

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.433 OF 1999
CUTTACK THIS THE 21ST DAY OF FEBRUARY/2002

Maheswar Muduli

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(S.A.T. RIZVI)
MEMBER (ADMINISTRATIVE)

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : ~~CUTTACK~~

ORIGINAL APPLICATION NO.433 OF 1999
Cuttack this the 21st day of February/2002

CORAM:

THE HON'BLE SHRI S.A.T.RIZVI, MEMBER (ADMINISTRATIVE)
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER (JUDICIAL)

...

Sri Maheswar Muduli, aged 45 yrs., S/o. Late Bhikari Charan Muduli, Vill/PO Haladia, Via: Ghanteswar, Dist-Bhadrak, PIN-756129, at present working as E.D.Packer, Kiriburu Hill Top, Dist-Keonjhar, -578404

... Applicant(s)
M/s. P.K. Padhi
U.R. Bastia

By the Advocates

-VERSUS-

1. Union of India represented by its Chief Post Master General (Orissa Circle), At/PO-Bhubaneswar, Dist-Khurda-751001
2. Superintendent of Post Offices, Keonjhar Division, At/PO-Keonjhar Garh, Dist-Keonjhar-758001
3. Prahallad Chandra Mohanta, Postman, At/PO-Keonjhar Garh HO Dist-Keonjhar
4. Bijaya Kumar Senapati, Postman, At/PO-Joda S.O., Dist-Keonjhar
5. Prana Ballav Acharya, Postman, At/PO-Belani S.O., Dist-Keonjhar
6. Fakir Charan Sahu, Postman, At/PO-Barbil S.O., Dist-Keonjhar

... Respondent(s)
Mr.S.Behera, A.S.C.

By the Advocates

ORDER (ORAL)

MR.S.A.T.RIZVI, MEMBER (ADMINISTRATIVE): A Departmental Examination was held on 29.6.1997 to fill up six vacancies in the post of Postman/Mail Guard. As a result the following five persons have been declared qualified in the respondents' letter dated 14.8.1998 (Annexure-4).

1. S/Shri P.C.Mohanta (OC)
 2. B.K.Senapati (OC)
 3. P.B.Acharya (OC)
 4. F.C.Sahoo OBC (Wrongly shown as OC)
 5. B.Patra, (SC)
- 2

8

In addition to the above five persons a sixth candidate, viz., Shri P.K.Giri¹ (OC) ✓ has been appointed, the information in relation to which has been supplied to us during the course of hearing to-day. The particulars of this sixth candidate had not been revealed in the pleadings placed on record.

2. In the notice dated 26.5.1997 (Annexure-3) issued by the Respondents notifying the holding of the aforesaid examination, it was stated that while ~~three~~ vacancies would be filled up by Departmental candidates working on Group D posts, the other three were to be filled up by outsiders, viz., the E.D.As. According to the break up ^{of} communities the aforesaid vacancies were to be filled up by OCs and SCs alone; four were to be filled up by OCs and two by SCs. The posts were equally divided communitywise in the departmental and the outsiders quota. No vacancy was notified for being filled by OBC candidates. After the aforesaid notice had been issued the respondents discovered that none eligible among the departmental candidates was available. Accordingly the three vacancies belonging to the departmental quota were diverted to the outsider (EDA) quota. Thus all the six vacancies were to be filled from amongst the EDAs. The Rules (Annexure-R/1) placed before us by the respondents provide that of the total number of vacancies to be filled by outsiders quota, half (50%) should be filled from amongst EDAs, who have put in three years (now five years) regular service and are within the age limit, on the basis of merit in the examination. The remaining half (50%) of the vacancies will have to be filled, in accordance with the aforesaid rule, on the basis of length

of service from amongst EDAs who have put in three years' of regular service and are within the age ~~of~~ limit and who qualify in the examination. The same rules (Annexure-R/1) further provide that the unfilled vacancies of the departmental quota will have to be added to the quota for EDAs and the addition will be to that half of the quota (meant for EDAs) ^{which is to be filled} on merit basis. This would mean that in the present case the three unfilled vacancies of the departmental quota, i.e., those which could not be filled up departmentally will be added to that half in respect of which promotion is required to be made on merit basis as a result of an examination. Out of the six vacancies, in the present case, accordingly 4.5 will fall under the merit quota and the remaining 1.5 under the quota intended to be filled on the basis of seniority. The learned counsel appearing on behalf of the respondents, in instructions from the departmental representative present in the Court submits that in order to round off ^{the} ~~all~~ the figures the Department decided to fill five vacancies on merit basis and only one vacancy on seniority basis. He submitted that in the ^{future} ~~the~~ Department will suitably increase the vacancy to be filled on seniority basis by reducing vacancies to be filled on merit basis, so that ^{the above} tilt in favour of merit quota gets properly rectified by an ^{appropriate} ~~appropriate~~ tilt in favour of the seniority quota.

