

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.,260/793/2015

Date of Reserve: 23.01.2019

Date of Order: 08.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Suvendu Nayak, aged about 24 years, S/o. Sachidananda Nayak of Vill-Dhuliswar, PO-Bentkar, Dist-Cuttack-754 012.

...Applicant

By the Advocate(s)-M/s.S.Barik
D.Mohanty
R.N.Mishra
P.C.Behera

-VERSUS-

Union of India represented through:

1. The Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Post Master General, Odisha Circle, At-CPMG Square, PO-Bhubaneswar GPO, Dist-Khurda, PIN-751 001.
3. The Director of Postal Services, O/o. Chief Post Master General, Odisha Circle, At-CPMG Square, PO-Bhubaneswar GPO, Dist-Khurda, PIN-751 001.
4. Gobinda Chandra Swain (Roll No.1102000364), aged about 47 years, at present working as Postman/Mail Guard, Sambalpur Division, Sambalpur, At/PO/Dist-Sambalpur.
5. Bimal Chandra Singh (Roll No.1200200053), aged about 48 years, at present working as Post Man/Mail Guard, Koraput Division, Koraput, At/PO/Dist-Koraput.

...Respondents

By the Advocate (s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant was a candidate for the post of Postman/Mail Guard in pursuance of an advertisement dated 22.08.2014 made by the Department of Posts. He appeared in the examination that was held on 14.12.2014. The result

of the examination was announced on 15.01.2015 in the website. Applicant belongs to OBC category. He found that there was no specific result column for OBC category whereas in respect of other categories viz., UR, SC/ST, PH and Ex. Servicemen, results were announced against those categories indicating the specified number of vacancies. According to applicant there were two vacancies for OBC category in the cadre of Postman and since no such indication had been there in the result, he made an application seeking information under the RTI Act. Simultaneously, he also submitted a representation to Respondent No.2 requesting for declaration of result in so far as OBC category is concerned. Applicant received information under the RTI Act, vide communication dated 23.2.2015, wherein the cut off marks were disclosed as under:

- i) O.C. 74
- ii) S.C. 69
- iii) S.T. 62
- iv) O.B.C. 58

2. The applicant thereafter submitted a representation to the Director of Postal Services (Res.No.3) requesting for supply of marks secured by him. Since there was no response, he submitted a further representation dated 2.4.2015 to the Secretary, Department of Posts (Res.No.1) with a request to declare the result of OBC community candidate including his rank. Since it did not yield any fruitful result, the applicant approached this Tribunal in O.A.No.260/00255/2015. This Tribunal vide order dated 14.5.2015 disposed of the said O.A. with a direction to Respondent No.1 to consider and dispose of the representation, if the same has been preferred by the applicant on-02.04.2015 in a well-reasoned order. As an interim measure, this Tribunal directed that if all the posts of Postman/Mail Guard under OBC quota have not been filled up, then one post be kept open till disposal of the

representation and result communicated to the applicant. 3. Complying with the aforesaid order, Respondent No.1 passed an order dated 7.8.2015 rejecting the representation of the applicant. Impugning and challenging this order dated 7.8.2015 (A/8) the applicant has approached this Tribunal in the present O.A. wherein he has sought for the following reliefs:

- i) To quash the result dated 15.01.2015 under Annexure-A/4 in respect of OBC candidates by cancelling the appointment order of Respondent Nos. 4 & 5.
- ii) To quash the reasoned order dated 07.08.2015 communicated on 11.08.2015 under Annexure-A/8 by the department.
- iii) To appoint the present applicant in OBC category being the applicant is the highest scored in OBC Community i.e., 73 marks; only when the General category mark is 74 marks.
- iv) To pass any other order/direction as deemed fit by this Hon'ble Tribunal.

