

6
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 591 OF 2000
Cuttack this the 02nd day of August, 2001

S. Madhei

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 74.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

✓

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.591 OF 2000
Cuttack this the 02nd day of August, 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Subhasini Madhei, aged about years,
D/o. Sri Bhagirathi Madhei of Village/PO-Tentulia,
at present C/o. Niranjan Rout, At/PO/Gopalpur,
P.S. Nilagiri, District - Balasore

...

By the Advocates

Applicant

M/s.S.K.Ray
S.K.Rout
K.K.Jena
S.P.Swain
M.R.Mohanty-3

-VERSUS-

1. Chief Post Master General, Orissa Circle,
Bhubaneswar, At/PO/P.S. Bhubaneswar,
Dist - Khurda
2. Superintendent of Post Offices, Balasore Division,
Balasore, At/PO/PS/Dist-Balasore
3. Mahendra Kumar Singh of Vill/PO-Gopalpur,
P.S. Nilagiri, District - Balasore

...

By the Advocates

Respondents

M/s.S.B.Jena,
A.S.C.(Central)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Original Application, challenging the selection and appointment of Mahendra Kumar Singh (Respondent No.3) to the post of Extra Departmental Branch Post Master, Gopalpur Branch Office, ^{meant for SC community} applications were called for from the Employment Exchange as well as from the open market. Annexure-R/4, the check sheet of the candidates reveals that last dates fixed for receipt of applications from the open market and candidates sponsored by the Employment Exchange were 26.10.1999 and 20.1.2000, respectively. The applicant

was a candidate sponsored by the Employment Exchange whereas Mahendra Kumar Singh (Res.3) was a candidate from the open market.

The grievance of the applicant is that Respondent No.3 does not belong to Scheduled ^{Tribe} ~~Caste~~ community. His name was also not sponsored by the Employment Exchange. According to applicant, a candidate whose name has not been sponsored by the Employment Exchange is not eligible to be selected for the post in question.

2. Respondent No.3 though duly noticed had neither entered appearance nor filed any counter.

The stand of the Department is that Respondent No.3 belongs to Scheduled Tribe community as per the ^{caste} certificate issued by the competent authority. In comparison to applicant Respondent No.3 has secured ~~the~~ higher percentage of marks in the H.S.C. Examination. No illegality has been committed in selecting Respondent No.3 to the post of E.D.B.P.M. even though he was not a candidate sponsored by the Employment Exchange. Moreover, the application of the applicant (Annexure-R/5) was incomplete in respect of some vital informations, which have important bearing for consideration of his selection.

3. In the rejoinder the applicant submits that higher percentage of marks in the H.S.C. Examination should not be the only criterion for selection. In fact she is more solvent than Respondent No.3 in the matter of property and income. This apart application of Respondent No.3 was received after the last date fixed for receipt of applications from the open market was over and on this ground in the check sheet under Annexure-R/4, he was first shown as disqualified and thereafter an interpolation was made to show him eligible.

4. We have heard Shri S.K.Ray, the learned counsel for

the applicant and Shri S.B.Jena, learned Addl.Standing Counsel appearing on behalf of the departmental respondents. Also perused the records.

5. On our direction the relevant selection file was also produced for our perusal and reference.

6. There is no dispute that Respondent No.3 has secured higher percentage of marks in the H.S.C.Examination than the applicant. Though Respondent No.3 may be having lesser extent of property and income than the applicant, the fact remains that he has some landed property and annual income and as such it cannot be said that he has no adequate means of livelihood, which one of the criterion to be considered for selection and appointment to the post of E.D.B.P.M.

As regards controversy with regard to community of Respondent No.3, the caste certificate issued by the Tahasildar, Nilagiri on 26.7.1995 reveals that he belongs to 'Bhumij', which is a Scheduled Tribe community. Further the selection file reveals that the applicant on 17.7.2000 represented to the Department complaining that Respondent No.3 does not belong to Scheduled Tribe community and that the certificate obtained by him is false. She had also enclosed a xerox copy of castes schedule. On the other hand this xerox copy of the castes schedule would indicate that persons belonging to 'Bhumij' are Scheduled Tribes. We are, therefore, not inclined to accept the version of the applicant that Respondent No.3 does not belong to Scheduled Tribe community.

