

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

LIBRARY

Original Application No. 861 of 2013

Reserved on 05.02.2016.

Pronounced on 23. 2. 2016.

Hon'ble Ms. B. Banerjee, Member - J
Hon'ble Ms. Jayati Chandra, Member - A

Sri Angad Mahato, son of Sri Premananda Mahato, aged about 53 years, residing at Bongabari, P.O, Vivekananda Nagar, P.S Purulia working as GDSMP Vivekananda Nagar, S.O. Under Purulia Division, Purulia - 723 147.

..... Applicant

By Advocate: Sri B.K. Chatterjee.
Sri M.K. Bandyopad

VERSUS

1. Union of India through its Secretary, Ministry of Communication, Department of Post Dak Bhawan, New Delhi - 110 001.
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhawan, Chittaranjan Avenue, Kolkata - 700 012.
3. The Post Master General, South Bengal Region, Chittaranjan Avenue, Kolkata - 700 012.
4. Superintendent of Post Offices, Purulia Division, Purulia - 723 101.
5. The Post Master, Purulia Head Office, Purulia - 723101.
6. Sri Tarani Mahato, GDSMD, Sihali B.O. Purulia, 723149.

..... Respondents

By Advocate: Sri L.K. Chatterjee
Sri B.P. Manna
Sri S.K. Datta
Sri M.K. Ghara

J. Chandra

ORDER

Delivered by: **Hon'ble Ms. Jayati Chandra, Member - A**

By means of this O.A filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:

- (i) for an order quashing and setting aside the selection of respondent No. 6 as communicated by Memo dated 24.07.2013 also memo dated 24.07.2013 made Annexure A-4 to this application.
- (ii) for an order directing the respondents to select the applicant in the post of Postman cadre under the quota of seniority-cum-fitness basis as being qualified candidate for the post of Postman under outsider quota of seniority basis.
- (iii) for an order directing the respondents to select and to appoint the applicant in the post of Postman cadre on outsider quota of length of service basis.
- (iv) for an order directing the respondents to produce the entire records relating to the case.
- (v) to pass such other or further order/ orders as to this Hon'ble Tribunal may deem fit and proper.
- (vi) for costs and incidental to this application.

2. The case of the applicant is that he was holding the post of GDSMP at Vivekananda Nagar S.O. His date of birth

T. Chandra

is 02.10.1960 and he belongs to the OBC category. Vide Memo dated 18.01.2011 as communicated vide circle office, Kolkata Memo dated 17.11.2011 (the copies of Memos have not been provided), three vacancies of Postman for direct/ outside quota was approved in the Purulia Division in which the applicant's place of posting falls. These vacancies were calculated for the year 2010.

3. As per the relevant recruitment rules, the outside quota of 03 posts were further sub divided into (a) 02 posts for being filled up on seniority-cum-fitness basis and (b) 01 post on the basis of merit from amongst the GDs officials. The eligibility criteria for the sub category (a) is 5 years regular service and maximum age of 50 years. The community wise break up for the 2 sub category (a) posts was 1 for OC and 1 for OBC.

4. The applicants having fulfilled all eligibility criteria was considered in the 1st DPC held on 24.11.2011 and was selected vide the notification dated 28.11.2011 (Annexure A1). All of a sudden, the said notification as it related to the case of the applicant was cancelled vide Memo dated 01.12.2011 (Annexure-A2).

5. The applicant came to know that a review DPC was held on 15.03.2012 and certain complaints were received regarding the selection of one Shri Sunil Kumar Mahato GDSML Purulia in the OBC category although he belonged to

the OC category as per gradation list of GS staff published on 26.02.2009. Finally vide notification dated 04.07.2013, the names of the candidates selected for the post of Postman from the GDS Cadre against seniority-cum-fitness basis was published (Annexure A-3). He came to know from Memo dated 24.07.2013, one Shri Gobardhan Majhi, GDSCMC (ST) was selected against the OC vacancy and Shri Sunil Kumar Mahato against the OBC vacancy. On his declining to take up the post, respondent No. 6 i.e. Sri Tarani Mahato, GDSMD was selected (Annexure A-4) against the OC vacancy. This selection is challenged as in the event of Shri Gobardhan Majhi having declined to join, the claim of the applicant should have been considered as he is much senior to Respondent No. 6. Shri G. Majhi, a ST candidate was selected against the OC quota on seniority basis.

