

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 33 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Santanu Kumar Das, aged about 47 years, S/o Late Swapneswar Dash, At LIV-140, Dumduma Housing Board Colony, H-4 Bhubaneswar at present working as Upper Division Clerk Office of the Regional Director, Central Ground Water Board, South Eastern Region, Khandagiri, Bhubaneswar, Pin – 751030.

.....Applicant

VERSUS

1. The Secretary, Ministry of Water Resources (RD & GR), Government of India, At Shramasakti Bhawan, New Delhi – 110001.

2. The Chairman, Central Ground Water Board, Government of India, Bhujal Bhawan, NH-IV, Faridabad-1, Pin – 121001.

3. The Director Administration, Central Ground Water Board, Government of India, Bhujal Bhawan, NH-IV, Faridabad-1, Pin – 121001.

4. The Regional Director, Central Ground Water Board, South Eastern Region, Khandagiri, Bhubaneswar, Pin – 751030.

.....Respondents.

For the applicant : Mr.J.M.Pattnaik, counsel

For the respondents: Mr.S.B.Mohanty, counsel

Heard & reserved on : 11.1.2019

Order on : 31.1.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

“Under the circumstances, the applicant prays that the Hon'ble Tribunal may graciously be pleased to quash the decision taken in order dated 14th December, 2015 and communicated in letter dated 21.12.2015 (Annexure A/2);

To quash the notification dated 12th October, 2015 (Annexure A/7) and direct the respondents to recalculate the vacancies taking into consideration the two vacancies occurred in the year 2013-14 and hold the selection for both SC/ST and OC candidates simultaneously;”

2. The applicant is aggrieved because of the fact that the respondents were not holding the Limited Departmental Competitive Examination (in short

LDCE) for the promotion to the post of Assistant for the year 2013-14 and 2014-15 and when finally the notification dated 12.10.2015 was issued for the vacancy for the year 2015-16, it was found that two posts of Assistant were categorized as reserved and out of two posts, one post was reserved for SC and one post for ST. Thus no Unreserved category post of Assistant was notified for the vacancy year 2015-16 vide notification dated 12.10.2015 (Annexure A/7).

3. The applicant had initially filed the OA No. 826/2015, which was disposed of with a direction to the respondents to dispose of the applicant's representation dated 30.3.2015. Accordingly, the respondents passed a speaking order dated 14.12.2015 communicated through the letter dated 21.12.2015 (Annexure A/2), rejecting the representation on the ground that in earlier LDCE held in 2009, two candidates were in the selection panel, who were subsequently promoted through DPC for the recruitment year 2012-13. They approached the Tribunal and as per the Court judgment, their promotion was antedated by the respondents to 6.10.2009, including them for the LDCE 2009. Since the promotion of those two candidates was antedated, there were two LDCE quota incumbents in excess of the vacancy, which was adjusted against the subsequent two vacancies for general category for the year 2013-14. Accordingly, the vacancies were notified vide the impugned notification dated 12.10.2015 without any unreserved category of post of Assistant for the year 2015-16 (Annexure A/7) .

4. The post of Assistant under the respondents is to be filled up by regular promotion through DPC in respect of 90% of the post and for 10% of the post, it has to be filled up through LDCE quota. The Tribunal, while considering the OA, has restrained the respondents from taking action in pursuance to the order dated 12.10.2015 in respect of Assistants vide the Tribunal's orders dated 29.1.2016 and dated 1.12.2016.

5. In the OA, the applicant has relied mainly on the following grounds :

- i) The mixing up of promotion through DPC quota and LDCE quota has resulted in applicant losing out the chance for promotion and seniority.
- ii) The respondents have deliberately acted in disregard to the rights of the applicant and it is malafide.
- iii) Even assuming that the adjustment of the vacancies between different year as claimed by the respondents is justified, there are vacancies also available for general candidates, as revealed in the information furnished under the RTI referring to three vacancies under LDCE quota.

iv) It is not clearly indicated in notification dated 12.10.2015 whether vacancies under SC/ST category advertised in the impugned notification fall under 10% LDCE quota.

6. The respondents have filed counter, reiterating basic facts and stating that two employees had to be accommodated in the LDCE 2009 quota as per the Court's order. Due to the decision of the Tribunal in another OA, the respondents had to prepare the reservation roster which indicated a shortfall of three number of LDCE quota vacancies for reserved category in pursuance to Tribunal's order in OA No. 143/2010 in Lovabati Mallick's case. Accordingly, two general vacancies of 2013-14 were utilized for accommodating two additional cases in LDCE 2009 and two vacancies of reserved category were notified on 12.10.2015, leaving one more reserved category vacancy to be adjusted in future. The other grounds mentioned by the applicant have been countered stating that the notification dated 12.10.2015 pertains to filling up of vacancies in reserved category since earlier no reservation roster was prepared and while implementing the Tribunal's judgment dated 25.4.2012 in OA No. 143/2010 reservation roster register for LDCE quota vacancies of Assistant was prepared and three shortfall vacancies in reserved category were noticed from the roster. Accordingly, it was stated that the impugned notification dated 12.10.2015 has been issued correctly.

