

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 77 of 2018

Date of order : 20.11.2019

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

Swaroop Khara, aged about 30 years, S/o Somnath Khara, resident of Vill-Gobindpali, PO-Gobindpali, Via-Mathili, PS-Gopbindpali, Dist-Malkangiri, Odisha, Pin-764044, presently working as Postal Assistant, Paradeep MDG

.....Applicant

VERSUS

1. Union of India, represented through its Secretary of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda, Odisha-751002.
3. The Superintendent of Post Offices, Cuttack South Division, Cuttack-753001.
4. Subhasis Acharya, Office Assistant, Divisional Office, Cuttack South Division, Cuttack-753001.
5. Rasmita Priyadarsini, PA, Athagarh HO, Athagarh, Dist-Cuttack, Pin-754029.
6. Bikash Parida, PA, Jagatsinghpur HO. Jagatsinghpur, Dist-Jagatsinghpur, Pin-754103.
7. Suchhanda Pradhan, PA, Athagarh HO, Athagarh, Dist-Cuttack, Pin-754029.
8. Anita Rani Sahoo, PA, Athagarh HO, Athagarh, Dist-Cuttack, Pin-754029.
9. Bishnu Charan Pradhan, PA, Athagarh HO, Athagarh, Dist-Cuttack, Pin-754029.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel

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

O R D E R (ORAL)

Per Mr.Swarup Kumar Mishra, Member (J)

The present OA has been filed with the prayer for the following reliefs :

- “(i) Admit the Original Application and
- (ii) After hearing the counsels for the parties be further pleased to quash the Memo No. ST/26-6(1)/2017-18 (Postal) dated 5.1.2018 at Annexure-A/4 to the extent the juniors are promoted. And consequently, orders may be passed directing the respondents to give promotion to the applicant to the cadre of LSG from the date of promotion of the juniors with all consequential benefits.
And/Or
- (iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow this OA with costs.

2. Heard learned counsel for the applicant. He submitted that the applicant is aggrieved because of the fact that the applicant's juniors in the seniority list, impleaded as respondents No. 4 to 9 in the OA, have been promoted to the Lower Selection Grade cadre vide order dated 21.12.2017, ignoring the case of the applicant who was senior to them. The applicant was appointed as Postal Assistant through direct recruitment on 9.5.2003. On 21.12.2017, 471 Postal Assistants were promoted by the respondents to the LSG Cadre vide order dated 21.12.2017 (Annexure A/3), in which the respondents No. 4 to 9 who are junior to the applicant have been promoted, ignoring the case of the applicant.

3. Heard learned counsel for the respondents. He submitted that as stated in the counter, promotion of 436 UR posts, 78 SC posts and 29 posts as per the roster for the year 2017-18 were considered by the DPC for promotion to LSG cadre. It is stated that the applicant being junior to the selected officials of ST community, was not considered for promotion. It was further stated that as per the order dated 7.5.2018 passed by Hon'ble Apex Court in SLP No. 30621/2011 giving liberty to Union of India for taking steps for the purpose of promotion from reserved to reserved category, unreserved to unreserved category and also for promotion on merits. It is stated that in the DPC the UR category employees appointed till 1986 recruitment were considered. For ST the employees appointed till 1990 were considered. It is stated that the applicant is recruited in the year 2003 for which his name was not considered for promotion along with others.

4. It is stated in the OA in para 5.1 that the applicant's seniority was overlooked, while promoting the respondents No. 4 to 9 who are junior to the applicant. In reply the respondents in the counter have stated that he was not in the selection zone since he is to be considered for promotion in reserve category. In reply to the contention in para 4.4 of the OA that some of the juniors of the applicant have been promoted, it is stated in para 7 of the counter, that as per DOPT order dated 30.9.2016, no further promotion of reserved category persons to unreserved posts will be made till the SLP No. 4831/2012 with the contempt petition pending in Hon'ble Apex Court is decided.

5. Learned counsel for the applicant in reply submitted that SLP No. 30621/2011 which was referred to by the respondents in para 4 of the counter, has been disposed of by the Hon'ble Apex Court vide the judgment in the case of Jarnail Singh & Ors. -vs- Laxmi Narayan Gupta & Ors. Along with other Civil Appeals/SLP involved in this issue. In this judgment it was held as under:

"It can be seen that when seats are to be reserved in the House of the People for the Scheduled Castes and Scheduled Tribes, the test of proportionality to the population is mandated by the Constitution. The difference in language between this provision and Article 16(4-A) is important, and we decline the invitation of the learned Attorney General to say any more in this behalf.

Thus, we conclude that the judgment in Nagaraj (supra) does not need to be referred to a seven Judge Bench. However, the conclusion in Nagaraj (supra) that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine Judge Bench in Indra Sawhney (1)(supra) is held to be invalid to this extent.”

6. In view of the submissions of the learned counsel for the applicant the main ground for which the promotion of the applicant could not be considered by the DPC as stated in the counter is no longer available. Hence the OA is disposed of with direction to the respondent No.2/competent authority to consider the case of the applicant for promotion by convening the review DPC in accordance with the extant rules and in the light of the judgment of the Hon’ble Apex Court dated 26.9.2018 passed in the case of Jarnail Singh (supra). If the applicant is found suitable for promotion on reconsideration by the review DPC, then he will be promoted notionally with notional benefit of pay fixation from the date from which his juniors had been promoted with the condition that the benefit of actual promotion is to be available to the applicant prospectively from the date of issue of order of such promotion. Respondents are directed to complete this exercise within a period of three months from the date of receipt of the copy of this order.

7. The OA stands disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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