6. The claim of the applicant has been denied by the official respondents 1-6. In their counter affidavit they have stated that as per the CPMG(W.B) Memo dated 17.11.2011, the DPC met on 23.11.2011 for selection of two posts of Postman in the vacancy year of 2010, to be filled up on seniority-cum-fitness basis from amongst the GDS Cadre. The eligibility criteria was 15 years service as on 01.01.2011 and maximum age of 50 years for OC, 53 years for OBC and 55 years for SC as on 01.07.2011. The selected candidates were:

<u>Selected Candidate</u>	<u>DOB</u>	<u>DOE</u>
1). Sri Phanibhusan Rajwar (SC) (Selected on merit) GDSMC, Dumdumi, B.O.	02.10.1961	22.09.1980
2). Sri Angad Mahato (OBC) GDSMP, V.Nagar, S.O.	02.10.1960	15.11.1980

7. As it was detected that one Shri Gobardhan Majhi who was senior to the selected persons had been omitted, the earlier selection was cancelled and a fresh selection was made by DPC dated 15.03.2012. The selected candidates were:

<u>Selected Candidate</u>	<u>DOB</u>	<u>DOE</u>
1) Gobardhan Majhi (GDS MC Khatanga BO)	17.02.1962	19.09.1980
2) Sri Sunil Kr. Mahato (GDS MC, Parbedia BO)	11.07.1960	22.11.1978

The waiting list of OC and OBC were separately prepared as follows:

Waiting list for OC post

Sl. No.	Name & Designation of GDS	Community	DOB	DOE
1	Sri Tarani Mahato, GDSMD, Sihali BO	OC	28.07.1962	15.12.1980
2	Sri Srinath Singha Mura, GDS MC, Kalimati BO	ST	06.09.1962	16.12.1980
3	Sri Jagannath Roy, GSC MC, Narayanpur BO	OC	12.05.1962	31.12.1980

J. Chandre

Waiting list for OBC

Sl. No.	Name & Designation of GDS	Community	DOB	DOE
1	Sri Angad Mahato, GDS MP, V. Nagar SO	OBC	02.10.1960	15.11.1980
2	Sri Gopal Ch Mahato, GDS MP, K Joria BO	OBC	13.07.1960	10.02.1984
3	Sri Subhash Ch Mahato, GDS MC, Gengara BO	OBC	17.11.1959	19.07.1985

8. The applicant, earlier selected against the OBC quota, was not selected by the revised DPC as he had crossed the age limit of 50 years as on 01.07.2011 against the OC quota. He lost out to his senior Shri Sunil Mahato against the OBC quota. Respondent NO. 6 being 1st on the OC waiting list was selected against OC quota.

9. The respondent No. 6 also filed his counter reply through which he has repeated facts as narrated by Respondent Nos. 1-5. He has further stressed on the fact that the applicant could not have been considered against the vacancy meant for OC category as he was overage for the same as on 01.07.2011. But he was considered against the OBC vacancy for which the age limit was 53.

10. The applicant through his rejoinder reply has stated that the DoP (Postman and Mail Guard) Recruitment Rules came into force in the year 2010. The rules clearly stipulates

J. Chandra

that the maximum age limit for appointment of GDS shall be 50 years as on the 1st day of January of the vacancy year (relaxable for those belonging to SC/ST categories by 5 years and for OBC category by 3 years). Thus the cutoff date for determining the age limit has been wrongly fixed as on 01.07.2011. During the course of hearing the learned counsel for the applicant cited the order dated 29.04.2009 passed by the Hyderabad Bench of the CAT in O.A No. 582 of 2008 in which it has been held that the eligibility criteria of an employee is to be taken as on the date on which the vacancy arose for the purpose of promotion towards the seniority quota and not the date on which the DPC meets. The learned counsel for the applicant has also submitted his written arguments.

