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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 378 of 2009

Cuttack this the 16th day of August, 2012

Suwendu Mohapatra Applicant
Vs
Union of India & Ors. Respondents

ORDER

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THE HON'BLE SHRI C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE SHRI A.K.PATNAIK, MEMBER (A)

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The back ground of the case is that earlier the applicant had filed OA No. 145 of 2003 in which he had prayed to direct the Respondents to extend the benefit of preferential category in recruitment to EDA Category as he had worked 480 days as substitute in the Department; after quashing the instruction of the DGPT dated 6.6.1998 being discriminatory in nature.

2. The aforesaid OA No. 145 of 2003 was disposed of by this Tribunal on 30th June, 2005. The operative part of the order is quoted herein below:

“7. We, therefore, dispose of the OA giving a direction to the Respondents to consider the case of the applicant for appointment to Group D post according to the priority of his group to which he belongs as envisaged under the Department circular dated 17.05.1989 as and when vacancy arises. No costs.”

3. The order under Annexure-A/3 is in compliance of the order of this Tribunal dated 30th June, 2005 which reads as under:

“It is to inform you that the Group D recruitment of the Division is done as per guidelines of the Dte issued from time to time on the subject. The recruitment is made from amongst five categories specified in the Dte letter. The five categories as

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mentioned in the Dte letter 66-82/87-SPB-I dtd. 24.2.1989 is as follows:

- i) Non test category officials;
- ii) Extra Departmental agents of the recruiting division or unit, in which vacancies are announced;
- iii) Casual labourer (Full time and Part Time);
- iv) Extra Departmental agents of neighbouring Division or unit (for postal Sub Division) the neighbouring Division will be the Railway Mail Service Sub Division and vice versa;
- v) Nominees of the Employment Exchange."

Moreover recruitment from next category can only be made only when no qualified person is available in the higher category. As per the priority list, the extra departmental agents, now GDS of the Division re coming under serial (ii). It is also a known fact that thousands of eligible GDS are available in Sambalpur Division. As your candidature is coming under serial (v) of the priority list inclusion of your name in the zone of consideration of Group D selection is almost nil even in the nears future.

This is in final disposal of all your application received on the subject."

4. Hence being aggrieved by the above order, the applicant ha filed the present OA with prayer to quash the order at Annexure-A/3 and direct the Respondents to appoint him in any Group D post.

5. Respondents filed their counter in which it has been reiterated that the applicant has worked as a substitute of Shri Sanjib Kumar Mohapatra regular GDS MC of Bhatigaon BO in account with Bardol Sub Post Office under Bargarh HO in Sambapur Division for which he is not eligible for regular absorption in cadre of Group D posts under the Department circular dated 17.09.1989 as substitute coming under the category of serial No.V and GDS more than thousand coming under the category of serial No.II are waiting in the Division. Accordingly, it has been submitted by the Respondents that this OA being not maintainable is liable to be dismissed.

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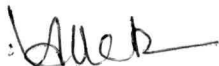
6. Mr.Dhalsamanta, Learned Counsel appearing for the Applicant drew our attention to the earlier order dated 30-06-2005 of this Tribunal in the OA No. 145 of 2003 to consider the case of the Applicant in the light of the circular of the DGP&T dated 17.05.1989 whereas the Respondents considered and rejected the case of the applicant by applying the DGP&T instruction date 24.2.1989. The case of the applicant is covered by the instruction dted 17.5.1989 and not by the instruction dated 24.2.1989. Had the Respondents considered the case of the applicant in the light of the instruction dated 17.5.89 the applicant would have been empanelled being a substitute for appointment in Gr. D category. Hence the consideration given being no consideration the impugned order is liable to be set aside. The contention of the Learned SSC is that consideration of the case of the applicant in the light of the instruction dated 24.2.1989 cannot be construed in any manner bad in law and even consideration of the case of the applicant as per circular dated 17.5.1989 willnot give him any appointment now as many others having completed number of days of substitute service are waiting. Hence, the Respondents' Counsel has reiterated the prayer made in the counter.


7. We have considered the submissions of the parties and perused the materials placed on record.

8. In view of the clear-cut order of this Tribunal in the earlier OA, we strongly disapprove of the action of the

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Superintendent of Post Offices, Sambalpur Division, Sambalpur in rejecting the case of the Applicant by applying the circular dated 24.2.1989. Respondents had been directed to consider the case of the applicant for appointment to Group D post according to the priority of his group to which he belongs as envisaged under the Department circular dated 17.05.1989 as and when vacancy arises. In view of the above, the order under Annexure-A/3 is hereby quashed. Respondents are directed to reconsider the case of the applicant in the light of the order of this Tribunal dated 30th June, 2005 in OA No. 145 of 2003 and communicate the decision to the applicant in a well reasoned order within a period of ninety days from the date of receipt of copy of this order. We dispose of this OA accordingly. No costs.


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


(C.R. Mohapatra)
Member (Admn.)