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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NO. 723/2014**

this the 21 day of December, 2016

CORAM

**HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)**

Trilochan Sahni aged about 45 years S/o Late Shri Sitanath Sahani,
Resident of Vill. Raghunathpur, PO Krushnapur Sasan, Via
Kantigadia, PS Balichandrapur, District Jajpur, Odisha-49.

...Applicant

By the Advocate :Mr. C.P.Sahani

-VERSUS-

- 1-Union of India represented through its Secretary - cum -
Director General Posts, Dak Bhawan, Sansad Marg, New Delhi-1.
- 2-Chief Post Master General, Odisha Circle, At/PO Bhubaneswar,
District Khurda, Odisha-01.
- 3-Superintendent of Post Offices, Cuttack (North) Division, Cuttack
- 4-Inspector of Posts, Dharmasala Sub Division, Dist. Jajapur-08.

...Respondents

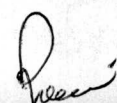
By the Advocate : Mr. S.K.Patra

O R D E R

PER R.C.MISRA, MEMBER(A) :

The applicant in this OA has approached this Tribunal making a prayer that respondents who are the authorities of Department of Posts, may be directed to consider his case by giving preference to physically handicapped candidates against the short-fall vacancies under the said quota in the selection of GDSMD-cum-MC Raipur BO in account with Charinangal SO by modifying the Notification No. B4/GDSMD-cum-MC/Raipur BO dated 04.07.2014.

2. Briefly the facts of this OA are that applicant is a permanently disabled person under category 'Deaf' and his percentage of disability is 60%. Disability certificate dated 7.6.2002 granted by the District Medical Board of Jajpur has been enclosed at Annex. A/1 of this O.A. The applicant has passed his matriculation in the year 1991 and is eligible for the post of GDSMD-cum-MC, Raipur



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B.O. He is now about 45 years of age and is not eligible ^{for} ~~to~~ any other job except the post of GDS in Postal Department in which maximum age prescribed is 65 years. The Inspector Posts, Dharmasala by Notification No. PF/GDSMD/Raipur dated 29.06.2002 (Annex.A/3) invited candidates for consideration for the post of GDSMD, Raipur BO. Candidates from physically handicapped category were also asked to apply along with the medical certificates. Applicant submitted his application (Annex.A/4) , however, no action was taken by respondents to follow-up with the Notification dated 29.06.2002 and the matter was allegedly kept in cold storage. When the matter was pending as such, respondent No. 4 brought out a fresh Notification dated 04.07.2014 (Annex.A/5). The applicant again applied vide application dated 23.7.2014 and along with application, applicant made a special representation to respondent No. 4 ^{endorsing} ~~enclosing~~ a copy thereof to respondent No. 3, praying for preference to be given to physically handicapped candidates by citing the Government's Instructions and the short-fall vacancies against physically handicapped quota. It is pointed-out that as per the Government of India Instructions, 3% of the vacancies to be filled-up by selection, are to be reserved for physically handicapped candidates and out of these 3% vacancies, 1% would be for Deaf, 1% for Blind and 1% for Orthopedically P.H. categories. The Director General (Posts) i.e. respondent No. 1, had issued orders on 22.04.1994 which was circulated by the Chief Post Master General, Odisha, to concerned authorities giving direction for filling-up the posts ear-marked for physically handicapped category by giving preference to physically handicapped candidates in appointment of GDS. It was indicated that there was no need to maintain a roster in this regard but, preference should

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be given to such candidates "to ensure that adequate representation is given to physically handicapped candidates in the recruitment of GDS". However, in spite of such instructions, the Superintendent of Post Offices, Cuttack North Division i.e. respondent No. 3, did not appoint a single Deaf candidate by the date 04.09.2001. The respondent No. 2 in his letter dated 04.09.2001 allocated 46 short-fall vacancies including ¹⁵~~50~~ vacancies for the Deaf candidates in the physically handicapped quota to Cuttack North Division directing respondent No. 3 to appoint physically handicapped candidates by giving preference provided they satisfy all other conditions for the post in question. Vide letter dated 17.06.2002 (Annex.A/10) there was further instructions given to respondent No. 3 by respondent No. 2 that whenever there is a short-fall against physically handicapped quota, it is necessary to clearly mention that preference to physically handicapped candidates will be given in selection over other candidates. In spite of these instructions being given repeatedly, respondent No. 3 did not appoint a single physically handicapped candidate particularly from the Deaf category in the Division. The respondent No. 3 in response to a RTI application of one Shri S.S.Samal replied that no physically handicapped candidate including Deaf category, has been appointed as GDS in Cuttack North Division. In context of the above facts, applicant has prayed that respondents No. 3 and 4 may be directed to consider his application giving preference to him being a physically handicapped candidate of Deaf category, for recruitment to the post of GDSMD-cum-MC, Raipur B.O. in keeping with the instructions given by respondents No. 1 and 2 in this regard. It is submitted by him that Government of India has made provisions for reservation of physically handicapped incumbents by enacting