3. From the submissions made by the learned counsel on behalf of the respondents, ⁱⁿ⁻ again on ^{received} instructions from the departmental representative, we find that the Department has conducted only one examination and that was held for filling the five vacancies falling under the merit quota.

The sixth candidate has been selected/appointed without any examination, simply on the basis of DEC's recommendations.

4. In relation to the aspect of merit, the learned counsel appearing on behalf of the applicant in the present Original Application submits that going by merit, the present applicant should have occupied ^{the} 4th place in order of merit, having secured 114 marks in the examination. The list supplied by the respondents, in their counter reply, however, does not include the name of the present applicant. Instead the name of ~~another~~ OBC candidate, viz., Shri F.C.Sahoo has been listed therein with an indication that Shri Sahoo was selected by providing some kind of relaxation. The same ^{ind-} ~~communication~~ has been held out in respect of the SC candidate (Shri B.Patra), finally selected/appointed as a result of the aforesaid examination.

5. The learned counsel appearing on behalf of the respondents has tried to meet the situation arising from the submission made by the learned counsel for the applicant by submitting that after the diversion of departmental vacancies to the outsiders quota the Respondents relied on ^a 100 point roster ^(not produced before us) and going by that roster only four were to be filled by OC candidates and one each by OBC and SC candidates, respectively. According to him, as per the aforesaid ~~note~~ ^{note}, ~~in the roster~~ ^{OCs} only three were to be ~~filled~~ ^{taken} against the merit quota and one OC was required to be inducted on seniority basis. We are unable to persuade ourselves to believe that such a course of action ^{followed} on seniority basis without examination was indeed possible. Firstly, in so far as ^{the} representation of SCs is concerned, after the introduction

of post-based reservation from July, 1997, it is no longer possible in our judgment to divert SC quota vacancies to be filled by other categories, whichever roster, whether a 40 point or a 100 point, is followed. Secondly, even if it is assumed, without being ^{admitted} ~~assumed~~ that a vacancy was to be filled by an OBC candidate, how could the same be filled by a candidate (Shri F.C.Sahoo), who was lower in merit than the present applicant. The respondents have not been able to come out with a proper explanation in that respect.

6. The rules (Annexure-R/1) also provide that the reserved points should be divided equally between the quota of length of service and the quota based on merit. By following this rule, we find ^{that} the two vacancies earmarked for SC in the initial notice issued by the respondents should have been equally divided between the merit and the seniority categories. In other words, ~~one~~ ^{one} out of the five should have been reserved for SC and the ^{one} ~~seniority~~ quota vacancy ~~was~~ should also have been filled by a SC candidate. Instead the Respondents have selected one SC candidate under the merit quota with none on seniority basis. The candidates selected on seniority basis, ~~on the other hand~~, belongs to ^{the} O.C. category. We have, in the circumstances, noticed a serious discrepancy in this area of decision making.

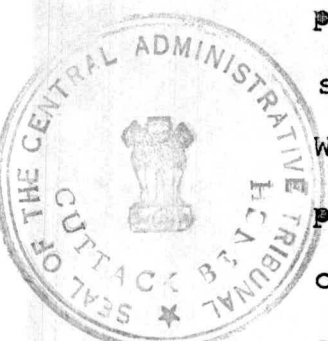
7. It ^{has} ~~is~~ not escaped our attention that when the departmental vacancies were diverted to the outsiders quota, a fresh notice notifying ^{the} ~~such~~ change was not issued, thereby keeping the aspirants in the dark about the changed position. This would add to the various other grounds, already pointed out by us in the preceding paragraphs on the basis of which

12

the selections made stand vitiated as being de hors the rules.

8. In the light of the foregoing, we conclude that the selections made which have been challenged by the applicant in the present Original Application are bad and stand vitiated on the ground that the rules laid down by the respondents (Annexure-R/1) have not been followed properly and correctly and on the additional ground that the policy of reservation too has not been followed properly. The O.A. is accordingly allowed by quashing the selection, but without providing any relief to the applicant. We have no doubt in our mind that as and when the selection process is initiated afresh, all these who have been considered in the selection in question will be considered again along with such others, as might be found eligible.

9. The Original Application is disposed of in the aforestated terms. There shall be no order as to costs.


M.R. MOHANTY 21/02/2002
MEMBER (JUDICIAL)


(S.A.T. RIZVI)
MEMBER (ADMINISTRATIVE)

B.K.SAHOO//