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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.609 OF 1999
Cuttack this the 5th day of Aug 2003

Ashok Kumar Behera ... 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 ? *Yes*

Chauhan
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Chauhan
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 609 OF 1999
Cuttack this the 5th day of August 2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN

AND

THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

...

Shri Ashok Kumar Behera, aged about 30 years,
Son of Late Kishore Chandra Behera, resident
of Tikarpada Street, At/PO/P.S. Rambha,
Dist- Ganjam

...

Applicant

By the Advocates

M/s. Narasinh Patra
A.K. Patra

VERSUS..

1. Senior Superintendent of Post Offices,
Berhampur (Gm) Division, At/PO-Berhampur,
Dist-Ganjam
2. Asst. Superintendent of Post Offices Incharge,
Chatrapur, At/PO-Chatrapur, Dist-Ganjam
3. Satrughana Pahan, S/o. Hatia Pahan, E.D.B.P.M.,
Panditgaon, Village-Sk. Saranpur Langhar,
PO-Panditgaon, Dist-Ganjam

...

Respondents

By the Advocates

M/s. Biswanath Rath
J.Rath,
S.K.Jethy
M.K.Panda
M.K.Singdeo
K.K.Mohapatra
(For. Res. No. 3)

Mr. B.Dash, A.S.C.
(Res. No. 1 and 2)

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Shri Ashok Kumar Behera (applicant)
in this Original Application under Section 19 of the A.T. Act,
1985, has challenged the selection of one Satrughana Pahan,
(Res. No. 3) as Extra Departmental Branch Post Master (in short

E.D.B.P.M.) Panditgaon Branch Office . . ignoring his candidature.

2. The facts of the case in a nut shell are that Senior Superintendent of Post Offices, Berhampur (Gm) Division, (Res. No.1) invited applications for recruitment to the post of E.D.B.P.M., Panditgaon B.O. on 7.12.1998, notifying the said vacant post to be reserved for the candidates belonging to S.T. category; failing which the vacancy to be treated as unreserved and would be reserved for the candidates in order of preference for SC/OBC communities. The applicant has submitted that he belongs to S.C. community and possesses all the requisite qualifications, i.e., educational and others for the post. He further stated that no candidate belonging to S.T. community applied for the post. But the Respondents-Department instead of considering his candidature, being a Scheduled Caste, considered the ~~applications of~~ ^{to} Res. 3 to 5, who belonged ~~to~~ general category and verified the documents submitted by them. Being aggrieved, he had approached this Tribunal in Original Application No.148/99, wherein the Tribunal was pleased to direct the Respondents-Department to verify the documents of the applicant along with others. It was only after receipt of this direction of the Tribunal that the Respondents-Department carried out the verification of the documents submitted by the applicant on 20.4.1999. It is further submitted that the applicant had sent a representation to Res. No.1 on 7.5.1999 stating therein that he would provide accommodation for housing the Post Office at Panditgaon, if necessary, he would purchase a house for the purpose. ~~In spite of this offer~~, Res. No.1, without taking into

consideration the documents filed by the applicant "illegally and arbitrarily" selected Res. No.3 provisionally to the post of E.D.B.P.M., Panditgaon. Being aggrieved by this action of the Res. No.1, the applicant has approached this Tribunal in the instant O.A. for redressal of his grievance.

3. The Respondents-Department as well as the private Res. No.3, by filing separate counter have contested the prayer of the applicant in this O.A. Respondents-Department have disclosed that for filling up of the post of E.D.B.P.M., Panditgaon B.O., Res. No.1 issued public advertisement on 7.12.1988 and simultaneously, on the same day, placed a requisition with the Employment Exchange, Chatrapur for sponsoring the names of the eligible candidates for the said post. In both the notifications, the Res. 1 had mentioned that the post was reserved for S.T. category and that "in case of non availability of minimum of three eligible candidates belonging to the above reserved category, the vacancy in question would be treated as unreserved and would be reserved in order of preference, i.e., OC/OBC, subject to fulfilment of other required conditions". Eventually the Employment Exchange sponsored a list of 25 candidates, out of which 20 candidates including the applicant submitted their candidature in the prescribed form with requisite documents to Res. No.1. Three applications were rejected being received after the last date fixed for receipt of applications. Finally there remained 4 ST, 3 SC, 4 O.B.C. and 6 O.C. candidates. However, 2 of the SC candidates, 3 of the OBC candidates, 2 of the OC candidates and none of the ST candidates fulfilled the conditions of recruitment

as prescribed for the post. All the eligible candidates were considered for selection, but no preference could be given to the candidates either of SC or OBC category as there was no three eligible candidates in the zone of selection as per the requirement of selection notified in the circular. In the circumstances, the Respondents-Department have submitted that the selection was made on merit basis from among the six candidates, who were eligible for the post without giving preference to any candidate on consideration of his caste. Finally, one Shri Satrughan Pahan, was selected being the most meritorious candidate and fulfilled all the requirements. Regarding the candidature of the applicant, Respondents-Department have submitted not only that there were no three SC candidates for consideration for selection as per the conditions laid down in the vacancy circular, but that the applicant was not able to offer rent free accommodation for running the Post Office.

4. Shri Satrughan Pahan (Res. No.3) in his counter has stated that the applicant in this O.A. being not a resident of the post-village was not fulfilling the eligibility condition as prescribed under Clause-II(2) of the Advertisement.

