

J

OA-120/2000

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Rejoinder of

07. 19.01.2001

b1/c

Fah Bench
6/12

Lawyers have abstained from Court work
Pleadings have been completed in
this matter.

1. Rejoinder not filed.

Adjourned to 07.02.2001 for

2. For further orders
reg. stay.

hearing and final disposal at the
stage of admission.

PS
1.1.2001

Bench

Ord. No. 6Rejoinder filed -
Copy served.S. J. M.,
Vice-Chiefman
19/1/01

For orders

L. K. J.
Member (J)PS
18/1/01

Bench

Order dated 7.2.2001

Heard Shri S.S.Das, the learned counsel
for the petitioner and Shri A.K.Bose, learned senior
Standing Counsel for the Respondents and also
perused the records.

For Admission

In this Application the petitioner has
prayed for quashing the order dated 9.2.2000 at
Annexure-7 rejecting his request for transfer from
the post of E.D.D.A. Tulati to work as E.D.B.P.M.,
Tulati. He has also prayed for quashing the adverti-
sement dated 7.2.2000 vide Annexure-6 through which
applications were invited for the post of EDBPM,
Tulati reserving it for S.T. candidate, failing
which by OBC/SC and failing which by candidates
belonging to other communities. Respondents have
filed their counter opposing the prayer of the
applicant and applicant has filed rejoinder.

PS
6/2/01

Bench

For the purpose of considering this O.A.
it is not necessary to go into too many facts of this
case. The admitted position is that post of EDBPM,
Tulati fell vacant on 24.11.1998 as the regular
incumbent was promoted. As it was not possible to
fill up the post immediately through a regular
process of selection the applicant, who was working
as E.D.D.A. in the same office was permitted to
manage the work of EDBPM in addition to his own

S. J. M.

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duties. This order is dated 23.11.1998 at Annexure-1. Applicant has stated and this has not been denied by the respondents that initially he **had** worked in the post of E.D.D.A. and later on he was handed over the charge of EDBPM and on a representation made by him the departmental authorities issued him a letter dated 6.2.1999 vide Annexure-5, in which he was asked to manage the work of E.D.B.P.M., Tulati from 8.2.1999 until further orders after taking leave from the post of EDDA and by providing substitute. Thereafter from 8.2.1999 the applicant has been working as EDBPM by providing substitute in the post of EDDA. Applicant had ^{represented} admitted to the respondents to get himself absorbed in the post of EDBPM, Tulati by way of transfer, but his representation has been rejected in letter dated 9.2.2000 at Annexure-7 on the ground that he did not possess independent landed property. In this letter he was also informed that selection process for filling up of the post of EDBPM, Tulati had already been initiated. In the notice dated 7.2.2000 at Annexure-6 the applications were invited for filling up of the said post of EDBPM and the petitioner also applied and was one of the candidates, but his application was rejected on the ground of ~~he~~ not having landed property ~~of~~ his own. On the basis of the above admitted facts the applicant has come up in this petition with the prayers referred to earlier.

It is submitted by the learned counsel for the petitioner that in support of ~~he~~ having landed property, he has filed two Records of Right, xerox copies of which have been annexed as Annexure-4 series. The lands covered by these two Pattas are **Sthitiban properties, comprising of homestead and paddy land.** The name of the applicant appears as record holder along with the name of his married sister Kumuduni Mohanty. The departmental respondents have rejected the prayer of the applicant for getting appointed to the post of EDBPM by way of transfer on the ground that he does not have the landed property in his own name.

We have in a series of decisions held that

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a cosharer recorded in the R.O.R. has a specific identifiable interest in the property and it cannot be held that he has no landed property in his own name. Moreover, for appointment to the post of EDBPM Rules provide that the selected candidate must have independent means of livelihood. ~~xxx~~ There is no averment in the counter of the Department that the applicant does not have the independent means of livelihood.

We, therefore, hold that ~~xx xxx xxxxxx~~ that the Records of Right submitted by the applicant showing the landed property held by him along with his married sister cannot disentitle the applicant for being appointed to the post of EDBPM. The contentions of the Department in this regard are therefore, rejected.

Secondly it is submitted by the learned Sr. Standing Counsel that the applicant was appointed to the post of EDBPM only as a stop gap measure and he did not come through any process of selection to get himself absorbed against that post. Circular dated 12.9.1988 of D.G. Posts lays down that when an E.D. Post falls vacant in the same office in the same place and if one of the existing incumbents prefers to work on the same post he may represent to work on that post by way of transfer without coming through the employment exchange, provided he is suitable for the other post and fulfils all the required conditions.

In the instant case the applicant was ~~an~~ ^{is} working as EDDA, Tulati and he wanted to get himself appointed to the post of EDBPM, Tulati by way of transfer which is at the same place and therefore, the case of the applicant ^{is} ~~is~~ ^{is} ~~squarred~~ ^{is} covered by the Circular of D.G. Posts referred to by us above; and he is, therefore, entitled to be appointed to the post of EDBPM, Tulati.

Respondents have further stated in their counter that they have gone on inviting applications for fresh appointment by notifying the vacancy and according to departmental instructions every alternative vacancy is to be filled up by one of the categories of candidates belonging to SC/ST/OBC, depending on the percentage of representation in

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existing vacancy and accordingly the post of EDEPM, Tulati has been reserved for S.T. candidate, failing which by OBC/SC and so on. As already held, the applicant is entitled to be considered for appointment to the post of EDEPM, Tulati, by way of transfer in the light of the instructions of D.G.Posts, as referred to above, we hold that without correctly deciding the case of the applicant in accordance with rules and instructions of the Department, Respondents should not have gone in for public advertisement. In this view of the matter, notice at Annexure-6 and order, rejecting the representation of the applicant vide Annexure-7 are hereby quashed.

Learned counsel for the petitioner has brought to our notice the decision of the Hon'ble High Court in a similar matter in O.J.C.8355/99, disposed of on 21.6.2000 and we have taken note of that decision.

We direct the respondents to appoint the applicant to the post of E.D.B.P.M., as directed by us above, within a period of 60(Sixty) days from the date of receipt of this order.

In the result, O.A. is allowed as above, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

Free copies of
final order
dt. 7.2.2001 given
to both sides.

Ans/2
S.C.T.

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13/2/01