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AT (PROCEDURE) RULES

JUDICIAL APPLICATION NOS. 772 & 785/97 AND 466 OF 1998  
Cuttack, this the 30th day of August, 2001

CORAM:

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

.....

IN OA 772/97

Sri Gunanidhi Mallick, aged about 45 years, son of  
Dinabandhu Mallick, At-Okala, P.O-Kothamala, P.S-Tirtol,  
Via-Rahama, Dist.Jagatsinghpur....Applicant

Vrs.

1. Union of India represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
3. Director of Postal Services (HQs), O/o C.P.M.G., Orissa Circle, Bhubaneswar, Dist.Khurda.
4. Senior Superintendent of Post Offices, Bhubaneswar Postal Division, Bhubaneswar, Dist.Khurda....Respondents

IN OA 785/97

Satrujhna Barik, aged about 39 years, son of Loknath Barik,  
Vill-Garhtorihan (Dihassahi), P.O-Bakugram, Via-Balanga,  
P.S-Nimapara, District-Puri.... Applicant

Vrs.

1. Union of India represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.Khurda.
3. Director of Postal Services (HQs), office of ICPMG, Orissa Circle, Bhubaneswar.
4. Senior Superintendent of Post Offices, Bhubaneswar kPostal Division, Bhubaneswar, Dist.Khurda.
5. Joyendra Barik, Postman, Rasulyarh Sub Post Office, Rasulyarh, Bhubaneswar-10.... Respondents

IN OA 466 OF 1998

Kedar Kumar Guru, aged about 39 years, son of Dhaneswar  
Guru, at present working as EDB, Balidokan, At/PO-Konark,  
Dist.Puri.... Applicant

Vrs.



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1. Union of India, represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
3. Director of Postal Services (HQs), Office of CPMG, Orissa Circle, Bhubaneswar, District-Khurda.
4. Senior Superintendent of Postal Services, Bhubaneswar  
Postal Division, Bhubaneswar, District-Khurda

..... Respondents

Advocates for applicants - M/s Ganeswar Rath  
S.N. Misra  
A.K. Panda  
T.K. Praharaj

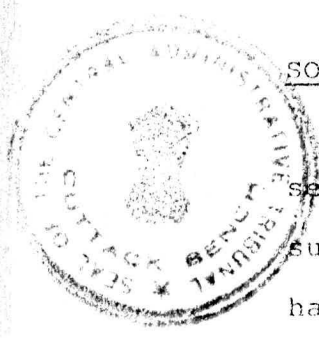
Advocate for respondents - Mr. S.B. Jena  
ACGSC

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ORDER  
SOMNATH SOM, VICE-CHAIRMAN

These three applications have been heard separately. But as the applicants are similarly situated and subject-matter of these applications is the same and they have asked for identical reliefs, these cases are being disposed of by a common order. The facts of these three cases are, however, set out separately.

2. The subject-matter of these three O.As. is the selection made in the year 1995 for appointment to the cadre of Postman. Applicants in OA No.466/98 and OA No.772 of 1997 have prayed for quashing the entire selection for the recruitment year 1995 and have prayed for a direction to the respondents to select the eligible ED officials and to declare the result correctly. These two applicants have also prayed for a direction to the respondents to appoint them to Postman cadre from the date other eligible candidates have been appointed, with consequential financial and service benefits. The applicant in OA No.785 of 1997 has prayed for a direction to the



S. Som

respondents to produce answer papers in Paper-A of the applicant and respondent no.5 and get it evaluated by an officer of the rank of Senior Superintendent of Post Offices in some other Circle outside Orissa. He has also prayed for quashing the appointment of respondent no.5 and for a direction to promote him in his place.

3. Departmental respondents have filed counters in these three O.As. opposing the prayers of the applicants. In OA No.785 of 1997, respondent no.5 has also filed counter opposing the prayer of the applicant. For the purpose of considering these O.As. it is not necessary to record all the averments made by the parties in their pleadings. We have heard the learned counsel for the parties in these three cases. In OA No. 785 of 1997 the respondents have produced the concerned file along with answer papers of the applicant and respondent no.5 in that OA as also the Recruitment Register and we have perused the same.