5. The applicant, by filing a rejoinder has tried to controvert some of the points raised in the counter filed by the Respondents. Firstly, his submission in the rejoinder is that the vacancy circular did not specify that a candidate belonging to general category would be selected in the event of non-availability of a reserved category candidate. He claimed that the post in question

was reserved for ST/SC/OBC and thus selection of an OC candidate was illegal. This apart, appointment of Res. No.3 is bad because he had submitted his application without attaching land documents by violating Clause-2(c) of the eligibility conditions under Annexure-1. He further submitted by filing a rejoinder that "It is nowhere mentioned in the said Clause that non-availability of 3 SC/OBC candidates the post will be reserved for general and the applications of general caste candidates would be considered for the post ...". He also disputed that he could not have provided rent free accommodation had he been selected.

6. We have heard the learned counsel appearing for the parties and perused the records placed before us.

7. The sole point to be decided here is whether the non-selection of the applicant by Res. No.1 on the ground that there were no 3 eligible candidates in the field of selection had not contravened the conditions laid down in the vacancy circular at Annexure-1. The admitted fact of the matter is that the post was reserved, in the first instance, for ST candidate. In case no suitable candidate would be available in ST category, the post would be dereserved for the SC category failing which for OBC category. It has been submitted by the Respondents that four applications were received from ST category candidates, but none of them was eligible for consideration for the reasons recorded in the relevant recruitment file. With regard to SC candidates, they have submitted that they had received three applications, out of which two were rejected being submitted in incomplete manner (as they had

not given proof of their income, which is one of the essential conditions for determining the eligibility for selection). The other candidate, i.e., the present applicant, had furnished all the requisite certificates and he had also stated that he would be providing rent free accommodation for housing the Post Office in the post village and to that effect produced a letter of authorization of tenancy from one Dr. Kashinath Biswal, belonging to that village. However, his candidature was not considered for selection ab initio on preferential basis, on the ground of non-availability of minimum three candidates in SC category. However, his candidature was later considered along with the O.C. candidate on the direction of this Tribunal in O.A.145/99 dated 7.4.1999. The applicant has vehemently contested this statement of the Respondents-Department and has gone to the extent of stating in the rejoinder that no such condition was ever mentioned in the vacancy circular.

We have perused the vacancy circular at Annexure-1 and also the Department of Posts, Ministry of Communications letter No.19-11/97-ED & Trg. dated 27.11.1997 issuing instructions regarding reservation of SC/ST/OBC etc. for appointment to E.D. categories (Annexure-R/6). From the vacancy circular dated 7.12.1998 (Annexure-1) we find (at Para-4) that the notification contained the following conditions.

" The post is reserved for the candidates of ST category. In case of non-availability of minimum number of 3 (three) eligible candidates belonging to the above reserved category, the vacancy in question will be treated as unreserved and will be reserved for the candidates in order of preference, i.e., SC/OR Communities subject to fulfilment of other required conditions".

The aforesaid condition as incorporated in the vacancy circular is based on the authority of the Department of Posts, Ministry of Communications' instructions/letter dated 27.11.1997, referred to earlier, wherein Para-5 stipulates as under.

"... In the notification it should be specifically mentioned that in case the minimum number of 3 eligible candidates belonging to the particular reserved community are not nominated or do not offer the candidatures, the vacancy in question will be treated as unreserved and offered to the candidates belonging to other reserved category to be specified for which the representation may happen to be sufficient or other community candidates, as the case may be".

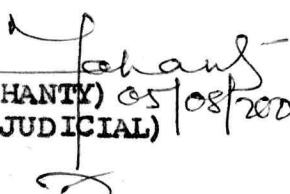
8. From what has been stated above, it would be clear that the argument put forth by the applicant that the Respondents-Department had never notified the conditions that non-availability of minimum number of three eligible candidates belonging to the reserved category would result in de-reservation of the post in the said category is not sustainable. We find that the terms and conditions notified in the vacancy circular by Res.1 were incorporated strictly in accordance with the instructions issued by the D.G.Posts, for recruitment to the E.D. post and for ensuring reservation in appointment to E.D. categories. The vacancy circular did notify the circumstances in which the post could be dereserved by the recruiting authority. We also do not find any legal infirmity in the instructions issued by the D.G.Posts in this regard as the reservation policy applied in appointment of E.D. categories are post based and not vacancy based. In this regard we have referred to Para-4 of the letter at Annexure-R/6. In the circumstances, we

uphold the selection procedure adopted by Res. No.1 for filling up of the post of E.D.B.P.M., Panditgaon B.O.

9. Before concluding, we would like to observe that the D.G.Posts would do well to issue instructions modifying the notification form used for calling candidates from the Employment Exchange to enable the Employment Exchange to sponsor the names of the applicant keeping in view the eligibility conditions for the post. We, therefore, suggest that after Column-5 of the Form, he should incorporate the eligibility conditions as given out in Para-2(a) to 2(d) of Para-4 of the public advertisement for recruitment to E.D.Posts. Such an amendment in the notification form will create uniformity in the manner of notification of the vacancies to the Employment Exchange as well as to the general public.

10. Having regard to the facts and circumstances of the case, we hold that this Original Application is devoid of any merit and the same is, therefore, dismissed, leaving the parties to bear their own costs.

11. Registry is directed to send a copy of this order to the Director General (Posts), Dak Bhawan, New Delhi, drawing his attention and to take necessary follow up action, as observed in Para-9 of this order.


(M.R.MOHANTY) 05/08/2003
MEMBER (JUDICIAL)

By/


(B.N. SOM)
VICE-CHAIRMAN