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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 26 of 2012
Cuttack, this the ~~18th~~ day of May, 2016

Bijayanarayan Mohanty Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


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


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/0026 OF 2012
Cuttack, this the 18th day of May, 2016

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER(A)

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Sri Bijayanarayan Mohanty,
aged about 51 years
S/o Late Gourang Mohanty,
at present working as M.T.S., Group-D,
Under Jajpur Road Railway Services(MTS)
At/PO-Jajpur Road, Dist-Jajpur, Vill-PO-Tulati,
Via-Jaipur Road, Dist-Jajpur.

.....Applicant

By the Advocate(s)-M/s. S. Behera, A. Mishra.

-Versus-

Union of India, represented through

1. Director General of Post,
At-Dak Bhawan,
New Delhi-110116.
2. Chief Postmaster General,
Orissa Circle, At/Po-Bhubaneswar,
Dist-Khurda, 751001.
3. Superintendent of Post Offices,
Cuttack North Division,
At-Cantonment Road,
PO-Baxibazar, Town/Dist-Cuttack, 753001.

.....Respondents

By the Advocate(s)-S.K. Patra

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ORDER

A.K.PATNAIK, MEMBER (J):

The prayer of the applicant in this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 is as under:

Under the circumstances, the applicant most humbly and respectfully prays that the Hon'ble Tribunal may be pleased to quash the order issued by the Respondent No.3 under annexure-A/2;

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And further be pleased to direct the respondents to issue the order of promotion against the cadre of Postman under seniority quota in favour of the applicant forthwith; OR

Pass such other order(s)/ directions(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

And allow the Original application with costs;

2. The impugned order under Annexure-A/2 dated 23.12.2011 reads as under:

Your case could not be considered for promotion to the cadre of Postman under seniority quota as you have crossed the age limit.

3. It is the case of the applicant, in a nutshell, that he joined service as EDDA on 24.01.1979. While continuing as such he was also allowed to discharge the duties of EDBPM in addition to his own duties as EDDA w.e.f. 24.11.1998. According to him, he had already served the department for about 33 years without any promotion. The Respondents convened DPC on 21.06.2010 for filling up of two posts under seniority quota from amongst the GDS employees and recommended two names, viz. Ananta Charan Panda (UR) and Dhruba Charan Jena (SC). Sri Ananta Charan Panda refused to accept the promotion vide his application dated 26.06.2010. Consequently, the applicant being placed at Sl. No.2 of the UR category ought to have been promoted to Postman cadre but his case was not considered for which he submitted representation dated 20.06.2011 and 03.10.2011 requesting to give him promotion to the post of Postman. The Respondents rejected the case of the applicant on the ground that he crossed the age limit of 50 years. It is

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his case that the vacancies were of 2006 an 2008. In the year 2009, the applicant was aged about 48 years. By the time the DPC was held, i.e. on 21.06.2010, he was also within the age of 50 years. As such, rejection of his candidature, although he was placed at Sl. No. 2 of the list, on the ground of age is illegal. Thereafter, his case was considered for the cadre of MTS as against the backlog vacancy of 2009-10 on 05.09.2011 and had he been considered and promoted to the post of Postman he would not have been promoted to the cadre of MTS. By virtue of non-consideration of his case in right perspective to the post of Postman, he was made to suffer financially as the Postman carries higher scale of pay than the MTS. On the above ground, the applicant has prayed for the relief quoted above.

4. Respondents have filed counter opposing the prayer of the applicant. It is the specific case of the Respondents that there was two vacancies in the Postman cadre against seniority quota on Cuttack "N" Division; one vacancy for the year 2006 and another for the year 2009. The one post was meant for UR category and the another was meant for SC category. Accordingly, the DPC was held on 21.06.2010. The proposal for promotion was placed before the DPC and two candidates were selected for Postman cadre. Sri Ananta Charan Panda (UR candidate) refused to avail promotion so one post remained vacant. The applicant submitted application requesting for his promotion as against the post which was refused by Sri A.C.Panda. His representation was duly considered and the same was rejected on the ground that there was no waiting list prepared by the DPC on 21.06.2010. Thereafter, the

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applicant made application for promotion to the post of Postman on 28.03.2011 in place of A.C.Panda. His case was duly considered but it was found that the applicant crossed the age limit of 50 years as on that date. Accordingly, the applicant was intimated the result of the consideration of his representation. It has been stated by the Respondents that there being no illegality in the impugned order, this O.A. is liable to be dismissed.

