

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH****OA No. 438/2015****Present: Hon'ble Mr.Gokul Chandra Pati, Administrative Member****Hon'ble Mr.Swarup Kumar Mishra, Judicial Member**

Kedarnath Singh, aged about 58 years, S/o Late Bhagaban Singh, presently working as Postal Asst., Balugaon SO, permanent resident of Vill – Posal, PO – Sankheswar, PS – Tirtol, Dist. – Jagatsingpur – 754137.

.....Applicant.

VERSUS

1. Union of India, represented through its Director General, Department of Posts, Government of India, Dak Bhawan, New Delhi – 110001.
2. Chief Postmaster General, Odisha, Bhubaneswar, Dist. – Khurda – 751001.
3. Postmaster General, Sambalpur Region, Sambalpur – 768001.
4. Director of Postal Services (Hqrs), office of the Chief Postmaster General, Odisha Circle, Bhubaneswar – 751001.
5. Senior Supt. Of Post Offices, Puri Division, Puri – 752001.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.M.R.Mohanty, counsel

Heard & reserved on : 21.12.2018

Order on : 3.1.2019

O R D E R**Per Mr.Gokul Chandra Pati, Member (A)**

In this case, the applicant was selected and appointed as a Postal Assistant (in short PA) as an ex-army personnel under the respondent no.3 vide the letter dated 11.2.1992 (Annexure-A/1) and after verification of documents, he was asked to report to the Principal, Postal Training Centre, Darbhanga (in short PTC) on 29.6.1992. Vide the letter dated 2.9.1992, selection of the applicant was cancelled on the ground of submission of false certificate, The applicant was allowed to complete the training, but his result was not declared and he was relieved without any further instruction. Other employees selected with him joined in their respective place of duty. The applicant represented to higher authorities and filed OA No. 555/1992, which was disposed of vide order dated 17.8.2000 (Annexure-A/2) holding that the

certificate submitted by the applicant was genuine and acceptable and his appointment as PA was as per the rules and that the action of the respondents to be unjustified. The order dated 17.8.2000 directed the respondents to appoint the applicant as PA against ex-serviceman quota. Vide order dated 17.1.2002 (Annexure-A/3), the applicant was appointed as PA w.e.f. 23.10.2001. The grievance of the applicant is that he was not given the service benefits to which he is entitled due to wrong cancellation of his earlier appointment order. Subsequently, he came on mutual transfer to Puri Division. Since no action was taken for his retrospective benefit w.e.f. 1992, he submitted a representation dated 24.10.2013 (Annexure-A/4), which was rejected by the respondents vide order dated 12/19.6.2014 (Annexure-A/6), on the ground that the Tribunal while directing appointment of the applicant, did not state anything about retrospective effect of such appointment. Being aggrieved, the OA has been filed seeking the following reliefs:-

- “(i) To admit the OA;
- (ii) To quash the official communication dtd. 12/19.6.2014 (Annexure A/6) made on the basis of referral decision of the Respondent No.4.
- (iii) To direct the official respondents to extend all consequential benefits to the applicant as per the decision of Hon'ble Apex Court in the case of K.P.Manu –vs- Chairman, Scrutiny Committee for Verification of Community Certificate (reported in (2015) 1 SCC (L&S) 757);
- (iv) To pass any other order/orders as deem fit and proper for the ends of justice.”

2. The respondents have filed counter conceding the fact that the applicant's selection was wrongly cancelled 'with misconception that the applicant did not possess 10+2 qualification. But the applicant was serving in the Indian Army and was issued a graduation certificate which was disputed by the appointing authority....' The Tribunal held that the certificate of graduation filed by the applicant was valid and directed the respondents to appoint the applicant as PA against ex-army quota. It is further stated that the case of the applicant has been decided as per the circular dated 4.11.1992 of the DOPT, which stipulates that the seniority is to be counted from the date of appointment.

3. The Rejoinder filed by the applicant stated that even after admitting the mistake, no action was taken to extend the consequential benefits to the applicant. It was further stated that the circular dated 4.11.1992 of the DOPT, referred in the counter is not applicable in this case, since it clarifies that the seniority is to be counted from the date of appointment, not from the date of confirmation. It was admitted that due to cancellation of the appointment, the next person in the merit list (Sri Narayan Sahoo) was allowed to join (as stated in the order dated 17.8.2000 of the Tribunal in OA No. 555/1992).