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provisions viz. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in which, provisions have been made to appoint in every establishment such percentage of vacancies not less than 3% for persons with disabilities. The respondents by not filling up the physically handicapped quota vacancies have violated provisions of the said Act. In the Cuttack North Division which covers the Dharmashala Postal Sub Division, there is a short-fall of 46 vacancies meant for the physically handicapped category. It is further mentioned by applicant that Hon'ble the Apex Court in the matter of Civil Appeal No. 9096 of 2013 arising out of SLP (Civil) No. 7541/2009, ***Union of India and Ors. Vs. National Federation of Blind and Ors.***, have observed that non-observance of provisions of reservation for persons with disabilities, shall be considered as an act of disobedience and the nodal officer concerned in the Department or the PSU will be responsible for strict implementation of all reservations for persons with disabilities. It is pleaded by applicant that by not giving appointment to any physically handicapped candidates including him, respondents are disobeying the provisions of the Act as also the specific directions of the Hon'ble Apex Court on the issue.

3. The respondents by filing a counter affidavit have submitted that Raipur BO was consisting of one GDS BPM, 1 GDS MD and 1 GDS MC post. Subsequently, post of GDSMC, was abolished by the competent authority and permission was accorded to fill-up the re-designated post of GDSMD-cum-MC and as per approval, decision was taken to fill-up said vacant post. The District Employment Officer, Jaipur, was requested to sponsor names of eligible candidates and simultaneously public notification calling for applications, was issued on 04.07.2014. In

response to the said notification issued by the respondent No. 4, 29 candidates including the applicant, submitted their applications within stipulated time. The applicant along with his application submitted a letter in which he prayed for giving preference being a Deaf category candidate in selection. It is further submitted that though the post was notified on 29.06.2002 but, the selection did not materialize and no such record regarding notification for the post of GDSMD, Raipur BO dated 29.6.2002, was found available in the office of respondent No. 4. After the abolition of the post of GDSMC and re-designation of the said post as GDSMD-cum-MC, a Notification dated 4.7.2014 was issued. With regard to the representation of the applicant regarding preference to be given under physically handicapped category, respondents submitted that this post is Un-reserved one and applicant's representation dated 23.07.2014 received in the office of Superintendent of Post Offices, Cuttack North Division, i.e. respondent No. 3, is pending for disposal. Again respondents have submitted that applicant earlier applied in response to Notification dated 29.06.2002 and he remained silent over a period of 12 years and has again applied in response to Notification dated 04.07.2014. The submission of the respondents in the counter affidavit is self contradictory since they have earlier submitted that no records are available with regard to the recruitment notification of the year 2002. There seems to be no bar to the present applicant for applying again in response to the notification issued in 2014 since he was completely un-aware ^{of} ~~to~~ the fact ^{about} ~~that~~ what was the result of Notification of the year 2002. The respondents further have submitted that the notification of the year 2014 is in supersession of earlier notification of 2002. It is admitted that 46 posts have been allocated to the Division under the control of respondent No.

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3 in three different categories under the physically handicapped quota out of 1526 total number of GDS posts of Cuttack North Division. It is further admitted that there are instructions to give preference to physically handicapped candidates in appointment to GDS category. At the same time, capacity of the candidate concerned should also be considered. But, what action has been taken in compliance of such instructions, is not mentioned in the counter affidavit. It is further submitted that in the instant case, there is no proposal in the Notification dated 04.07.2014 issued by the respondent No. 4 to fill up the quota of physically handicapped persons. The respondents have further urged that the Government of India, Department of Personnel & Training in its OM dated 20.03.2014 has circulated a judgment dated 08.10.2013 of the Hon'ble Supreme Court to respondent No. 1 in which, it is made clear that the reservation for persons with disabilities in Group A or Group B, shall be computed on the basis of total number of vacancies occurring in direct recruitment quota. It has been made clear in the counter affidavit that this Circular of the DOP&T is meant for the categories of Group A, B, C and D posts in the Government. The post of GDSMD-cum-MC, Raipur BO, does not come within the purview of the said Circular of the DOP&T.

4. The applicant has also filed a rejoinder in which it is stated that no selection was made as per the Notification dated 29.06.2002 till date. While the applicant was still waiting for the decision on his application of the year 2002, the respondent No. 4 issued a fresh Notification on 04.07.2014 in response to which, applicant has submitted his application again as well as a representation for considering him under physically handicapped category. It is further pointed-out that office of the Chief Post

Master General i.e. respondent No. 2, had already issued

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instructions with regard to filling-up vacancies ear-marked for physically handicapped persons. It is pointed-out that vide letter dated 04.09.2001, ² office of respondent No. 2 have communicated to respondent No. 3 regarding number of GDS vacancies which are to be filled-up by physically handicapped category persons. Therefore, it is submitted that there is no doubt that reservation for the physically handicapped categories is available for the GDS cadre and in this regard, the office of respondent No. 2 has already directed respondent No. 3 and others that the short-fall vacancies under the category, may be filled-up by giving preference to the physically handicapped candidates; provided they satisfy all other conditions. The capacity of the candidates to perform duties should however be considered in consultation with prescribed medical authorities according to instructions given by respondent No. 2. It is also directed that in case any physically handicapped incumbent is found eligible for any post, such case should be forwarded for approval by respondent No. 2 along with relevant documents and other particulars.

