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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.18 of 2012

Cuttack this the 28th day of March, 2016.


Suresh Kumar Dang...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? No


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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C ORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Suresh Kumar Dang

Aged about 43 years

S/o.Sri Chandrabhanu Dang

Resident of Vill/PO-Daspur

Via-Rajendra College

Dist-Bolangir-767 002

Presently working as GDSBPM of Daspur B.O. in a/c.with
Rajendra College S.O. in Bolangir Division

...Applicant

By the Advocate(s)-M/s.N.R.Routray

M.P.J.Ray

T.K.Choudhury

-VERSUS-

Union of India represented through:

1. The Director General of Posts

Dak Bhawan

Sansad Marg

New delhi-110 116

2. Chief Post Master General

Orissa Circle

At/Po-Bhubaneswar

Dist-Khurda-751 001

3. Superintendent of Post Offices

Bolangir Division

At/PO/Dist-Bolangir

Odisha-767 001

4. Assistant Superintendent of Post Offices I/c.

Bolangir Central Sub Division

At/PO/Dist-Bolangir

Odisha-767 001

...Respondents

By the Advocate(s)-Mr.D.K.Mallick



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ORDER**R.C.MISRA, MEMBER(A):**

Grievance of the applicant in this Original Application is regarding his absorption and/or transfer to the post of GDSBPM, Daspur Branch Post Office in account with Rejedndra College Sub Post Office under Bolangir Head Post Office.

2. Brief facts leading to filing of this O.A. is that through a regular process of selection, applicant had initially been selected and appointed to the post of GDSMC, Daspur Branch Post Office and joined the post in the year 2000. In the year, 2003, the post of GDSBPM of the said Branch Post Office fell vacant due to promotion of the regular incumbent to the post of Postal Assistant. In view of this, applicant was directed to manage the affairs of the post of GDSBPM, Daspur B.O. from 8.2.2003 and continued as such. In the meantime, applicant went on preferring representation and after representation for his regularization in the post of GDSBPM, Daspur B.O., which did not yield any consideration. While the matter stood thus, respondents issued a notification dated 23.12.2011(A/5) calling names from the open market for filling up the vacant post of GDSBPM, Daspur B.O., reserving the same to ST followed by SC/OBC/OC. Aggrieved with this, applicant made a representation dated 31.12.2011 to res.no.2 and simultaneously, moved this Tribunal in the instant O.A. for direction to be issued to respondents, particularly, res.no.3 to consider him for permanent absorption as GDSMPM, Daspur BO.



3. It is the case of the applicant that he is having the required educational qualification for being absorbed against the post in question. Besides, he has already worked against the post of GDSBPM, Daspur B.O. for about nine years, in addition to his own duties as GDSMC. Applicant has also provided rent free accommodation for housing the Branch Post Office at Daspur. He has cited the DG Posts instructions dated 28.8.2006 as well as the decision of this Tribunal in O.A.No.448 of 1996 in support of relief sought by him in the O.A.

4. Respondent-Department have field their counter opposing the prayer of the applicant. While not disputing the factual aspects of the matter, it has been contended that in response to notification, applicant has submitted his application along with the required documents and his case will be considered, keeping in view the extant recruitment rules governing GDS. According to respondents, there is no provision in the rules to absorb an incumbent GDSMC in the post of GDSBPM regularly. It has been pointed out that a GDSMC cannot be transferred to the post of GDSBPM and this is the reason why applicant's request could not be acceded to.

5. Upon perusal of records, we have heard the learned counsel for the parties. We have also gone through the written notes of submission filed by both the sides. In the written notes of submission, applicant has brought to the notice an earlier decision of this Tribunal in O.A.No.772 of 2011 disposed of on



23.2.2015. On the other hand, the written notes of submission filed by the respondents contain more or less the averments as made in the O.A.

6. From the recital of facts as stated above, the short point to be decided whether applicant being initially appointed to the post of GDSMC could be absorbed and/or appointed against the vacant post of GDSBPM in the said Branch Post Office, in view of the fact that he has been directed to manage the work of the post of GDSBPM, in addition to his own duties as GDSMC.

