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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 639 OF 2000
Cuttack this the 31st day of March/2004

Bimal Kumar Parida ... 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

31/03/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

31/03/04
(B.N. SARKAR)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.639 OF 2000
Cuttack this the 31st day of March, 2004

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER (JUDICIAL)

Sri Bimal Kumar Padia, aged about 22 years,
S/o. Kumar Chandra Parida of Village-Baruan,
PO-Bamua, Dist-Dhenkanal

By the Advocates ... Applicant
M/s.B.P. Das
D.N.Mohanty
S.Rath

- VERSUS -

1. Chief Post Master General, Department of Posts, Orissa Circle, Bhubaneswar
2. Sub-Divisional Inspector (Postal), Kamakhyanagar Sub-Division, At/PO-Kamakhyanagar, Dist-Dhenkanal
3. Branch Post Master, Bamua Post Office, At/PO-Bamua, Dist-Dhenkanal
4. Sri Jayanta Kumar Sahoo, S/o.Jaladhar Sahoo, Vill-Salpada, PO-Anlabereni, Dist-Dhenkanal

... Respondents

By the Advocates Mr. B. Dash, A.S.C.
M/s C.R. Mishra,
G. Mishra,
T.K. Mishra
D. Das
B. K. Swain (B)

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Shri B.K.Parida) has filed this Original Application under Section 19 of the A.T.Act, 1985, challenging the appointment of Res. No.4 (Shri Jayanta Kumar Sahoo) to the post of E.D.D.A./ M.C., Bamua Sub Office made vide order dated 16.6.2002 issued by Res.No.2.

2. The case of the applicant is that he belongs to O.B.C. community and is a physically handicapped person

with 50% hearing ability and possesses all the requisite qualifications for appointment as Extra Departmental Delivery Agent/Mail Carrier (in short EDDA/MC) Bamua S.O. He has further argued that he is entitled to preferential treatment for appointment to the post by virtue of the Act passed by the Government of India for protecting the rights of the disabled and also by virtue of the circular issued by the Post Master General, Orissa on 7.6.1995, enclosing an Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions dated 28.9.1994, stipulating modalities of reservation for physically handicapped persons, following the Indra Shani case decided by the Apex Court that horizontal reservation should be made in case of physically handicapped persons. He has further submitted that the Ministry of Communications, Government of India, Department of Posts by issuing a circular dated 27.11.1997 have directed that candidates belonging to reserved categories including physically handicapped persons possessing minimum required qualifications for appointment to E.D. posts have to be given preference.

3. The Respondents-Department by submitting a detailed counter have submitted that the post of EDDA/MC, Bamua S.O. was advertised on 29.1.2000 to be filled up by an O.B.C. community candidate and accordingly, Res.No.4 being a candidate belonging to OBC category and having been found to be most meritorious among the candidates, who had responded to the advertisement was selected and appointed to the post. They have further submitted that there was no

provision of reservation for any candidate belonging to handicapped category and therefore, the selection and appointment of Res.No.4 cannot be assailed on ^{that} ~~any~~ ground. They have further stated that the applicant's candidature was also considered along with that of Res.No.4, but he could not be selected as he was less meritorious than the selected candidate and that the post that was advertised to be filled up was not reserved for physically handicapped category candidate.

4. We have heard the learned counsel for the parties and also perused the materials available on record.

5. The short question for consideration in this O.A. is whether Respondent Nos. 1 and 2 ^{were} ~~are~~ bound to advertise the post reserving the same for physically handicapped category. In this connection, the applicant has relied on the circular issued by Res.No.1 on 27.11.1997 and on 13.5.1994. We have perused those circulars issued by the said Respondent. We find that the circular dated 27.11.1997 was issued by communicating instructions regarding observation of principles of reservations for SC/ST/OBC in the matter of appointments to ED posts and that before advertising a post falling vacant, a decision should be taken beforehand whether the post falling vacant is to be filled up by a reserved category candidate and if so, a specific mention to this effect and the particular(s) of the community should be made in the notification itself. In so far as circular dated 13.5.1994 is concerned, Res.No.1 had circulated a copy of D.G.Posts circular dated 2.4.1994 regarding the policy of the Department

for reservations of certain number of posts for physically handicapped persons for recruitment in E.D. (now called G.D.S.) categories within the broad reservation framework of provisions applicable to Departmental Group-D/C cadres. In this circular it was mentioned that the Postal Services Board had decided that "no specific post" would be reserved for physically handicapped ~~and no roster was circulated to~~ be maintained in this regard. However, as far as possible, the representation of physically handicapped person, should approximate the level applicable to Group-C & D service and for this purpose, the broad provisions contained in the orders issued by the Department of Personnel & Training from time to time should be kept in view. From what has been laid down in the D.G.Posts letter dated 22.4.1994, it is clear that no specific number of post has been reserved for the physically handicapped nor any reservation roster has been prescribed. However, the Respondents have been instructed to consider the filling up of 3% of posts by selecting candidates from physically handicapped category, according to requirement of service. In this case, the Respondents had not identified the post of EDDA/MC advertised on 29.1.2000 as reserved for physically handicapped. Therefore, the question of giving preference as a physically handicapped to the applicant herein does not arise nor the Res.No.2 had violated the instructions issued by the D.G.Posts vide letter dated 22.4.1994 communicating the decision of the Postal Services Board.

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6. For the reasons discussed above, we see no merit in this application, which is accordingly dismissed. No costs.

[Signature]
(M.R.MOHANTY) 31/03/04
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

BJY