11. We have heard the learned counsels for the parties and have perused the records. The broad facts of the case are common. The common points for easy recapitulation are set down below:

- (a) There were two vacancies of Postman in the Purulia Division to be filled up under the 25% quota of promotion from amongst the GDS Cadre on the basis of seniority-cum-fitness.
- (b) The vacancies related to the year 2010.
- (c) The eligibility criteria was 15 years service as GDS and the age limit would be 50 years for OC, 53 years for OBC and 55 years for SC/ST.

T. Chandra

12. The point of controversy arose from the cut off date for determination of maximum age limit. The applicant's case is that the cut off date should be 01.01.2010 as the vacancies relate to the year 2010. As on that date he was below the age of 50 for consideration as a OC candidate on the basis of his seniority. The respondents have held that the cut off date for determination of the maximum age is 01.07.2011. On that date the applicant was more than 50 years old and therefore, could not be considered against OC vacancy. His date of birth being 02.10.2060 he was considered against the OBC vacancy, but in that category he could not get the benefit of his selection, although placed in the waiting list as his senior Shri Sunil Kr. Mahato (DOB - 11.07.1960) was selected against the OBC vacancy.

13. From Swamy's compilation of Service Rules for Postal Gramin Dak Sewak (upto 2009, page 172, Section VIII) it is seen that the cut off date is to be 1st of July in which recruitment is made. The question as to what should be the cut off date - when the vacancy arose or when the post falls vacant was delibered upon following para of the order dated 29.04.2009 passed in O.A No. 582/2008 by the Hyderabad of CAT Bench. The relevant part of the order is quoted below:

"... For the vacancies of a particular year, the cut off date for considering the age is 1st July of that year. As the applicant belongs to SC community, he is entitled to be considered for the OC vacancy till he completes the

age of 50 years and for SC vacancy till he completes the age of 55 years. As the applicant's date of birth is 16.06.61, he is entitled to be considered for OC vacancy of seniority quota till 14.06.2011 provided he is cleared by the DPC. So far as the SC vacancy is concerned, he is entitled to be considered till 14.06.2016 provided he is cleared by the DPC. Therefore, as and when vacancies are notified for 25% seniority quota, the name of the applicant is required to be considered in accordance with the seniority among the GDS employees who completed 15 years of service. This Tribunal in OA 754/2005 dated 27.07.2007, held that the eligibility criteria is to be taken as on the date on which the vacancies arose for the purpose of promotion towards the seniority quota and not the date on which the DPC meets. In P.N. Premachandran Vs State of Kerala and others reported in 2004 SCC (Lands) 170, the Hon'ble Apex Court held that delay in convening the DPC being administrative lapse, promotees cannot be made to suffer for no fault of their part and when the DPC meet at a later date, they should be promoted with retrospective effect....."

14. It is to be noted that the order was passed in the light of DoPT O.M. dated 10.04.1986. The learned counsel for the respondents have not produced a copy of any order passed in Writ/SLP to show that the said order has been nullified. We have no reason to differ with the said order and hold that the crucial date for determining the maximum age of the

applicant would be his age as on 01.07.2010 as the vacancy relates to 2010.

15. On the basis of discussions above, the O.A succeeds. Memo dated 24.07.2013 is cancelled . A review DPC to be held as per rules to consider the case of the applicant as per his age as on 01.07.2010 within four months from the date of receipt of copy of this order. No costs.

(Ms. Jayati Chandra)
Member (A)

(Ms. B. Banerjee)
Member (J)

RK