7. On a reference being made to the decision of this Tribunal in O.A.No.772 of 2011 (supra), it reveals that a similar matter had come up before this Tribunal in O.A.No.202 of 1999 disposed of on 2.7.1999. In that O.A., applicant had been working as Extra departmental Packer in Singla Sub Post Office and the vacancy for the post of GDBPM had arisen at Dundakote (not at Singla). This Tribunal, relying on the circular dated 12.09.1998 issued by the Director General Posts, in which it is stipulated that ***"when an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against the post, he may be allowed to be appointed against that vacant post, provided he is suitable for the other post and fulfills all required conditions"***, held that the vacant post being at Dundakote and not at Singla, where the applicant had been working, he could not be appointed at Dundakote. This decision of the Tribunal



was challenged before the Hon'ble High Court of Orissa in WPC No.835 of 1999. The Hon'ble High Court took note of clarificatory note issued by the DG Posts in letter No.19-21/94-ED & Training dated 11.08.1994 wherein the expression 'place' has been explained as follows:

"...After taking into consideration the basic features of the ED system and other relevant considerations, it has been decided that the exiting word 'place' occurring between the words "...in any office in the same" and "if one of the existing Extra Departmental Agents" shall be substituted by the words "recruiting unit". In other words "in any office in the same recruitment unit" will be substituted".

8. Based on the above clarification, the Hon'ble High Court observed as under.

"A bare reading of the aforesaid note would show that vacancy of the post has now to be considered from the angle of 'recruiting unit' and not from the stand point of 'same office or in any office in the same place'. In other words, the zone of consideration has become wider. There is no dispute that Dundakote and Signgle come within one recruiting unit. Therefore, the case of the petitioner has to be considered in the light of clarificatory note of the Director General of Posts, referred to above".

9. The case in hand no doubt comes within the purview of DG Posts circular dated 12.09.1988⁸⁹ (i) as referred to above and to this extent applicant has a right to be considered. However, the peculiarity involved is that the post of GDSBPM sought to be filled up for Daspur Branch Post Office has been offered to ST category and it has been indicated that in case the minimum



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required number of three candidates belonging to the said community is not available, the vacancy will be offered to candidates belonging to the other communities in the following order, i.e. SC, OBC and OC. Applicant belongs to OBC category as would be evident from A/1 dated 4.7.2000. Therefore, a question does arise whether this Tribunal, in such a situation could direct consideration of the case of the applicant for his appointment to the post of GDSBPM, Daspur having regard to the provisions of DG Posts circular dated 12.9.1988, notwithstanding the fact that the post of offered to be filled up by ST category. Neither of the parties has made any submission from this point^{of} of view.

10. Since the post of GDSBPM, Daspur B.O. has been offered to ST category and in case the minimum required number of three candidates belonging to ST community is not available, the vacancy will be offered to candidates belonging to the other communities in the following order, i.e. SC, OBC and OC, in our considered view, the Tribunal is not within its powers and authority to relax this provision and direct the respondents to consider the case of the applicant who belongs to OBC category by ignoring the rights of the candidates belonging to reserved community. Therefore, a duty is cast on the respondents to scrupulously follow the point of reservations step by step and in such an eventuality, applicant's turn will come in case the minimum required number of three candidates either in ST or



SC category, in order of preference, in pursuance of the notification is not available for consideration to the post in question. Therefore, unless and until the above provisions are not complied with in letter and spirit, even if applicant's case deserves to be considered in the light of GD (Posts) instructions, he cannot be so considered by jumping from the queue in the matter of concession and reservations granted to the ST and SC categories, respectively.

11. It is an admitted fact that applicant, in response to the notification, has submitted an application with necessary documentation for being considered to the post of GDSBPM, Daspur B.O. But, he has to wait until his turn comes. However, we make it clear that if during the process of selection, the minimum required number of three candidates is not available from either of the communities, i.e., ST and SC, in pursuance of notification, and the post in such eventuality is offered to OBC category to which applicant belongs, his case shall be considered in the light of GD(Posts) instructions dated 12.9.1988 read along with clarificatory note dated 11.8.1994, for his appointment as GDSBPM, Daspur B.O.

12. With the observations and directions as aforesaid, the O.A. is thus disposed of. No costs.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

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