

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 605/2012

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

Tripati Kumar Anjangi, aged about 36 years, S/o Sri JNarasingha Anjangi, At/PO-Badagumuda, Via- Kodinga, Dist-Nowrangpur, Pin – 764075, presently working as GDSBPM of Badagumuda BO.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. Director of Postal Services, Berhampur Region, At/PO-Berhampur, dist.- Ganjam, Odisha – 760001.
3. Sr. superintendent of Post Offices, Koraput Division, At/PO – Jeypore, Dist. – Koraput, Pin – 764001.
4. Prasant Gouda, Postman, At/PO – J.K.Pur SO, Dist. – Rayagada, Odisha – 765017.
5. Tusr Ranjan Pradham, Postman, Jeypore HO, At/PO – Jeypore, Dist. – Koraput – 764001.
6. Dambaru Mali, Postman, At/PO-Malkangiri MDG, Dist – Malkangiri, Odisha – 764045.
7. Pratap Ch. Ratan, Postman, At/PO-Kotpad, Dist – Nowrangpur, Odisha – 764058.
8. Dolamani Putel, Postman, At/PO- Umerkote, Dist- Nowrangpur, Odisha – 764073.
9. Natabar Naik, Postman Nowrangpur MDG, At/PO-Nowrangpur, Dist. –Nowrangpur-764059.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.C.M.Singh, counsel

Heard & reserved on : 10.7.2019

Order on : 1.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant, while working as a Gramin Dak Sevak (in short GDS) had appeared in the test conducted by the respondents for promotion to the post of postman on 30.1.2011 for the GDSs. The applicant claimed to have done well in the said test, but when the result was declared, the applicant found his name missing from the list of selected candidates. He claims in the OA that he had secured 98 out of total 150 marks in 3 subjects, which was more than 45% qualifying marks required for the examination. He stated that as informed to him, he could not be selected since he did not secure 45% in one of the

subject vide the letter at Annexure-A/1. It is stated that stipulation of securing 45% mark in each of the paper ignoring the aggregate marks was 'illegal, illogical and non application of mind'. It is stated that for selection of some other posts like Postal Assistant, minimum mark for each paper was 40% for general category candidates, but for postman selection 45% mark was unreasonable.

2. Being aggrieved, the applicant has filed this OA challenging the result of the examination and incorporating the selected candidates who had secured less aggregate marks than the applicant. He sought the following reliefs:-

"In view of the facts stated above, it is humbly prayed that Hon'ble Tribunal may graciously be pleased to pass appropriate order directing the respondents to review the answer of Mathematics of applicant, review the select list and direct for posting the applicant as Postman w.e.f. the date the other selected candidates have joined and place the seniority of applicant in accordance with his merit.

And direct to review the qualifying mark as Postman for OC community.

And further be pleased to award grace mark in Mathematics for setting out of syllabus/prescribed standard and setting wrong questions i.e. different question in different language.

And any other order(s) as the Hon'ble Tribunal deems just & proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain every pray."

3. The respondents filed their Counter resisting the OA and stated as under:-

"The Departmental Examination for promotion of Group (MTS) & GDS to the cadre of Postman for the vacancies of the years 2009 & 2010 was held on 30.1.2011 (Sunday) in tune with the guidelines stipulated in the circle Office, Bhubaneswar Letter No. RE/30-22/2009 dated 19.10.2010 and in pursuance of Regional Office Berhampur (Gm) Letter No. RE/23-2/2005 dated 21.10.2010. In the said examination , 172 GDS employees and 2 Group D (MTS) officials were allowed to appear in for filling up of the vacancies pertaining to the years 2009 & 2010 as detailed below :

Year	Outsider (Merit)	Departmental	
	UP	UR	SC
2009	04	9	-
2010	01	2	1

The above vacancy position, duly approved by the Postmaster General, Berhampur (Gm), ws circulated among all concerned vide SSPOs, Koraput Division, Jeypore (K) letter No. B2/Genl-8/Ch-III dated 24.1.2011.

