

**ORISSA HIGH COURT
CUTTACK**

W.P.(C) NO. 2731 OF 2005

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Union of India & others Petitioners

Versus

Hasya Ranjan Sahoo Opposite Party

For Petitioners - Mr. J. K. Mishra,
Assistant Solicitor General

For Opp. Party - In person

PRESENT: -

**THE HON'BLE MR. JUSTICE I.M.QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

Date of hearing & judgment : 05.04.2006

I.M.QUDDUSI,J.

This writ petition has been filed against the judgment and order dated 6th August, 2004 passed in O.A. No.456 of 2003 by the Central Administrative Tribunal, Cuttack Bench, quashing the impugned order of termination from service of the petitioner passed by the reviewing authority from the post of GDS Packer-cum-Mail Carrier of Patapol Sub-Post Office under the Superintendent of Post Offices, Cuttack City Division.

2. The brief facts of the case are that applications were invited from General category candidates for appointment on the post of Gramin Dak Sevak Mail Carrier/Pkt., Patapol Sub-Post Office vide advertisement dated 04.03.2002. It was mentioned therein that

physically handicapped persons can also apply, for whom 3% of the total Gramin Dak Sevak Posts are earmarked at the rate 1% each in 3 different categories, i.e., blind, deaf and orthopaedically handicapped. The selection was held in which total 39 candidates participated; out of whom, 29 candidates failed to fulfil one or more essential conditions of eligibility. All of them were kept out of normal zone of consideration for selection. Thereafter, the selecting authority considered that only 10 including one physically handicapped person out of 39 candidates, namely, C.K. Ray, had fulfilled all the conditions of eligibility. But the selection committee found the petitioner as the most meritorious candidate, as it was not mentioned in the advertisement that physically handicapped candidates would be preferred.

3. It is also necessary to mention that it was specifically mentioned in the advertisement that if the minimum required number of 3 eligible candidates belonging to the community for which the advertisement was made is not available, the vacancy will be filled up from amongst the candidates belonging to other categories.

4. The stand of the instant petitioners is that since the selection and appointment of the opposite party was challenged by one Tapan Kumar Nayak, an unsuccessful candidate, before the Tribunal by filing O.A. No.331 of 2002, the next higher authority (reviewing authority) found that the selection of the opposite party was made erroneously in contravention of the departmental rules and, therefore, his services were terminated by giving him one month's pay in lieu of one month's notice, as required under the Rules, with effect from 01.08.2003. It has also been submitted by the learned Assistant Solicitor General that two physically handicapped candidates were to be appointed vide Memo dated 31.11.2001, due to which termination order was passed. He also submitted that in the notification dated 04.03.2002 inviting applications to fill up the posts, it was required to be mentioned that physically handicapped candidates would be given preference. Though, in fact, one physically handicapped candidate,

namely, C.K. Ray, was available, the opposite party was selected ignoring his case.

5. Vide Circular dated 08.11.2001 issued by the Senior Superintendent of Post Offices, Cuttack City Division, it was mentioned that one post was kept reserved for blind and one post for deaf under the Assistant Superintendent of Post Offices in-charge, Cuttack East Sub-Division. Learned Assistant Solicitor General, however, submitted that the said circular was a mistake of the office and should not have been issued as there was no distribution of vacancies by the Chief Post Master General under the Senior Superintendent of Post Offices, Cuttack City Division. However, the total number of posts were 309, out of which 3 vacancies each (in all 9 vacancies) were to be filled up by blind, deaf and orthopaedically handicapped candidates, and it was mentioned by the Chief Post Master General that no roster was required to be maintained.

6. It is to be noticed that the quota for physically handicapped persons is not a separate quota but is within the quota specified for general candidates and other reserved candidates. There is also a rule laid by the petitioners that in case 3 candidates for a particular category do not apply, the post may be filled up by the candidates belonging to other categories. In the advertisement, it was open for the physically handicapped persons to move applications and it was specifically mentioned in the advertisement that 3% of total Gramin Dak Sevak posts are earmarked @ 1% each for the three different categories, i.e., blind, deaf and orthopaedically handicapped. It was also mentioned that if required number of three eligible candidates belonging to the said community are not available, the vacancies may be filled up by selecting candidates belonging to other communities. There is no illegality if advertisement is made for general category candidates including physically handicapped mentioning the above conditions. In the instant matter, it appears that only one physically handicapped candidate had applied. Let us, for the sake of argument,

accept that the opposite party was not to be selected and preference was to be given to physically handicapped person. In that event, under the conditions mentioned in the advertisement as well as in the relevant rules, at least three candidates belonging to physically handicapped category would have been there in the fray. That being not so, the lone physically handicapped person was not to be considered at all. However, he was considered along with other general candidates. The selection was made on the basis of the percentage of marks obtained in the Matriculation Examination. C.K. Ray, the sole physically handicapped candidate, had secured only 41.06% of marks in High School Certificate Examination, whereas the opposite party had secured 75.80% of marks. The selection committee had specifically mentioned that the selection of the sole physically handicapped person on his single individual application will eliminate competition among the meritorious candidates and his recruitment will not be a competitive one as there was only one physically handicapped candidate.

7. In view of the facts and circumstances mentioned above, we see no good ground to interfere with the impugned judgment and order passed by the Tribunal. However, it will be open for the petitioners to fill up the quota of physically handicapped persons by making recruitment in the existing vacant posts.

8. The writ petition is dismissed subject to the above observation. No order as to costs.

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I.M.QUDDUSI, J.

PRADIP MOHANTY,J. I agree.

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PRADIP MOHANTY,J.