4. Before considering the submissions made by the learned counsel of both sides it is also necessary to note that K.K.Guru, the applicant in OA No. 466/98 and S.Barik, the applicant in OA 785/97 belong to OBC. The applicant in OA No.782 of 1997 belongs to SC. The admitted position is that for 1995 examination, ten vacancies in the cadre of Postman were notified in letter at Annexure-1 of these O.As. Five vacancies were notified under departmental quota to be filled up by Group-D officials of the Department through written examination and five vacancies were meant for ED employees, i.e., outsider quota. Under the rules, the vacancies meant for ED employees were to be further broken up, 50% going to ED employees coming up

through merit in written examination, and the balance 50% of the ED Agents quota, i.e., 25% of the total vacancies, to be filled up by ED Agents on the basis of seniority. It is also the admitted position that in the examination which was held none of the Group-D employees qualified. Under the Rules enclosed by the respondents at Annexure-R/5 to the counter filed in OA No.466 of 1998, 50% vacancies<sup>are</sup> to be filled up by promotion of Group-D employees, failing which by ED Agents on the basis of their merit in the departmental examination. IN other words the departmental quota meant for Group-D employees has to be added on to the merit quota of ED. In the notice at Annexure-1 of these three O.As. it has been mentioned that in the ED Agents quota, which is commonly called as Outsider quota, one vacancy was meant for OBC candidate and one J.Barik, respondent no.5 in OA No.785 of 1997 was selected, having got 108 marks. K.K.Guru, the applicant in OA No.466 of 1998, who is also an OBC candidate initially got 94 marks but he asked for re-evaluation and after re-evaluation he got his marks determined as 104. K.K.Guru in paragraph 4.5 of his O.A. has stated the reservation roster which should have been applied in respect of these ten vacancies which, according to him, fell against Point Nos.3 to 12 of 100 points roster. In this roster given by the applicant himself in this paragraph, he has shown only one vacancy falling in OBC quota. As applicant K.K.Guru has got only 104 marks and the selected candidate J.Barik, who belongs to OBC category, has got 108 marks and as according to the applicant K.K.Guru himself the only one vacancy would have fallen in OBC category, his prayer for a direction to the respondents to appoint him to the cadre of Postman is held to be without any merit and is rejected.



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His other prayer for quashing the entire selection because of various illegalities will be considered separately as exactly similar prayer has been made by S.Barik, the applicant in OA No. 785 of 1997.

5. S.Barik, the applicant in OANo.785 of 1997, who belongs to OBC category, has got 107 marks as against 108 marks secured by the selected candidate, i.e., respondent no.5 in the O.A. The applicant in the O.A. has stated that his paper was not evaluated correctly. He has stated that instead of Superintendent of Post Offices, the Staff Assistant of Superintendent of Post Offices, Bhubaneswar, has evaluated Paper-I and has awarded more marks to J.Barik, the selected candidate. The departmental respondents in their counter in OA No.785 of 1997 have denied that the answer books were evaluated by the Dealing assistant and not by Senior Superintendent of Post Offices. They have stated that the answer books were evaluated by the then Senior Superintendent of Post Offices Shri S.Patnaik. Copying of marks in the resultsheet was, however, got done by the Dealing Assistant under the personal supervision of Senior Superintendent of Post Offices. Except for his bald assertion that the answer papers have been evaluated by Staff Assistant, one Purnendu Das, the applicant has not given any material in support of this allegation. Applicant S.Barik has mentioned in paragraph 4.11 of the O.A. that he had filed a representation at Annexure-5. Along with the representation he has enclosed an Annexure listing out all the irregularities and here also he has mentioned that he apprehends that Paper A was not evaluated by Sr.S.P.O. but got evaluated by the Staff Assistant concerned. On the basis of a bland assertion which again is based on the

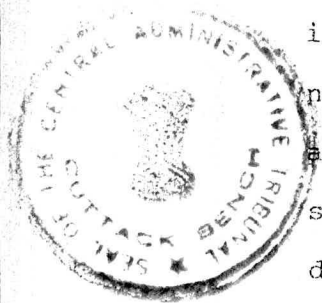


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apprehension of the applicant, it cannot be held that Senior Superintendent of Post Offices did not evaluate Paper-A himself. This contention of the applicant in OA No.785 of 1997 is accordingly rejected.