4. We have heard learned counsels for both the parties. Mr. S.K. Ojha, learned counsel for the applicant, relied upon the judgment of Hon'ble Supreme Court in the case of K.P. Manu vs. Chairman, Scrutiny Committee for Verification of Community Certificate, reported in (2015) 1 Supreme Court Cases (L&S) 757. Mr. M.R. Mohanty, learned counsel for the respondents, on the other hand argued that the cited case is not applicable to the present case and the order dated 17.8.2000 did not state anything about retrospective seniority of the applicant.

5. We have gone through the pleadings on record and considered the submissions of both the parties. The limited question in this case is whether the applicant is entitled for the consequential service benefits after his appointment vide order dated 17.1.2002 (Annexure-A/3) w.e.f. 23.10.2001 since his original appointment was cancelled under misconception that the applicant did not possess 10+2 qualifications and such cancellation order was set aside by the Tribunal vide order dated 17.8.2000, which states as under:-

".....In this case the originally one Benudhar Dash was selected, but he did not join and thereafter the applicant was selected. These facts have been mentioned by the respondents in their counter and are also borne out from the check list of five ex-servicemen including the applicant and Benudhar Dash whose details have been mentioned therein. From this it appears that originally in place of Benudhar Dash, the applicant was selected and sent for training and later on it was cancelled and the next person Narayan Chandra Sahoo has been taken in. Thus the ex-servicemen quota seems to have been already filled up. But as the applicant's selection was wrongly cancelled, the respondents will be obliged to provide him with a job of Postal Assistant. In view of this, the orders at Annexures 6 and 7 are quashed and the respondents are directed to issue appointment order to the applicant for a post of Postal Assistant against ex-servicemen quota if not in the Division for which he has applied but in any other Division under the Chief Post Master General, Orissa Circle, Bhubaneswar. In case a vacancy is not available under ex-servicemen quota in the Orissa Circle, then he should be offered a job of Postal Assistant in the next available vacancy to be set off against the future vacancy under ex-servicemen quota. As the applicant has already undergo the training once again. This action should be completed within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order."

6. The order dated 17.8.2000 is very clear to state that the order dated 2.9.1992 of the respondents, which was Annexure-6 of the OA No. 555/1992, was quashed. After quashing of the order dated 2.9.1992, being the cancellation of the applicant's appointment, it is logical that the applicant should have been allowed the benefit of service which he would have been entitled to in absence of the order dated 2.9.1992 in view of the findings and the direction of the Tribunal vide order dated 17,8,2000.

7. In the case of K.P. Manu (supra), cited by Mr. Ojha, the caste certificate issued in favour of the appellant (K.P. Manu) had been cancelled which was

upheld by Hon'ble High Court. The appellant's great-grandfather belonged to Hindu community, but the appellant's grandfather embraced Christianity. The appellant at the age of 24 had converted himself to Hindu religion and changed his name. On the basis of conversion, he applied for a caste certificate from the community which was granted. Then the competent authority had also issued the caste certificate. On a complaint, his caste certificate was cancelled and his appointment was also cancelled after due inquiry conducted by the respondents. Hon'ble Supreme Court in the cited judgment relied on the certificate given by the community that the appellant had been converted to Hindu religion and rejected the findings of the inquiry by the respondents. The appellant was reinstated in service with all benefits relating to seniority and his caste, with 75% of back wages. In case of the applicant in the present OA, he seemed to have accepted the decision of the Tribunal vide order dated 17.8.2000 which did not mention anything about the back wages or seniority. After his reinstatement in service vide order dated 17.1.2002, he submitted a representation dated 24.10.2013 for restoration of his seniority at par with his junior, without claiming any back wage for the period he did not work.

8. In view of the facts as discussed above, we are of the considered opinion that although the applicant will not be entitled for any back wages till the date of his representation i.e. 24.10.2013 (which is mentioned in para 4.12 of the OA), but in the interest of justice, it will be just and fair to allow the benefit of seniority and notional fixation of pay at par with his immediate junior in Sambalpur Division, ignoring the order dated 2.9.1992, which was quashed by the Tribunal vide order dated 17.8.2000 passed in OA No. 555/1992.

9. Accordingly, the impugned order dated 12/19.6.2014 (Annexure-A/6), being unsustainable, is quashed and the respondents are directed to notionally fix the seniority and pay of the applicant at par with immediate junior in Sambalpur Division and allow the differential salary to the applicant from 24.10.2013 onwards, with consequential differential retirement benefits as per the rules applicable to the applicant. The OA is allowed to the extent as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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