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ORDER DATED 31-1-2002.

Learned counsel for the applicant and his associates are absent. There is also no request for adjournment. As in this case pleadings have been completed long ago it is not possible to drag on the matter indefinitely. We have therefore, Heard Shri B. Dash, learned Additional Standing Counsel for the Departmental Respondents and Shri D.K. Mishra, learned counsel for the Res. No. 4 and perused the pleadings.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. Being aggrieved by his nonselection for the post of EDMC, Chhaitana BO the petitioner has approached the Tribunal with a prayer for quashing the appointment of Res. No. 4 the selected candidate and issue of a direction to consider the case of applicant for the post. Admittedly vacancy arose due to promotion of the regular incumbent to the cadre of postman and a public notice was issued at Annexure-1 inviting application and reserving the post for ST failing which by OBC category. Simultaneously requisition was also placed with the Employment Exchange. Ultimately in response to the public notice and requisition to the Employment Exchange, six ST candidates were within the zone of consideration. It is also admitted position that for the post of EDMC, the minimum qualification is Class VIII pass and it is further provided that matriculates will be preferred. Amongst the six ST candidates none was a matriculate. Appointing Authority, therefore, rejected the candidatures of all the six ST

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candidates and ^{considered} ~~thereupon~~ the appointment for next preferred category i.e. OBC. But as there was one OBC candidate, he could not be considered and therefore, the vacancy was treated as un-reserved and Respondent No. 4 who belongs to general category was selected. The Departmental Authorities have mentioned in their counter that rejection of candidature of six ST category candidates on the ground of ~~their~~ ^{their} not having preferred qualification was not correct when all of them had the minimum qualification for the post and it is further submitted that Departmental Authorities are going to take further action in this regard. Under the circumstances we would have normally left to the Departmental Authorities to take for such further action under law as is open to them but we propose to deal with the matter further in view of the submission made by Mr. Mishra, learned counsel for the Respondent No. 4, the selected candidate stating that his selection was perfectly legal. In support of his contention learned counsel for the Respondent No. 4 has relied on para 4 of the circular dated 26.5.1995 enclosed by the Departmental Authorities at Annexure-4 and para 6 of circular dated 27.11.1997 at Annexure-R/5 to the counter of the Departmental Respondents. We have considered these two paragraphs carefully. In para 4 of the circular a clarification has been issued to the doubt expressed therein as to whether SC/ST candidates who have passed VIII std. will be given preference to candidates other than SC/ST possessing matriculation qualification where ^{there is} adequate representation for SC/ST candidates in ED categories other than EDBPM/EDSPM.

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In reply it has been clarified that where adequate SC/ST candidates are there then such preference need not be given. In the instant case vacancy was notified for ST community because there was shortfall in the representation of ST category and therefore, question of preferring non-ST matriculate candidates over a ST candidate having the minimum qualification can not be termed as ~~illegal~~ legal. In view of this, this paragraph does not provide any support to the case of Res. No. 4. Para 6 of ^{Order} the circular lays down that candidate belonging to reserved category should fulfil all the conditions and no relaxation will be possible. It is further provided that if candidates belonging to reserved or unreserved category possessing preferential qualification are not available selection should be made from amongst them on merit and those possessing essential qualification should be considered. From this a case is sought to be made out by the learned Counsel for Res. No. 4 that even when ST candidates having the minimum qualification are available the general candidates having preferential qualification should be preferred even when while advertising the post it has been specifically mentioned that the post will be filled by ST candidate. We find no support ^{for} ~~of~~ this contention, in the above paragraph No. 6. ^{what} it says merely is that when persons with preferred qualification in reserved or unreserved categories are available persons with minimum qualification in that category should not be considered. This does not mean that unreserved category candidates with preferred qualification will be given preference over a

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reserved category candidate with minimum qualification when the post has been ~~meant~~ ^{he} declared to ~~have been~~ ^{be} filled up by reserved category. In view of this we have no hesitation in holding that the above contention of learned counsel for Respondent No. 4 is without any merit and the same is accordingly rejected.

Respondents will be free to take action as per law with regard to the selection and appointment of Respondent No. 4.

The First prayer of the applicant is disposed of accordingly.

As regards the second prayer, the applicant by his own admission belongs to SC community and Respondents have pointed out that as against the required 15% ^{to be} reserved for SC community the ^{in SC} existing level of reservation is 17.4%. As such, he can not claim any preference on the ground that he is belonging to SC. Moreover, the vacancy was not notified to be filled up by a SC candidate. His second prayer is therefore, held to be without any merit and the same is rejected.

In the result, therefore, the OA is disposed of with the observations and directions made above. No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 31.01.2002

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 31.01.2002

KNM/CM.

Free copies of final
order dt. 31.10.02
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for both sides

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Prapz
S.O.D.)