5. We have heard Ld. Counsels for both the sides and have perused the materials placed on record.

6. Besides reiterating the stand taken in the O.A., Ld. Counsel for the applicant drew our attention to the order of this Tribunal dated 07.08.2014 in O.A. No. 637/2011 filed by one Ajaya Kumar Mohapatra to substantiate his stand that age of a candidate should be taken into consideration with reference to the date of vacancy or at best to the date when the DPC was convened and in the instant case DPC having been convened on 21.06.2010 when the applicant was very much within the age his case ought not to have been rejected on the ground that the applicant has crossed the age limit of 50 years. Ld. Counsel for the applicant vehemently argued that as UR category candidate, who was at Sl.No.1, refused his promotion, the applicant being at Sl. No.2 of UR category ought to have been promoted in pursuance of the recommendation of the DPC held on 21.06.2010. But the authorities did not consider the said aspect in his proper perspective and, thereby, the applicant has been made to suffer. Hence, the Ld. Counsel for the applicant has press for the relief claimed in this O.A.

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7. Per contra, Ld. Counsel for the Respondents placing reliance on the stand taken in the counter has reiterated that there was no provision for maintaining waiting list by the DPC. The recommended candidate Sri A.C.Panda refused his promotion vide his application dated 26.06.2010, thereafter, the applicant submitted his representation, on examination of which, it was found that by that time the applicant had become over aged. However, in the meantime, the case of the applicant was considered for the post of MTS and he having found suitable was promoted to the said cadre. As such, Respondents have submitted that this O.A. is liable to be dismissed.

8. Before advertizing to the stand taken by the respective parties, we would like to go through the earlier order of this Tribunal dated 07.08.2014 in O.A. No. 637/2011 filed by one Ajaya Kumar Mohapatra. We find that in the case of Ajaya Kumar Mohapatra (supra), admittedly, he belonged to UR community and had crossed the upper age limit of 50 years as on 01.07.2011. Respondents issued notification dated 19.10.2010 inviting application for holding departmental examination for promotion to the Group D/Mail & GDS to Postman/Mail Guard Cadre for vacancy year 2009-10. There was 11 vacancies for 2009 and 8 vacancies for 2010. When his case was rejected by the Respondents on the ground of becoming age bar, he filed aforesaid O.A. in which this Tribunal after taking into consideration the various decision of the Hon'ble Apex Court held as under:

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

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“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, 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. Applicant 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 for 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 considered. In so far as holding the examination, entire responsibility is thrust upon the Regional Director of the Postal Department to hold selection for filing 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 employee 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 revolts 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 hereby depriving 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 conditions 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."

9. In the case of Sub Inspector Rooplal and another Vs Lieutenant Governor, reported in AIR 2000 SC 594, it has been observed as under:

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point

could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bounded by the enunciation of law made by the superior courts. A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of *Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel*, [1968] 1 SCR 455 while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai's case* and of Macleod, C.J., in *Haridas 's case* did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J. observed in *Lala Shri Bhagwan and Anr, v. Shri Ram Chand and Anr.*

"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, lie should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before

the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

13. We are indeed sorry to note the attitude of the tribunal in this case which, after noticing the earlier judgment of a coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the tribunal in this case, a lot of valuable time of the Court is wasted and parties to this case have been put to considerable hardship."

10. On examination of the above case in hand vis-à-vis the case relied upon by the applicant, in the instant case as it appears the applicant was within the age when the vacancy was available and even on the date when the DPC was convened. When Sri A.C.Panda refused to join in the promotional post obviously and axiomatically the vacancy cannot be treated as to be of the year when Sri Panda refused such promotion. It is not the case of the Respondents that the case of the applicant was considered but he was found ineligible for any other ground. Once, Sri Panda refused promotion, even after there was no waiting list the authorities ought to have considered the case of the applicant taking into consideration the age and other eligibility either on the date of the vacancy or at least when the original DPC was held. Although, giving reasons in the order of rejection is one of the principles of natural justice but in the instant case Respondents rejected the grievance of the applicant only by stating that the applicant has crossed the age limit.

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11. On examination of the case in hand and the decision already taken by this Tribunal in the case referred to above, we do not find any distinction to make a departure ^{from} ~~for~~ the view already taken therein. Viewed the matter from any angle, as per the above discussion, we have no hesitation to hold that the decision taken by the authorities in rejecting the claim of the applicant can not pass test of reasonableness and the provision enshrined under Article 14 and 16 of the Constitution of India. Hence, we quash the order of rejection dated 23.12.2011 and remand the matter back to the Respondents to examine the case of the applicant with reference to the discussion made above and communicate the reasoned order to him within a period of 90 days from the date of receipt of copy of this order. No costs.


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


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

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