

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

8. ORDER DATED 1-3-2001.

We have heard Mr. S.K. Das, learned counsel for the applicant and Mr. B. Dash, learned Additional Standing Counsel appearing for the Departmental Respondents and have also perused the records.

2. In this Original Application, the applicant has prayed for quashing the offer of appointment issued in favour of Respondent No. 5 and for a direction to the Departmental Respondents to issue offer of appointment in her favour for the post of Extra Departmental Branch Post Master, Mituani Branch Post Office.

3. Departmental Respondents have filed counter opposing the prayers of the applicant and the applicant has also filed rejoinder.

4. Private Respondent No. 5 was issued with notice but he did not appear nor did he file any counter.

5. We have gone through the pleadings of the parties. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case. The admitted position is that for filling up of the post of EDBPM, Mituani Branch post Office, public notice was issued on 14.5.1999 at Annexure-1 reserving the said post for the candidate belonging to ST community. It was also provided that in case requisite number of ST candidates are not available, then the post will be offered to other reserved communities i.e. SC/OC/OBC failing which to general category candidate. In response to the public notice and also in response to the requisition sent to the employment exchange, altoge-

REGISTRAR

S. J. M.

21/7/2000

1. Coun. had by
R-1, not
found on the
Coun. in the
app. filed.

11. Coun. by P.S. not found

For and

20720

21-7-2000

Notice v/R 26 of The CAT Rules of Practice has already been issued. No steps taken by the learned Advocate for the applicant in this regard.

Put up before the Bench for further orders in terms of Rule 27.

1. Copy of Coun. not found.

11. Coun. by P.S. not found

For and

9A772/2K

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Rejoinder of
filed
Ratna Bench
23/12

Rejoinder
not filed.

Ratna
23/12 Bench

Rejoinder not filed

23/12 Bench

1. Rejoinder filed -
copy served.

2. Counter by A-5
not filed.

3. M.A. 982/2000 for
consideration -
copy served.

23/11/01 Bench

Os. No. 6

As per cr. No. 1
dt. 10.4.2000, notices
issued to all steps,
including A-5
on 17.4.2000
vide despatch
Nos. 830 to 834, But
A.D. from A-5
not returned.

For Order

Bench

S. Kum

For Admission

23/12/01

Bench

ther 16 candidates were in the zone of consideration including the applicant and Respondent No. 5. It is also the admitted position that between the two the applicant has got higher percentage of mark in HSC examination. She has got 353 out of 750 representing 47.56% whereas Respondent No. 5 the selected candidate has got 244 out of 700 representing 34.95% in HSC examination.

Departmental Respondents have stated that the applicant was not selected even though she got highest ^{or} percentage of marks because according to the income certificate her income from landed property is Rs. 600/- which is not considered adequate to be considered that she has independent means of livelihood. Respondents have stated that the income of Rs. 11,600/- shown in the income certificate given to the applicant as Income from other sources was not taken into consideration as in the ED rules, there is no provision to take such income into consideration. Accordingly, the candidature of applicant was cancelled and Respondent No. 5 was selected.

6. Thus, the sole point for consideration in this case is whether the Departmental Authorities were right to reject the Income of Rs. 11,600/- shown as applicant's income from other sources in the Income certificate issued by the Tahasildar which is at Annexure-5. It has been submitted by learned counsel for the applicant that from the checklist enclosed by the Departmental Respondents in their counter it is seen that the Respondent No. 5 has got only 0.50 decimals of land from which Income has been shown as Rs. 3000/- per year. In the same check

list it has been shown that the applicant has got 0.53 decimals of land but Income from that larger piece of land has been shown as only Rs.600/- per year. From the documents filed by the applicant it is seen that 0.53 dec. of land of the applicant is firstclass irrigated land (Sarda zala one) and the 0.50 dec. of land of Respondent No.5 can not be any better quality of land. It is also stated by the learned counsel for the applicant that the Departmental Authorities had no power to ignore the Income Certificate given by the Tahasildar in respect of other Incomes of Rs.11,600/- which according to the rejoinder is from tuition and handicrafts business. We have considered the above submission carefully. A similar question came up before this Tribunal in O.A. No. 583/1994 filed by Smt. I. Padhi Vrs. UOI. Another Division Bench presided over by Hon'ble Chairman considered a similar question and held that before disbelieving the certificate of Tahasildar with regard to income from other sources a show cause notice should have been given to the applicant in that case. In the instant case admittedly before ignoring the income of Rs.11,600/- indicated by the Tahasildar as income of the applicant from other sources no show cause notice was issued to her. Moreover, we find that while the Departmental Authorities have analysed the income certificate of the applicant on the question of its genuineness they have blindly accepted the income certificate of Respondent No.5 showing the income of Rs.600/- from 0.50 dec. of land. In view of the above we have no hesitation to hold that the Departmental

Authorities have rejected the Income certificate and the candidature of the applicant without any legally sustainable ground. In view of the above the action of the Departmental Authorities in rejecting the candidature of the applicant and consequently selecting Respondent No. 5 can not be sustained. Therefore, the selection and appointment of Respondent No. 5 is quashed. The first prayer of the applicant is accordingly allowed.

7. The second prayer of the applicant is for a direction to the Departmental Authorities to give her appointment to the post of EDS PM, Mituani BO. This prayer can not be granted because from the checklist we find and this has also been pointed out by the Respondents in their counter that there is one more candidate namely D.K. Das, who have secured higher percentage of mark than the applicant. In view of this, we dispose of this prayer of the applicant with a direction to the Departmental Authorities that they may consider all candidates in the checklist once again strictly in accordance with rules and keeping in mind our observations as above. This exercise should be completed by the Departmental Respondents within a period of 60 (sixty) days from the date of receipt of a copy of this order.

8. In the result, therefore, the O.A. is disposed of in terms of observations and directions made above.

No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.

See copies of final
order dt. 1.3.2001
issued to the
counsel for both
sides.

R
2/3
S.O (J)

2/3/01