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As regards the candidature of the applicant, Sri Tripati Kumar Anjangi [GDSBPM, Bodogumuda BO, i.a.w. Kodinga SO], it is to submit that the

applicant, belonging to OBC category, was permitted to appear in the Examination vide Roll No. KRP/J-50/11. On perusal of the tabulation sheet, it is found that the applicant secured a total of 98 marks out of the Maximum 150 marks in the Examination,. Paper wise marks scored by the applicant are as follows :

Paper A- 44 Marks
 Paper B- 20 Marks
 Paper C- 34 Marks

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In reply to the contentions of the applicant in this para, it is to humbly submit that the question papers of the said examination were set by the higher functionaries strictly in accordance with the departmental instructions laid down for the purpose. Though the applicant secured 98 marks i.e. more than 45% on aggregate but it is mandatory for a candidate to secure qualifying marks in all the Papers to be declared successful in the Examination. As the applicant secured 20 marks in Paper B against the prescribed qualifying marks 23, his name was not included in the list of qualified candidates notified by the Respondent No.3. The respondents have acted strictly as per the rules and examination procedures laid down by the Department which is in no way illegal. The list of qualified candidates published is purely based on merits and logical."

4. Learned counsel for the applicant was heard. He submitted that the respondent No. 4 to 9 have secured less aggregate marks than the applicant, which has been admitted in the Counter. It was submitted that in the advertisement for the post there was no clear stipulation that a candidate of UR category was required to secure minimum 45% marks in each of the subject for selection for the post of postman from the GDS.

5. Learned counsel for the respondents was heard. In compliance of the order dated 14.3.2019 of this Tribunal, learned counsel for the respondents submitted some documents prior to hearing, giving a copy to the applicant's counsel. These documents include a copy of the vacancy notification for the examination in question and the guidelines of the Ministry of Communications on the minimum qualifying marks for such test. It was submitted that the minimum qualifying marks for each of the subject is 45% for general category GDS candidates appearing in the test as per the instructions of the Ministry. It was further submitted that the applicant failed to secure 45% in the paper B for which he failed the said test as per his result at Annexure-A/1 of the OA.

6. The only question relevant in this OA is whether the stipulation of minimum 45% marks in each subject for the test by the respondents was legal. We have gone through the notification dated 19.10.2010 of the respondents for selection for the post of postman. It did not stipulate the criteria for selection for the post. It has not been explained by the respondents in their pleadings as to why the criteria to be adopted for the selection in question could not be specified in clear terms to avoid any ambiguity or confusion in the mind of the candidates and to avoid future disputes in this regard. In fact, it is seen that in

the past such notifications, copy of which was submitted by the respondents' counsel, such criteria has been spelt out in the vacancy notification itself.

7. Learned counsel for the respondents submitted a copy of the letter No. 10-6/86-PCC/SPB-I dated 4-89 of the Ministry of Communications by which it is stated that the qualifying marks for the paper C will be 45%. It does not specify any qualifying marks for other papers and as the Annexure-A/1 reveals, the applicant did not secure 45% marks, for which he was not qualified as averred by the respondents. Learned counsel for the respondents also submitted a copy of the circular dated 17.11.1988 of the Ministry of Communications. It is not very clear from this circular if the minimum mark for the Departmental Examination for promotion from GDS to postman is 45% for each paper for general category candidates.

8. From the discussions above, it is clear that there is no stipulation of the minimum qualifying mark in each paper in the vacancy notification dated 19.10.2010 and no satisfactory reason has been furnished in the Counter for not specifying such important criteria for qualifying the examination in the advertisement for the posts itself. There is no unambiguous rule produced before us through the pleadings, which specifies such minimum mark for each paper as the criteria for qualifying the examination in question. Further, it is not disputed that the respondent No. 4 to 9, who were selected in the test, had secured less aggregate marks than the applicant, who was declared 'fail'. No rule or circular has been furnished by the respondents in their pleadings to support of the contention regarding the minimum marks for each subject. In absence of such rules or circular, we are unable to accept the contentions of the respondents in this regard.

9. In view of the above, the respondents are directed to review the result of the applicant ignoring the condition of the minimum qualifying marks for each subject which is not mentioned in the notification at Annexure A/1 for the post and if the applicant is otherwise eligible, appoint the applicant against a vacant post of Postman against the promotional quota of the GDS as would be available at present, with the consequential service benefits as per the provisions of law within four months from the date of receipt of a copy of this order.

10. The OA is allowed as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

