

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 13.12.2001

Heard Shri D.P.Dhalasamant, learned counsel for the petitioner, Shri S.P.Mohanty, learned counsel for Respondent No.4 and Shri B. Das, learned Addl.Standing Counsel appearing for the departmental respondents and perused the records.

In this O.A. the petitioner has prayed for quashing the appointment of Res.4 to the post of E.D.M.C., Nandana B.O. and for further direction to departmental respondents to appoint the petitioner to that post as he is a Matriculate and is more qualified than Res.4. The departmental respondents and private Res.4 have filed their counter. No rejoinder has been filed.

For the purpose of considering the petition it is not necessary to go into too many facts of the case. The admitted position is that a vacancy in the post of E.D.M.C. arose on 21.3.1999 due to superannuation of the existing incumbent. The Employment Exchange was moved and public notice was also issued. It is also the admitted position that the minimum qualification for the post of E.D.M.C. is Class-VIII pass. But the rules provide that Matriculates should be preferred. It is also the admitted that in the requisition placed with the Employment Exchange as also in the public notice, while prescribing the minimum qualification required for the post, there was no mention that preference would be given to Matriculates. Admittedly the post was reserved for giving preference to Scheduled Tribe candidates and

For Admission
(To be listed as the
1st item)

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it was indicated that in case three S.T. candidates would not be available then OBC candidates will be preferred. As S.T. candidates were not sufficiently available, the post was filled up by O.B.C. candidate. The applicant and Res.4 belong to OBC category and come within the privilege category. The case of the applicant is that while he is a Matriculate Res. 4 has read upto Class-X and notwithstanding the provisions ~~of~~ the Rules that Matriculate should be preferred, the appointing authority, viz. A.S.P.O., without considering the case of the applicant appointed Res.4 on the ground that preference to Matriculate was not mentioned either in the requisition or in the notification and that Res.4 is senior ^{in age} ~~to applicant~~. In the context ^{of the above the selection of Res.4} ~~to the post of E.D.M.C.~~ has been challenged in the instant O.A. by the applicant.

As the Recruitment Rules specifically provide that the minimum qualification required for the post in question is Class VIII pass, preference would be given to Matriculate, it was incumbent on the part of the appointing authority to make selection in terms of the Recruitment rules. There are a number of decisions of the Hon'ble Supreme Court specifically providing that recruitment should be done only in terms of the recruitment rules. The fact that preference is to be given to Matriculates was not mentioned either in the requisition placed before the employment exchange or in the public notification ~~in effect~~

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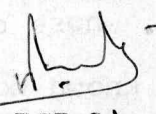
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would change the recruitment rule. In view of this we hold that the appointing authority was not right in not giving preference to Matriculates. As there were several candidates ^{with} acquiring Matriculation in the ^{you} ~~the~~ consideration of of selection/ a non-matriculate candidate that too on the ground that he is senior in age, to the post in question cannot be sustained and in this view of the matter we quash the selection of Respondent No.4 to the post of E.D.M.C., Nandan B.O. The second prayer of the applicant is for direction to respondents to appoint him to the post in question. From the records we find that besides the applicant there were sufficient number of other Matriculates, whose cases have also been ignored. It is also not known how many candidates including the applicant had submitted all necessary papers/documents required to be submitted by them along with their applications. In this view of the matter, while rejecting the 2nd prayer of the applicant, we direct that a fresh selection should be made for the post of E.D.M.C., Nandan B.O. strictly in terms of recruitment rules keeping the selection confined amongst the OBC candidates who were in the zone of consideration before the appointing authority. This exercise should be completed within a period of 90 (ninty) days from the date of receipt of copies of this order. It is submitted by the learned counsel for Res.4 and to our mind rightly for no fault of his, he is being ousted from the job for which he had been selected and in which post he has been working for more than two and half years. As we have held ^{that} the selection of


Res.4

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Res.4 to the post of E.D.M.C., Nandan was not done in accordance with rules, mere continuance in that post for two and half years does not confer on him any right. But at the same time it is to be noted that Res.4 was selected to the post of E.D.M.C. and has worked for two and half years without any complaint. In view of this we direct that in case Res.4 applies for any other E.D. post which may be notified for selection and in case he has the eligibility for the said post, his case should be considered strictly in accordance with rules and while so considering the experience gained by him as E.D.M.C., Nandana B.O. should also be taken into consideration.

The O.A. is disposed of as above. No costs.


MEMBER (JUDICIAL)


VICE-CHAIRMAN
14.12.2001

Free copies of
final order
dt. 13.12.2001 issued
to counsel for
both sides.

DR
17/12/01

DR
19-12-2001