6. S.Barik, the applicant in OA No.785 of 1997 has stated that he had appeared at the same examination in the year 1990 and had secured 46 out of 50 marks in Paper-A. He has enclosed at Annexure-4 which, however, shows that he has got 47 out of 50 marks in the 1990 Examination in Paper-A. On that basis he has stated that he has been intentionally given less marks in Paper-A. It is necessary to note at this stage that Paper-A deals with making entires in the Postman Book. The candidates are given a certain number of entries (same entries for each candidate) and they are supposed to write the same in the Postman Book. We have seen the two Answer Books produced in a sealed cover. The departmental respondents in their forwarding letter have written that these are answer Books of S.Barik, the applicant and Shri J.Barik, the selected candidate. Their roll numbers have also been mentioned. On a careful comparison of the answer papers, i.e., the entires recorded in respect of the same items by the selected candidate (respondent no. 5) and S.Barik, the applicant, it does not appear that the answer paper of the applicant has been underassessed. On the other hand, it is seen that marks given to him have been inflated. In view of this, we reject the prayer of the applicant for getting the Answer paper evaluated by another Sr.S.P.O. outside Orissa. Moreover, if such a prayer is allowed, then every unsuccessful candidate in any departmental examination may come up with such



J. Barik

prayer. It is also seen that unlike the applicant in OA No. 466 of 1998, the applicant in OA No.785 of 1997 had never asked for re-evaluation of his answer paper. In view of this, his contention is held to be without any merit and is rejected.

7. In OA No.785 of 1997 the applicant, S.Barik has made elaborate averments as to how the earmarking of vacancies for SC, ST, OBC and GC was wrongly done. But in paragraph 4.5(i) of OA No. 785/97 S.Barik, the applicant has himself stated that the roster should have been calculated from point No.3 onwards in the recruitment year 1995. Originally, there were three vacancies in the examination quota. Even if 5 unfilled vacancies of Group-D departmental quota are added to this, it will only come upto 8 and even taking into account the ED Agents seniority quota vacancies it will come to 10. According to 100 points roster mentioned by the applicant in paragraph 4.4((d) the first roster point for OBC is point no.7 which has been covered in this case and the next roster point for OBC is against point no.15. Therefore, it is obvious that in this case also, as in the case of K.K.Guru, applicant in OA No.46 of 1998, the applicant S.Barik has admitted that there is only one vacancy in any case under OBC quota and he having been rightly given less marks than the selected candidate, he cannot claim for a direction to the departmental respondents to appoint him to Postman cadre.

8. In OA No. 785 of 1997, applicant S.Barik has prayed for quashing the entire selection because of various irregularities and this aspect will be considered separately as all the three applicants have made this prayer.

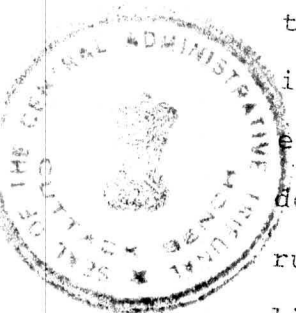
9. G. Mallick, applicant in OA No.772 of 1997, as earlier mentioned, belongs to SC. In the five vacancies originally notified for outsider quota, i.e., ED Agents quota, one vacancy was earmarked for SC. Applicant G. Mallick has stated that adding of five unfilled vacancies meant for Group-D officials for promotion to Postman cadre, to the merit quota of ED Agents, another vacancy would have arisen in SC quota. In paragraph 4.5 of the O.A. No.772 of 1997 the applicant has indicated that ten vacancies would have fallen against roster point nos.3 to 12 and in this, roster point nos.3 and 11 would have gone to SC quota. Respondents have mentioned that initially five vacancies for ED Agents quota were shown from roster point nos. 3 to 7. Thus the admitted position is that the roster point for ED Agents quota started from point no. 3. Respondents have pointed out and rightly that in roster point nos. 3 to 7 the communitywise break up was OC-3, SC-1 and OBC-1. They have also mentioned that in roster point nos. 3 to 7, point no.5 falls in ST category. But this was not shown as falling to ST category because of non-availability of ST candidates in the Division. The respondents have further stated that five vacancies meant for Group-D employees were added to outsider quota and the resultant vacancies were shown against roster point nos. 3 to 12. There was a backlog ST vacancy and that was carried over to these 10 vacancies and the break up was originally OC-5, SC-1, ST-3 and OBC-1. But as there were no ST candidates in the Division, the first two vacancies, point nos. 3 and 4 were filled up in seniority quota, one by SC and one by OC, and roster point nos. 5 to 12 by merit quota. In roster point nos. 5 to 12 only one vacancy falling against roster point no.11 comes under SC quota. This has