7. The applicant has filed rejoinder stating that after impugned advertisement, no other advertisement for unreserved category was notified for subsequent year. The respondents in response to RTI query informed that there are three vacancies in the post of Assistant under 10% LDCE quota. It was stated that but for conversion of the vacancies to reserved category, the applicant would have applied against unreserved vacancy. It is also stated that the respondents have no authority to convert general category post to SC/ST category posts.

8. We have heard learned counsels for the both the parties and also considered the pleadings on record. The speaking order dated 14.12.2015 states regarding the vacancies notified vide the notification dated 12.10.2015 (A/7) as under:-

"It is intimated that 74 posts of Assistants are sanctioned in the Board. Out of which 11 posts are reserved for SC candidate, 05 posts are reserved for ST candidates and 58 posts are reserved for GN candidates. Earlier, combined Reservation Roaster for the post of Assistant had been maintained by this Department which include the incumbents promoted both by DPC and LDCE. After receiving Cat judgment/order in OA No. 143 of 2010 dated 25.4.2012 filed by Smt. Lovabati Mallick, UDC and Ministry's letter No. 22/58/2010-CGWB dated 18.9.2012, board has maintained separate reservation roasters for the post of Assistant for

both method of recruitment i.e. DPC 90% & LDCE 10% (1995 to 31.3.2013). As per separate reservation roaster of LDCE, two posts meant for SC Quota and one post of ST Quota of backlog exist for the period from 1995 to 31.3.2015. These three vacancies will be filled up through LDCE in future. Hence Board has notified the two vacancy pertains to LDCE Quota for SC/ST candidates for the recruitment year 2015-16 vide letter No. 20-40/2015-Min.Estt.-8969 dated 12.10.2015."

This position has been reiterated in para 17 of the counter as under:-

"In reply to the averments made in Para – 4.1 and 4.2 the submissions made in foregoing 'facts of the case' are reiterated and it is respectfully submitted that previously CGWB was not maintaining any separate reservation Roster Register for Examination Quota vacancies of Assistant in CGWB. But in implementation of order dated 25.4.2012 passed by Hon'ble CAT-Cuttack in OA No. 143/2010, the said separate Reservation Roster Register for Examination Quota vacancies of Assistant, is now being maintained and past shortfall of vacancies for reserved category, is being rectified by notifying current vacancies only for SC/ST candidates. Hence article 14 and 16(1) of the Constitution of India may not be treated as violated."

9. From above averments, it would appear that it is necessary for the respondents to adjust three shortfall vacancies from reserved category which have arisen due to preparation of roster for reservation for LDCE quota posts from 1995 till 2015. Hence, all the vacancies of LDCE quota were notified to be from reserved category for the year 2015-16 by converting general category vacancies. There is no rule or instructions as to whether it is appropriate to convert all general vacancies available in one year to reserved category to make up the shortfall. Having allowed such a situation to emerge due to non-maintenance of reservation roster register for LDCE quota from the year 1995, if it was decided by the respondents to make up the entire shortfall in one year i.e. 2015-16, then to that extent, the prospects of general candidates would be affected. In any case, the shortfall of remaining one reserved vacancy will have to be adjusted in subsequent year as stated in the impugned order dated 14.12.2015.

10. It is also noted that due to adjustment of two employees, who were qualified for promotion under DPC quota, among the candidates of LDCE 2009 as per the Court's order, there were two vacancies available from DPC quota and two excess candidates under LDCE quota. Two excess posts under LDCE quota were adjusted against two general vacancies for the year 2013-14 as stated in the impugned order dated 14.12.2015 (Annexure-A/2).

11. We also take note of the fact that the applicant has not furnished any rules or the guidelines of Government in support of his contention that the general category post cannot be converted to reserved category in case of previous shortfall of the candidates belonging to the reserved category. But to

allow fair chance to all categories of candidates, it will be appropriate to adjust one shortfall of reserved vacancy out of two vacancies in the year 2015-16 and adjust two shortfall reserved category vacancies in subsequent years in place of one. Learned counsel for the applicant has submitted a written note of argument, broadly reiterating the stand taken in the OA and citing the judgments in a number of cases. But how these cited cases are similar to the facts of the present OA has not been mentioned in the written notes.

12. In view of the above, we quash the impugned order dated 14.12.2015 and remit the matter to the respondents to modify the notification dated 12.10.2015 for Assistants by notifying one general category post out of two posts for 2015-16 and to adjust two carried over shortfall vacancies in reserved category in subsequent years and to simultaneously take steps to notify the vacancies under LDCE quota for the years subsequent to 2015-16, i.e. for 2016-17, 2017-18 and 2018-19 (if not done already), based on the estimated/projected vacancy for the respective years for the post of Assistant, after adjusting the two shortfall reserved category vacancies that would be carried over after adjustment of one shortfall of reserved category post in 2015-16 as above. The respondents will be at liberty to proceed with the notification dated 12.10.2015 for filling up vacancy for 2015-16 after suitable modification as mentioned above. The applicant will be at liberty to apply for the post notified if he is eligible as per the terms and conditions of the notification for vacancy for Assistants under LDCE quota. This OA is allowed in part accordingly. There will be no order as to cost.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

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