

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/861/2016

Date of Reserve:11.04.2019

Date of Order:28.06.2019

CORAM:

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

Tapan Kumar Nayak, aged about 33 years, S/o. Bishnu Charan Nayak of Village-Chandpur, PO-Hazipur, PS-Biridi, Dist-Jagatsinghpur.

...Applicant

By the Advocate(s)-M/s.S.Barik
D.K.Mohanty-A

-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 Squire, PO-Bhubaneswar G.P.O., Dist-Khurda, PIN-751 001.
3. The Director of Postal Services, O/o. Chief Post Master General, Odisha Circle, At-CPMG Squire, PO-Bhubaneswar G.P.O., Dist-Khurda, PIN-751 001.
4. The Superintendent of Post Offices, Cuttack South Division, Cuttack, At-P.K.Parija Marg, Cantonment Road, PO-Buxi Bazar, Dist-Cuttack, PIN-753 001.
5. The Assistant Superintendent of Post Offices, Jagatsinghpur Sub-Division, At/PO/Dist-Jagatsinghpur, PIN-754 103.

...Respondents

By the Advocate(s)-Mr.B.Swain
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To direct the Respondents to consider the case of the applicant for appointment of GDSMC at Basandara BO in account with Biridi Road SO by considering the previous experience of the present applicant.
- ii) To pass any other order/direction as deemed fit by this Hon'ble Tribunal.

2. Shorn of unnecessary details, it would suffice to note that on being sponsored by the Employment Exchange, applicant was selected and engaged as Contingent Waterman in Barabati Stadium Post Office under the Department of Posts in the year 1996. While working as such, he was discharged from service in the year 2005 due to closure of the said Post Office. He then submitted a representation to the respondent-authorities for consideration of his case for the post of GDSBPM at any Sub Post Office under the Respondent Nos. 2 & 3. Since his representation was not considered, he approached this Tribunal in O.A.No.594/2006 which was disposed of vide order dated 29.08.2006 with direction to respondents for consideration of his representation on merit and to pass a speaking order. Since the respondents did not comply with the said direction, the applicant filed C.P.No.01/2007. This Tribunal disposed of the said CP with an observation that as and when vacancy will arise, the case of the applicant will be considered preferably. Thereafter, the applicant approached the Hon'ble High Court of Orissa in W.P.C.No.16551/2008 for not implementing the orders of this Tribunal. The Hon'ble High Court disposed of the said Writ Petition vide order dated 02.03.2009 with an observation that as soon as the ban is lifted, the case of the petitioner may be considered giving effect to the order of this Tribunal. Thereafter, the applicant filed CONTC No.916/2010 before the Hon'ble High Court. The said Contempt Petition was disposed of on 1.5.2013 with an observation that if the recruitment proceeding has been initiated for filling up the above vacancies, then the applicant/petitioner will be granted liberty to make an application and the case of the applicant/petitioner shall be considered, if he is otherwise found eligible. It is the case of the applicant that in response to Notification dated 01.09.2014 issued by the Assistant

Superintendent of Post Offices, Jagatsinghpur Sub Division (A/2) for filling up the post of Gramin Dak Sevak Mail Carrier, he has submitted an application enclosing thereto all the required documents. He is apprehensive that the concerned ASPO has started the recruitment process with mala fide intention to absorb his near and dear one against that vacancy and as such call letters are not being issued to the candidates. Applicant has pointed out that on his query regarding the recruitment process, the said ASPO disclosed regarding regularization of some casual GDSMC. Since there was no decision taken on his representation, he has approached this Tribunal in the present O.A. praying for the reliefs as aforesaid.

3. On the other hand, opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, as per order dated 01.05.2013 passed by the Hon'ble High Court in CONTC No.916/2010, it was directed that "if the recruitment process is initiated for filling up of the above vacancies, the petitioner will be granted liberty to make an application and the case of the petitioner shall be considered, if he is otherwise found eligible". In this order the Hon'ble Court High Court by saying 'above vacancies' pointed out that the six posts of GDS Packer-cum-MC and twenty five nos. of MTC posts lying vacant at that time in Cuttack City Division for which the applicant may apply, but not meant for the post of GDSMC, S.Basandhara BO in account with Biridiroad SO. In view of this, it has been submitted that the order dated 01.05.2013 as passed by the Hon'ble High Court in CONTC No.916/2010 is not applicable in selection for the post of GDSMC, S.Basandhara BO.

4. Applicant has filed a rejoinder to the counter as well as an Affidavit. In the Affidavit, the applicant has pointed out that the vacancy of GDSMC, S.Basandhara BO in account with Biridiroad SO which is sought to be filled

comes within the jurisdiction of Cuttack City Division. His further submission is that the said post has been left open to ST category candidate and in case of non-availability of ST category candidate, the vacancy will be given to OBC/SC/OC community. It has been further submitted that the Rule-33 of Postal Gram Dak Sevak speaks of preference to be given to casual labourers in the matter of appointment as ED Agents, which reads as follows:

"33. Preference to casual labourers in the matter of appointment as ED Agents – According to the prevalent Recruitment Rules governing the cadre of Group D, the order of preference among various segments of eligible employees is as under:

- a) Non-test category
- b) ED employees.
- c) Casual labourers
- d) Part-time casual labourers.

5. Based on the above, it has been submitted that the applicant being a part-time casual labourer, his case deserves to be considered in the light of the above rule.

6. We have heard the learned counsels for both the sides and perused the records. It is not in dispute that the applicant had initially been engaged as Contingent Waterman in Barabati Stadium Post Office under Cuttack Division in the year 1996 and because of closure of the said Post Office, he was discharged from service in the year 2005. It is also not in dispute that the Respondent-Department have issued a notification for filling up the vacancy of GDSMC, S.Basandhara BO in account with Biridiroad SO which comes under Cuttack City Division and in response to this, the applicant has submitted an application in pursuance of the direction of the Hon'ble High Court. It is also not in dispute that as per Rule-33 of Swamy's Potal Gramin Dak Sevak, there is a provision to give preference to the casual labourers. Therefore, nothing

stands in the way of the respondents to consider the candidature of the applicant for the post in question. We may add that consideration is a matter of right and by no means, the respondents can abridge this right. If the ST candidate for which the vacancy is left open is not available, the same has to be considered in order of preference, i.e., OBC/ST/OC communities. In view of this, we hold that it would be improper if the candidature of the applicant is not considered provided he comes within the zone of consideration.

7. Having regard to what has been discussed above, we direct the respondents to consider the case of the of the applicant for the post of GDSCM at Basandhara BO in account with Biridi Road SO if he is otherwise found eligible and in keeping with Rule-33 of Gramin Dak Sevak as quoted above and pass appropriate orders within a period of 90 (ninety) days from the date of receipt of this order.

8. In the result, the O.A. is thus allowed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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