

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/463/2015

Date of Reserve:19.07.2019

Date of Order:09.09.2019

CORAM:

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

Indrajit Mahanto, aged about 58 years, S/o. Late Dhaniram Mahanto of Vill-Kukuramuta, PO-Kantadih-723 153, Dist-Purulia (WB) presently working as Part Time Rest House Attendant at Balasore RMS under Orissa Postal Circle.

...Applicant
By the Advocate(s)-Mr.T.Rath

-VERSUS-

Union of India represented through:

1. The Secretary-cum-D.G.(Posts), Dak Bhawan, new Delhi-110 001.
2. Chief PMG, Odisha Circe, Bhubaneswar, At/PO-Bhubaneswar GPO-751 001, Dist-Khurda.
3. Supdt. RMS 'K' Division, At/PO/Dist-Jharsuguda-768 201.
4. Sri Prafulla Kumar Naik, MTS, Jharsuguda RMS, At/PO/Dist-Jharsuguda-768 201.
5. Sri Bholanath Behera, MTS K-1 Section, At/PO/Dist-Jharsuguda-768 201.

...Respondents

By the Advocate(s)-Mr.S.B.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Part Time Rest House Attendant at Balasore RMS under the Department of Posts. Since his case for promotion/appointment to the cadre of MTS under 25% quota was not considered by the official-Respondents and on the other hand, his juniors S/Sri Prafulla Kumar Naik and Bholanath Behera were selected to the post in question vide Memo dated

05.09.2013, he had submitted a representation dated 01.02.2014 followed by a reminder dated 17.01.2015 to the Superintendent, RMS 'K' Division, Jharsuguda. As his grievance was not redressed, he approached this Tribunal in O.A.No.108/2015 and while the matter stood thus, the Superintendent, RMS K-Division, Jharsuguda disposed of the representation dated 17.1.2015 vide order dated 2.2.2015, which reads as follows:

"With reference to your letter under reference it is to intimate that your case for promotion to MTS cadre under selection cum seniority basis from Part time workers was considered by DPC held for the vacancy from the year 2011 to 2014 but rejected on the ground that you were not fulfilling age criteria for consideration of promotion under direct recruitment".

2. In the above backdrop, on the prayer made by the applicant, this Tribunal vide order dated 18.03.2015 allowed withdrawal of O.A.No.108/2015, with liberty being granted to file a better O.A. 3.

Hence, by filing the present O.A., the applicant has sought for the following reliefs:

- i) Quash the order under Annexure-4 and Annexure-A/7.
- ii) Direct the respondent number 1 to 3 to promote the applicant to the post of MTS from the date when his juniors was promoted to the said post.
- iii) Direct the respondents to grant all service benefits including financial benefit retrospectively, for the period from the date of passing of Annexure-A/4.
- iv) Pass such other order/orders, direction/directions granting complete relief to the applicant as deemed fit and proper in the facts and circumstances of the case.

3. In support of his case, it has been submitted by the applicant that he being senior to the selected candidates (Private Respondent Nos.4 & 5), his case ought to have been considered for selection and appointment as MTS, inasmuch as, as per the circular vide A/2, it has been specifically stipulated that the promotion of casual labour against 25% of vacancy is to be made solely on the basis of seniority. It has been pointed out that there is no prescribed maximum age limit for promotion of Casual Labour to MTS. Therefore, rejection of order as communicated vide A/7 rejecting his appointment to the post of MTS on the ground of age criteria is arbitrary and contrary to the relevant rules on the subject.