3. The grounds urged by the applicant in support of the reliefs sought are that whereas the cut off marks for UR category was 74 whereas, being an OBC category candidate, he had secured 73 marks which is much more than cut off marks (58) as fixed in respect of OBC category. Further, it has been contended that the two vacancies falling under OBC category have been filled up by ex-servicemen belonging to OBC category under horizontal reservation and if it be so, there should have been specific indication in the Advertisement. According to applicant, the respondents have clearly violated the reservation policy made by the Government of India from time to time. Applicant has pointed out that the total vacancies cannot be filled up by Ex. servicemen against the policy of reservation. It is therefore, submitted by the applicant that the action of the official-Respondents is violative of Articles 14, 16 & 21 of the Constitution of India.

4. Opposing the prayer of the applicant, the official respondents have filed a detailed counter. It is the case of the official respondents that the Department of Posts notified vacancies of Postman/Mail Guard vide notification dated 22.08.2014 mentioning the vacancies in each cadre community/division-wise. According to them, for 241 vacancies of Postman (UR-144, SC-44, ST 51 and OBC-2) and 8 vacancies of Mail Guard (UR-2, SC-2, ST-4, OBC-Nil) were intended to be filled with a clear mention in Para-5 that vacancies indicated are likely to vary/change without any prior intimation or assigning any reason. Subsequently, the vacancies in the cadre of Postman were modified and reduced to 235 from 241 (UR-142, SC-42, ST-49, OBC-2) and the vacancies in respect of Mail Guard which were eight in number as per the earlier notification remained the same. Therefore, the total number of vacancies (Postman - 235 + 8 Mail Guard) = 243 vacancies include 25 nos. of vacancies for Ex-servicemen and 07 for PH cadre. After the agency sent the merit list of selected candidates, the result was declared for 243 selected candidates as per the vacancy position in each cadre. The result for those 243 successful candidates was published/uploaded in the Department website showing the names of 116 candidates under UR, 43 under SC, 52 under ST, 25 under Ex-servicemen and 7 under PH candidates. Therefore, the result showing the names of 243 candidates was as per the existing vacancies of 243 (UR-144, SC-44, ST-53 & OBC-2). Official Respondents have pointed out that the number of vacancies filled up against the Ex-servicemen (25 nos.) and PH (7 nos.) were adjusted from the respective categories to which they belong. As per the guidelines/instructions of the Department, the vacancies for Ex-servicemen/PH categories are not separate vacancies and these are the parts of total vacancies and to be filled up by horizontal adjustment i.e., from the

vacancies of categories like UR, SC, ST & OBC. The vacancies for ex-servicemen & PH categories are to be filled up first by making horizontal adjustment coming across the other categories and as such, the result for vacancies of ex-servicemen (25 nos.) was declared constituting from various categories, i.e., UR-21, SC-1, ST-1, OBC-2 whereas 7 nos. for PH categories were from UR category. In the above backdrop, it has been submitted by the learned counsel that the result for existing vacancies of 243 numbers (UR-144, SC-44, ST-53 and OBC-2) in Postman/Mail Guard cadre was correctly declared as per category-wise vacancies as notified in the notification. Further, the respondents have pointed out that since the applicant had crossed the age limit for UR category, i.e., 18-27 years, his case was not considered against that category. He was also not considered against OBC vacancy due to the reasons that two (2) number of vacancies for OBC were first filled up by two Ex-servicemen candidates securing 64 & 58 marks belonging to OBC category under horizontal reservation and there was no vacancy left under OBC category.

5. With these submissions, the respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

6. Private Respondent Nos. 4 & 5 although duly issued with notice have neither entered appearance nor filed any counter to the O.A.

7. In the rejoinder it has been pointed out by the applicant that he having secured 73 marks against OBC category vis-a-vis the marks secured by the selected candidate (Res. Nos. 4 & 5) had a right to be considered for appointment against one of the vacancies under OBC category.

