

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

ORIGINAL APPLICATION NO. 191 OF 1998
Cuttack this the 26th day of July, 1999

Smt.Nirmala Dei(Dash)

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.7.99

26.7.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 191 OF 1998
Cuttack this the 26th day of July, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

Smt.Nirmala Dei(Dash)
aged about 30 years,
W/o. Saroj Kumar Dash,
Vill|Po: Atta, P.S. Sukimda
Dist: Jajpur

...

Applicant

By the Advocates : M/s.B.N.Nayak
A.K.Dora
B.B.Mohapatra

-Versus-

1. Union of India represented through
the Director General,
Department of Posts,
New Delhi-110001
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar, Dist: Khurda
3. Superintendent of Post Offices,

Cuttack North Division, Cuttack
At/PO/Dist: Cuttack

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Respondents

By the Advocates : Mr.B.K.Nayak
Addl.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, a candidate for the post of Extra Departmental Branch Post Master, Atta, on being sponsored by the Employment Exchange, Jajpur Road, in response to requisition dated 21.4.1997(Annexure-R/1) seeks to quash the selection pursuant to subsequent public notification dated 10.2.1998(Annexure-A/2) and to direct Respondent No.3, the appointing authority, to declare the result of the selection pursuant to requisition dated 21.4.1997(Annexure-R/1) to the Employment Exchange.

There was a prayer for interim stay for selection under Annexure-A/2. In order dated 16.4.1998, it was made clear that any appointment made to the post of E.D.B.P.M., Atta, shall be subject to the result of this application and that this condition shall have to be specifically mentioned in the appointment order of the candidate so selected and appointed.

2. The post of E.D.B.P.M., Atta, became vacant on 16.6.1997 due to retirement of the incumbent on superannuation. Respondent 3, i.e. Superintendent of Post Offices, Cuttack (North) Division, approached the local Employment Exchange as well as issued intimations to offices Tahasil and B.D.O., Sukinda and Gram Panchayat of Ata for wide publication. The names of the applicant and four other were sponsored by the Employment Exchange. Res.3 in letter dated 11.6.1998(Annexure-A/1) requested all the five candidates including applicant to submit their applications in prescribed forms on or before 2.7.1997. In response to this letter, four candidates including the applicant submitted their applications

within the specified time period. During scrutiny of the applications for final selection, Res.3, observed that the employment exchange have not submitted the list of candidates within one month from the date of notification as required under the instructions contained in D.G. (P&T) letter dated 4.9.1982(Annexure-R/3), and this according to respondents, necessitated issue of another public notification dated 10.2.1998 under Annexure-A/2.

According to applicant, in the later public notification dated 10.2.1998, applications were invited from the intending candidates belonging to O.B.C. community and in case of non-response of sufficient number of O.B.C. candidates, the other candidates belonging to other reserved communities, i.e., S.T./S.C. will be preferred. This condition was not in the first requisition made to the employment exchange and notification sent to various offices. Thus, it is the case of the applicant that when the selection process in response to earlier notification was not complete, a subsequent notification giving preference to a particular community for the very same post is illegal.

3. We have heard Shri B.N.Nayak, learned counsel for the applicant and Shri B.K.Nayak, learned Addl.Standing Counsel appearing for the respondents. Also perused the records. ~~It is seen from the counter that,~~
 Notification of any vacancy has to be compulsorily made ^{under Employment Exchange} to the concerned employment exchange, (Compulsory Notification of Vacancies) Act, 1959. The Act, however is, silent as to the period within which the employment exchange has to sponsor the names to the concerned

employer. Yet the main ground averred in the counter for issuing a subsequent notification under Annexure-A/1 is that employment exchange had not sponsored the names within 30 days from the date of requisition, as per the guidelines issued in D.G.(P&T) letter dated 4.9.1982 under Annexure-R/3. We have carefully perused these instructions under Annexure-R/3. The relevant portion under para-5 is quoted below :

"5. In case no nominations are received from the employment exchange regarding the candidates as per requirements within the stipulated period of 30 days or if any of the candidates sponsored by the Employment Exchange is not found suitable as per prescribed conditions of eligibility, it would be open to the competent recruiting authority to make selection from other applicants in accordance with the existing procedure".

This instruction in Para-5 does not make it obligatory on the part of the appointing authority to issue another notification. Discretion is left to the competent authority which has to be exercised in a judicious manner. Though requisition to the employment exchange is dated 21.4.1997, the counter is conspicuously silent as to the date when it was despatched to the employment exchange and the date on which the employment exchange received the same. It cannot be presumed that any official letter is despatched on the very same day. More over, the counter is also silent whether the requisition was sent through a Special Messenger or by Post. Be that as it may, the employment exchange in letter dated 22.5.1997 (Annexure-R/2) sponsored the names of five candidates including the name of the applicant. Under the circumstance, we are of the view that Res.3 was not justified in issuing another notification under Annexure-A/1 and that too highlighting that the

appointment to the post in question was meant for O.B.C. failing which, preference to S.T. or in the absence of S.T. to S.C., which condition was not there in the earlier notification under Annexure-R/1 and specially when it is not the case of the Department that by the time the post became vacant on 15.6.1997, there was short fall of percentage of O.B.C. candidates. In the matters of recruitments, conditions prevailing at the time the vacancy arose, should normally be the guideline. In the earlier notification issued to employment exchange, in the matter of preference, it was mentioned that S.T. candidate may be preferred. We, therefore, hold that issue of notification under Annexure-A/2 on 16.2.1998 is bad in law and cannot be sustained.

In the counter which has been filed after passing of order dated 16.4.1998, in regard to interim relief, it has been mentioned that four candidates including applicant sponsored by the employment exchange were considered along with five others, who applied in response to notification under Annexure-1. Shri A.K.Mallick, a Scheduled Caste candidate, who has secured highest percentage of marks among the nine has been given appointment and that the appointment memo was issued strictly in obedience to order dated 16.4.1998 passed by this Tribunal. We find from Annexure-R/2 that this A.K.Mallick was not a candidate sponsored by the employment exchange. Further under Annexure-R/5, it has been made clear that this appointment of Shri Mallick has been made provisionally and is subject to result of this Original Application.

4. As we already held that necessity for issuing

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another notification dated 10.2.1998 under Annexure-A/2 is not legally sustainable, we ~~therefore~~, quash that notification and consequently the selection and appointment made pursuant to that notification. We direct respondents to make selection among the candidates who applied in response to notification dated 11.6.1997 under Annexure-A/1 and notifications sent to various offices on 21.4.1997, according to rules within a period of 90 days from the date of receipt of this order.

In the result the application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.7.99

B.K.SAHOO

26.7.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)