

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

No. Of Adjournment : 12

COURT NO. : 1
11.01.2021
O.A./260/281/2015

B MAHALIK
-V/S-
D/O POST

ITEM NO:17
FOR APPLICANTS(S) Adv. : Mr. D. K. Mohanty
FOR RESPONDENTS(S) Adv.: Mr. S. Behera

Notes of The Registry	Order of The Tribunal
	<p>The matter is released from being treated as part heard. On the consent of learned counsel for both the sides, the matter was heard on video conference.</p> <p>Admittedly the applicant, who was recruited as SC candidate, as a departmental employee, had appeared in the departmental examination.</p> <p>The hyper technical approach taken by the respondents regarding the manner in which the answer sheets are to be treated or are to be evaluated, need not be gone into at this stage when admittedly as per the case of the respondents themselves, the applicant has secured total 678 marks in the examination. It is also the admitted case of the respondents that another SC community candidate having secured 630 mark, has already been promoted and appointed for the post in question.</p> <p>Although Mr. Behera appearing for the respondents initially tried to take a vague plea that the applicant has not appeared as a SC candidate, the document vide Annexure A/13 shows that he has appeared as a candidate belonging to SC community. The department could have specifically said so that the applicant has appeared as general candidate because the position is known to the department from the very beginning of the employment given to the applicant initially. Therefore the plea taken at this stage is not acceptable.</p> <p>The applicant has secured more mark than the selected candidate i.e. Respondent No. 4 and none has appeared for Respondent No. 4 in spite of receipt of notice.</p>

In the circumstances, this Tribunal finds that the applicant should not have been deprived of appointment to the promotional post in question in the absence of any sufficient ground assigned by the respondents.

Therefore, the respondents are directed to issue appointment letter for promotion to the said post to the applicant, and in case no such vacancy for the relevant year is available, then the respondents are also directed to create one supernumerary post and appoint the applicant till regular vacancy arises. The applicant will be treated as if he has notionally joined to the post in question from the date Respondent no 4 joined the promotional post. The applicant will also be entitled to notional pay fixation from that date, periodical increments etc and all financial benefits but he will not be entitled for backwages from that date till he actually joins in the promotional post. His seniority will also be fixed by treating him senior to respondent no 4.

The respondents are directed to issue letter of promotion in favour of the applicant within a period of three months from the date of receipt of copy of this order.

The OA is accordingly allowed but in the circumstances without any order to cost.

Copy of the order to learned counsel for both the sides.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

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