

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

For Admission

26/3/01

Bench

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Bench

Order dated 10.4.2001

Being aggrieved by her non selection to the post of EDEPM, Lachhman Khunta Branch Office, the applicant has approached this Tribunal in this O.A. praying for quashing the selection and appointment of Respondent No.3 to the above said post with further prayer for direction to appoint her to that post. Departmental respondents and Private Res.3 have filed counters opposing the prayer of the applicant. No rejoinder has been filed by the applicant.

We have heard Shri D.P.Dhalasamant, the learned counsel for the petitioner, Shri K.K.Sahu, learned counsel for Res.3 and Shri B.Dash, learned A.S.C. for the departmental respondents and also perused the records.

Admittedly the applicant has secured the higher percentage of marks than the selected candidate (Res.3). From the pleadings it appears that applicant has secured 48.80% of marks as against 47.60% marks secured by Respondent No.3. It is further submitted by the learned counsel for the petitioner that from the check list vide Annexure-R/1, it is seen that the candidature of the applicant was rejected on the ground of her not giving a declaration about taking up residence in the post-village on being selected for the post. It has been pointed out by the learned counsel for the petitioner that in the application submitted by the petitioner in reply to Question at Sl.No.5(h) applicant has specifically mentioned that if selected she would take up the house of one Shri Rabindra Nayak for holding the post office and also for her residence. From this it is clear that the applicant has indicated her willingness to reside in the post village in case she is selected and therefore, her candidature was rejected on grounds which are not borneout by the facts. The third ground urged by the learned counsel for the petitioner is that the departmental respondents in Page-2 of their counter have specifically mentioned that amongst the candidates Respondent No.3 was the only candidate belonging to O.B.C., who fulfilled all the required criteria. It is submitted by the learned counsel for the

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petitioner that according to instructions of D.G.Posts, there must be at least three candidates eligible in all respects for making a proper selection. But as in this case Respondent No.3 was the only candidate who was eligible for being considered in all respects, he could not have been selected in the absence of required number of eligible candidates. On the above ground applicant has prayed for quashing the selection of Res.No.3.

It is not necessary to refer to all the averments made by the respondents in their counter as these would be referred to while considering the submissions made by the learned counsel for the petitioner.

The admitted position is that the post in question was reserved for O.B.C. candidate. In the Notification at Annexure-1 enclosed by the applicant himself it is mentioned that the post is reserved for O.B.C. candidate and if suitable O.B.C. candidates are not available, the vacancy would be filled up by S.T. candidates failing which by S.C. and thereafter by candidates belonging to general category. Admittedly applicant belongs to general category. Even though she has mentioned in the application that she belongs to ^{S.E.}~~E.~~B.C., in the application, copy of which has been enclosed as Annexure-R/3 to counter, the applicant has clearly mentioned that she belongs to general category. Therefore, she could ~~xx~~ not have competed for a post which was reserved for O.B.C. candidate. In that context ~~xx~~ the fact that the applicant has secured higher marks in the H.S.C. than the selected candidate Res.3 cannot be given any weightage because the post was reserved for O.B.C. candidate. The learned counsel for the petitioner has stated that as the selected candidate was the only ~~xxx~~ eligible candidate from amongst the OBC-candidates, he could not have been selected. We have in this connection referred to D.G.Posts Circular dated 19.8.1998, gist of which has been printed at Pages 90-91 of Swamy's Compilation of E.D. Rules (7th Edn.). In this circular it has been mentioned that along with notifying vacancies of ED Posts to the Employment Exchange, simultaneously public advertisement should be issued and if the notification and public advertisement fails to elicit any response within the stipulated date or if the effective number of candidates responding

is less than three, the vacancy will be renotified to the employment exchange. From this it is clear that for the purpose of consideration there must be at least three OBC candidates in the field of choice. In the instant case there were 13 OBC candidates as it appears from the check sheet. While notifying the vacancy to the employment exchange it was mentioned that the post is reserved for OBC candidate and employment exchange sponsored as many as names of 40 candidates belonging to OBC. But ultimately out of the list of names sponsored by the employment exchange, 21 candidates including the applicant, who belongs to O.C. category applied for the post. The circular of D.G.Post does not say that after the candidature of the persons have been scrutinised and three candidates have been found eligible in all respects then only selection could be made and if eligible candidates are less than three, even though a large number of candidates have applied for the post, the selection from the reserved category can be made. If that be the case, then with the defects found out in the scrutiny in respect of an applicant and if in such process the number of candidates eligible in all respects becomes less than three, then the vacancy will be required to be notified again and again. Even granting for sake of argument the stand of the learned counsel for the applicant it is clear that Res.No.3 being an only O.B.C. candidate could not have been selected, then the proper course of the departmental respondents would have to renotify the vacancy for filling up of that post by O.B.C. candidate, which has also been provided in the circular referred to above. But in this case a large number of O.B.C. candidates were in the process of selection. Therefore, selection of Res.3 has been made in consideration of the candidatures of all the O.B.C. candidates. In consideration of the above, we find no infirmity in the process of selection and appointment of Res.No.3 to the post of EDEPM, Lachhman Khunta B.O. The applicant being a candidate belonging to O.C. category could not have been selected against a post which is

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reserved for O.B.C. candidate. Moreover, in case O.B.C. candidates were not available the vacancy would have been given to S.T. and there was sole candidate belonging to S.T. In view of the above, we hold that the applicant's prayer for direction to respondents to appoint her to the post in question is without any merit. In the result, therefore, O.A. is held to be without any merit and the same is rejected, but without any order as to costs.

MEMBER (JUDICIAL)

Amnath Singh
VICE CHAIRMAN
10.4.2001

Free copies of
final order
dt. 10.4.2001 issued
to counsel for both
sides.

S.O. Singh

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