5. Having perused the documents in this case, we have also heard learned counsel for both sides.

6. It is the admitted position that reservation of posts for physically handicapped persons for recruitment of GDS categories is available and in this regard, the letter of 04.09.2001 issued by respondent No. 2 to the Field Offices is very much clear. Instructions have been issued to fill-up the GDS cadre vacancies for handicapped category in different divisions and the posts reserved for Blind, Deaf and Orthopedically handicapped persons, have been separately indicated. From counter affidavit, it is made clear that concerned authorities have not initiated adequate steps

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 to fill-up such vacancies. Applicant has submitted that on 29.06.2002, there was a Notification for filling-up the posts of GDS Raipur Mail Deliverer GDSMD Raipur. On perusal of this Notification, we find that there is a stipulation that physically handicapped persons can also apply for whom 3% of the total GDS posts are ear-marked @ 1% each in three different categories i.e. Blind, Deaf and Orthopedically handicapped incumbents. It is not known what was the follow-up action after issuance of said notification and the present application^l who has given his application in response thereto^l but is not aware of the position till date. The counter affidavit mentions that in the office of respondent No. 4, no records are available in this regard, we find that this itself is a very disturbing reflection. After a lapse of 12 years, the Advertisement dated 04.07.2014 was issued inviting applications for the posts of GDSMD-cum-MC of the Raipur BO, wherein, we find that no reservation for physically handicapped category persons have been made which is quite surprising as to how the reservation which was rightly indicated in 2002 notification for PH quota candidates, has been omitted particularly when as per the version of the respondents in their counter affidavit that 46 vacancies of physically handicapped quota were available to be filled up and even after lapse^{gl} so many years, not a single physically handicapped^{pd} quota vacancy has been filled up. This is no doubt a gross violation of the Instructions issued in this regard by the Government of India as well as the Field authorities. It is not justified that when applicant has applied under physically handicapped quota despite that his case was not considered by the authorities. The applicant along with his application had given a representation in this regard and a copy of the representation dated 23.07.2014 which was received by respondent No. 3 on

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04.08.2014, is admittedly pending for disposal. It is, therefore, evident that respondent No. 3 did not bother to dispose of the representation of applicant to consider his case under physically handicapped category. As already mentioned, it is quite surprising that a preference for physically handicapped category was indicated in the notification issued in 2002, but in the year 2014 when a fresh notification was issued, this preference was not indicated, therefore, it appears that respondent-authorities are not following the specific Guidelines of the Government in letter and spirit on the issue. Another point which strikes us is that when a notification was issued in 2002 and no recruitment was actually made, the authorities should have cancelled the same giving reasons as to why no further steps were taken in pursuance of that notification. Further, a fresh notification in 2014 should have been issued only after cancelling the notification with adequate reasons. The applicants including the present applicant, who had applied for the post of GDS MD in the year 2002, were kept absolutely in dark about fate of their earlier application. If somebody has actually applied he has a legitimate right to know what happened to the said application. On the other hand, respondents have also submitted that documents with regard to the notification of 2002 were also not available with them, this generally indicates a sorry ^{State} of affairs.

7. With regard to the ^{discussions} ~~directions~~ that we have made about ^{ye} ~~it~~, we are convinced that applicant is eligible to be given preferential consideration for recruitment to the post concerned if medical certificates with regard to his physical status, are genuine and have been legitimately issued. If he qualifies all other conditions of recruitment, he should be given preferential treatment in pursuance of instructions of the Government for giving

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preferential treatment to the persons of physically handicapped category. The non-inclusion of such preference in the notification of the year 2014 is according to us, not valid in law. Therefore, considering all these facts, we quash the Notification dated 04.07.2014 (Annex.A/5) and, direct the respondents to issue fresh Notification for recruitment to the post in question after making provision(s) for preferential treatment to be given to persons of physically handicapped categories, as has been done in the previous Notification of 2002. After such notification is issued, applicant is free to apply again with his documents regarding physically handicapped status and when there^e will be a public notification, it is presumed that applications of all interested persons will be received and respondents will make selection as per extant rules. This direction in our view will suffice to redress the grievance of the applicant.

8. With the above observation and direction, this O.A. is allowed to the extent as stated above. No costs.


[S.K. Pattnaik]
Member(J)


[R.C. Misra]
Member (A)