It is true that Respondent No.3 is not a candidate sponsored by the Employment Exchange. However, pursuant to the decision of the Apex Court in the case of Excise Superintendent,

Malakpatnam, Krishna District vs. K.V.N.Visweswara Rao, reported in 1996(6) SCALE 670, the D.G.(Posts) issued modified instructions dated 19.8.1998 that vacancies in respect of E.D.Posts shall be simultaneously notified through public advertisement and the candidates sponsored by the Employment Exchange will have to be considered along with the candidates whose applications are received through open advertisement. Hence, the grievance of the applicant in this connection cannot be taken note of.

7. At this stage we cannot overlook that the application of the applicant under Annexure-R/5 was incomplete in respect of certain vital informations as mentioned under Clauses (a) to (g) of Column-5 having not been filled in. These clauses are - (a) If holds Government post; (b) If holds any elected post; (c) if a member of political organisation; (d) if involved in any criminal case; (e) if convicted in any criminal offence; (f) if appointed, he/she agrees to provide suitable accommodation in post village for housing the post office; and (g) if appointed he/she agrees to take up the residence in the post village before appointment. Unless the Department is satisfied with the answers in respect of these queries, a candidate, who is otherwise fit for selection, as per rule, cannot be selected and/or appointed to the post of E.D.B.P.M. One of the conditions for selection to the post in question is that a candidate, if appointed, must be in a position to provide suitable rent free accommodation in the post village for housing the post office. Unless a candidate applying for the post gives out an assurance to that effect, he/she, in normal course cannot be considered for appointment. Similarly,

if a person is convicted/involved in any criminal offence, he/she cannot be considered for appointment. So also a person in Government employment unless he resigns is not eligible to be appointed to the post in question. Viewed from this angle, the applicant is also not qualified to be considered for the post.

It is true that Respondent No.3 is more meritorious but this does not mean that he would be considered for the post even if his application was received after the last date of receipt of applications was over. He applied direct in response to the public notification. The last date for receipt of applications from the open market was fixed to 26.10.1999. This is also clear from Annexure-R/2 that open market notification is dated 5.10.1999. Annexure-R/4, the check sheet reveals some overwritings ⁱⁿ against remarks column-14 in respect of Respondent No.3, under Serial Number.11. We have, therefore, verified the selection file, as produced by the Department. The file reveals that Respondent No.3 had signed the application on 13.1.2000 and the application was received on 18.1.2000. On 25.2.2000, there is an endorsement of rejection on the margin ~~column~~ of the application of the respondent No.3, applying for the post, because the last date of receipt of applications was fixed to 26.10.1999. Still after the order of rejection ~~had been~~ ^{is} ~~endorsed and signed~~, another sentence appears to have been added to this to the effect that "he has again applied prior to this on 25.10.1999. It is rejected". In other words, his earlier application on 25.10.1999 being found defective was rejected. On further scrutiny of the file it reveals that his earlier application was received on 25.10.1999 and was

incomplete in respect of information, required under clauses (a) to (g) of Column-5 and apparently the same was not taken into account. Thus the fact remains though his first application was received just one day prior to the last date of receipt of applications ~~was over~~, the same was defective. The other application was received on 25.10.2000 and this was also rejected. Evidently in order to select Respondent No.3, an interpolation was made in the check sheet (Annexure-R/4). Viewed from this angle, the selection process is vitiated.

9. In the result, we quash the selection and appointment of Respondent No.3 (Mahendra Kumar Singh) to the post of EDBPM, Gopalpur B.O. The departmental respondents, if they deem fit by considering the candidature may fill up that post ~~from~~ amongst the other S.T. candidates, whose names have been found place in the check list under Annexure-R/4, if they are otherwise eligible, and if not, may invite fresh applications, as provided under the rules, for filling up of the post of EDBPM, Gopalpur B.O.

10. The O.A. is disposed of as per observations and directions made above, but without any order as to costs.

The Selection File pertaining to EDBPM, Gopalpur B.O., as produced by Shri ^{Jena} ~~Bose~~, be returned.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2.8.01

2.8.01.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//