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been noted by the applicant in paragraph 4.5 of the O.A. Respondents have pointed out that as the reservation had to be limited to 50%, point no.11 earmarked for SC was carried over to next year in order to limit the reservation to 50%. In other words, out of the eight vacancies in the examination quota, three were meant for ST and one for OBC and roster point no.11 was taken over to the next year. For filling up 3 ST vacancies, the respondents have stated that in letter dated 23.2.1996, the Chief Post Master General was moved for allotting three qualified candidates belonging to ST category from other Divisions to this Division to fill up the backlog/unfilled vacancies meant for ST. From the above it is clear that the earmarking of eight vacancies for examination quota amongst the communities was correctly done. The reserved vacancies had to be limited to 50% as per rules and therefore, out of eight vacancies, reservation was limited to four vacancies consisting of ST-3 and OBC-1, and the SC vacancy was carried over to the next year. We find no illegality in this. If it is taken for the sake of argument that SC vacancy falling against roster point no.11 should not have been carried over to the next year, even then we find from Annexure-1 that in the SC community there is one person, namely, Bhaskar Behera above the present applicant in the merit list. Applicant. G. Mallick has got 75 marks whereas Bhaskar Behera also belonging to SC, has got 79marks. In view of this, it is clear that the applicant has no claim to be appointed against a SC quota vacancy which in any case was not there. This contention of the applicant in OA No. 772/97 is accordingly rejected.



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10. The only point left to be considered is the prayer of the applicants for quashing the entire selection. In their pleadings, especially in the annexure to the representation filed by Satrugna Barik, applicant in OA No.785 of 1997, a large number of alleged irregularities have been mentioned. We have already dealt with some of them. Many of these alleged irregularities are not relevant for the present purpose. For example, the applicants have alleged irregularities in the matter of filling up the seniority quota vacancies. As all the applicants before us are claiming promotion under merit quota, the alleged irregularities in filling up the vacancies under seniority quota are not relevant for our purpose because it is not the case of any of the applicants that he was entitled to be promoted under seniority quota. We have already dealt in detail with regard to allocation of vacancies to SC and OBC quota and have noted that this has been correctly done. This ground for quashing the entire selection also fails.

11. Lastly, it is submitted that amongst the five posts meant for the outsider, i.e., ED Agents, the vacancies earmarked for seniority quota and vacancies earmarked for merit quota should have been shown separately and earmarking of communities should have been done separately applying the roster to these two groups separately. We find nothing in the rules to support this contention. We find that even though the respondents have notified the vacancies meant for ED Agents as 5, they have actually filled up 2 posts under seniority quota. Thus, under the seniority quota not more than 50% of the ED Agents quota has been filled up. The unfilled vacancies of Group-D employees quota have been added to the merit quota of ED



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Agents and roster points have been worked out. We find no illegality in this in the light of our discussions above. In view of this, we find that no case is made out for quashing the entire selection. Moreover, the prayer for quashing the entire selection made by the applicants is somewhat contradictory because in the same breath they have also asked for a direction to the departmental authorities to appoint them as Postman on the basis of same selection. Lastly, the persons who have been selected have not been made parties except the selected OBC candidate Joyendra Barik and therefore, their prayer for quashing the entire selection without making all the selected candidates as parties is also not maintainable.

12. In consideration of all the above, we hold that the Applications are without any merit and the same are rejected. No costs.

Sd/- G. Narasimham  
Member (J).

Sd/- Somnath Som  
Vice-Chairman

MEMBER (JUDICIAL)

VICE-CHAIRMAN

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Section Officer,  
Central Administrative Tribunal  
Cuttack Bench, Cuttack

AN/PS