para-4.6 of the Original Application are disputed and denied. The applicant has categorically raised the issue regarding irregular selection of three (3) OBC candidates against seven (7) posts meant for OC. The applicant has further stated that if three (3) candidates of reserved category i.e. OBC would not have been inducted in the combined merit list, he could have been placed at 6th position in the merit list. But perhaps the applicant has forgotten that to which community he belongs to. The applicant Sri Dusmant Kumar Sahoo belongs to OBC community and according to version of the applicant if the selection of 3 OBC candidates is irregular his claims for his selection as postman as he belongs to said OBC community is also unjustified.

It is to mention here that at the time of examination, the designation of the applicant was GDSBPM Kabatabandha BO in account with Jenapur SO and subsequently he has been posted as GDSBPM Saragada Mukundapur BO in account with Jenapur SO. The copy of the application along with copy of the caste certificate submitted



by the applicant for the examination for promotion to the cadre of Postman/Mail guard held on 08.10.2006 is filed herewith as Annexure-R-1."

5. On considering the above stand taken in the counter and the contentions raised by the Ld. Counsel for the parties, we are of the view that non inclusion of the name of the applicant in the panel is due to he having secured less marks than the other candidates. However, having regard to the facts and circumstances, we are of the view that if the Department wants to give an appointment and/or to include the name of the applicant for the next selection and if law provides to continue with the same panel for the next selection, the Department may consider the case of the applicant.

6. With the above observation and direction this Original Application stands dismissed as merit less. No costs.


MEMBER (A)


MEMBER (J)

K.B.