8. We have heard the learned counsels for both the sides and perused the records.

9. Admittedly, the vacancy position after being modified, reduced to 235 from 241 (UR-142, SC-42, ST-49, OBC-2) and the vacancies in respect of Mail Guard which were notified as eight remained the same. It is also an admitted position that the applicant and the selected candidate (Private Respondent Nos. 4 & 5) belong to OBC category, apart from the said Private Respondent Nos. 4 & 5 being of ex-servicemen. It is the specific stand point of the official respondents that the two vacancies for OBC category were first filled up by Private Respondent Nos. 4 & 5 who were Ex-servicemen securing 64 & 58 marks and were adjusted against that category under horizontal reservation and there being no further vacancy left under OBC category, applicant's case could not be considered. In this connection, we have gone through the Paragraph-11.1) of the vacancy notification dated 22.08.2014 (A/1). In the fitness of things, the relevant provisions are quoted hereunder:

"Total number of applicants as per the total number of vacancies in each category, i.e., OC, SC, ST, OBC, etc. shall be declared qualified in descending order of merit based on the marks secured by them in the Aptitude Test. ..."

10. A plain reading of the above quoted provisions in the advertisement makes it amply clear that the merit list has to be prepared based on the marks secured by the candidates belonging to each of the categories. Viewed from this angle, the candidates in respect of the OBC category should have been declared qualified in descending order of merit based on the marks secured by them in the Aptitude Test irrespective of whether all or some of them are ex-servicemen or PH candidates, as the case may be. Therefore, the applicant indisputably, having secured higher marks than Private Respondent Nos. 4 and 5, his name ought to have found place in the merit list above the names of the Private Respondent Nos. 4 and 5. It is a matter of fact that the official

respondents have not prepared the merit list in conformity with Para 11.1 of the notification dated 22.8.2014 (A/1). Apart from making a submission that as per the guidelines/instructions of the Department, the vacancies for ex-servicemen & PH categories are to be filled up first by making horizontal adjustment coming across the other categories, respondents have not produced any documentary evidence in that behalf. Be that as it may, it goes without saying that there is no reservation for ex-servicemen over and above the vacancy reserved for UR, SC/ST, OBC as the case may be. The contentions of the respondents in this regard are not as per the provisions of the notification dated 22.8.2014. Manner of selection of ex-serviceman and PH category has not been specified in the notification dated 22.8.2014 and no rule or policy guidelines of Government has been furnished by the respondents in support of these contentions. Hence, we are unable to accept the process of selection of ex-servicemen as stated by the respondents by which, OBC candidates (Respondent Nos. 4 & 5) with less merit than the applicant have been selected under ex-servicemen quota in contravention to the Para 11.1 of the notification dated 22.8.2014.

11. In this backdrop, the vacancy being filled by ex-serviceman is treated to have been filled by a candidate to the category to which he/she belongs. Keeping this in view, the merit list has been directed to be prepared in descending order of merit based on the marks secured by each of the categories, i.e., OC, SC,ST, OBC etc. In our considered view, therefore, the official respondents had not prepared the merit list in line with the above mentioned directives so far as OBC category is concerned and had it been so prepared, certainly, the applicant having secured more marks in the aptitude test would have figured above the private Respondent Nos. 4 and 5. We may

add that no where it has been laid down that preference should be given to ex-servicemen while adjudging their suitability. In other words, no where the Tribunal is confronted with any such provisions, wherein it is mandated that even if an ex-serviceman secures less mark in the aptitude test other than a candidate not of his category, the former would be considered more meritorious for appointment and will be adjusted against the category to which he belongs.

12. Therefore, the Private Respondent Nos.4 and 5 in order to be selected and appointed to the post in question ought to have secured at least marks equal to the applicant so as to come under the banner of ex-servicemen. We are of the opinion that the official respondents have utterly failed to bring about transparency and integrity while publishing the result in the cadre of Postman in so far as OBC category is concerned.

13. For the reasons discussed in the preceding paragraphs, we quash the order dated 7.8.2015 communicated through letter dated 11.8.2015 (A/8) and direct the official respondents to appoint the applicant under OBC category if he has secured the higher marks among the candidates belonging to OBC category as contended by the applicant and has otherwise qualified in the examination conducted in pursuance to the notification dated 22.8.2014 (A/1). The Respondents shall comply this order within two months from the date of receipt of a copy of this order.

14. The O.A. is partly allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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