4. Although Private Respondent Nos. 4 and 5 had been duly noticed, but they have neither entered appearance nor filed any counter. On the other hand, official respondents by filing a detailed counter have opposed the prayer of the applicant. According to official respondents, as per instructions dated 01.11.2011 steps were taken to fill up the vacancies under 25% quota from amongst the casual labours in pursuance of the revised Recruitment Rules for the post of MTS as notified in the Gazette of India on 12.12.2010. Accordingly, seniority list was prepared and communicated to RO, Sambalpur on 14.05.2012 in which the name of the applicant is placed at Sl.No.2. For the purpose of filling up the vacancies for the years 2011 and 2012 under different categories, the DPC met on 02.08.2013. In accordance with the revised Recruitment Rules for the post of MTS as notified in the Gazette of India dated 12.12.2010 [Part-II, Column No.7, note-3 and

Column No.11(iii) e & f], in which it is prescribed that the age limit for appointment of GDS shall be 50 years as on 1st day of January of the year of vacancies and relaxable for those who belong to SC, ST & OBC in accordance with instructions issued by the Government of India, the case of the applicant though considered, yet, he could not be selected as his date of birth is 29.12.1956 and as on 01.01.2011, he had crossed 50 years of age. In view of this, the official respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has filed a rejoinder to the counter in which has pointed out that that the DPC met on 02.08.2013 committed a grave error by taking into account the age limit as fixed for GDS (Gramin Dak Sevaks) employees, whereas the applicant is not a GDS. According to applicant, he being a casual worker, the age limit as prescribed for GDS should not have been made applicable. In this connection, the applicant has brought to the notice of this Tribunal DG(Posts) Letter No.45-95/87-SPC.1 dated 12th April, 1991 (A/9) which provides as follows:

"13. For purpose of appointment as a regular Group D official, the casual labourers will be allowed age relaxation to the extent of service rendered by them as casual labourers".

6. Based on this, the applicant has submitted that non- selection of the applicant to the post of MTS on the forefront of the above instructions of DG(Posts) is illegal, arbitrary and does not stand the judicial scrutiny.

7. We have heard the learned counsels for both the sides and perused the records. From the pleadings of the parties, the short point that emerges for consideration is whether the applicant being a part time casual labourer was within the age limit for being considered to the post of MTS.

8. In order to answer the point in issue, we have gone through the Notification dated 12.12.2010 issued by the Ministry of Communications & Information Technology, Department of Posts. Clause-11 provides "Method of recruitment, whether by direct recruitment or by promotion or by deputation/absorption and percentage of the vacancies to be filled by various methods". Sub-clause(i)(c) thereof lays down that "appointment of existing part time Casual labourers, engaged on or before 1.9.1993, on the basis of selection-cum-seniority failing which by...". As it reveals, there is no age prescription in so far as Casual Labourer or part time casual labourer, as the case may be, engaged on or before 1.9.1993 in the matter of selection and appointment to the post of MTS instead, it is based on selection-cum-seniority. In the absence of the prescribed age limit in respect of part time casual worker, it was incumbent on the part of the official respondents to adhere to the instructions issued vide DG(Posts) letter dated 12th April, 1991, as quoted above. Apart from this, there being no specific instructions laying down the age criteria in the Notification dated 12.12.2010 in so far as part time casual labourers for appointment to MTS is concerned, and on the other hand, consideration of their appointment to the post in question being on the basis of selection -cum-seniority, it was not

prudent on the part of the official respondents or for that matter the DPC to read the age criteria as prescribed for GDSs for the part time casual labourers without any law or logic. Therefore, this Tribunal is of the opinion that applying the age limit as prescribed for GDSs in the case of the applicant and consequently, holding him not fit for appointment to the post of MTS is unjust and improper. In view of this, we answer the point in issue by holding that the applicant being a part time casual labourer was within the age limit for being considered to the post of MTS.

9. For the foregoing discussions, we quash and set aside the impugned communication dated 2.2.2015(A/7) and direct the official respondents to convene review DPC having regard to the observations made by us above and in case, the applicant is found fit, he be appointed to the post of MTS with effect from the date the Private Respondent Nos. 4 and 5 had been so appointed. The entire exercise shall be completed within a period of sixty days from the date of receipt of this order. We make it clear that in case the applicant is appointed to the post of MTS with retrospective effect, he shall only be entitled to notional fixation of pay and the actual pay shall be drawn and disbursed in his favour only with effect from the date he joins the post in question.

10. With the above observation and direction, this O.A. is allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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