

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.297 OF 2001
Cuttack this the 17th day of February/2004

J.Majhi ... Applicant(s)

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Applicant(s)

-VERSUS-

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

(B.N. SOM)
VICE-CHAIRMAN (A)

(B.PANIGRAHI)
VICE-CHAIRMAN (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 297 OF 2001
Cuttack this the 17th day of February/2004

CORAM:

THE HON'BLE MR.B.N.SOM, VICE-CHAIRMAN (ADMN.)
AND

THE HON'BLE MR.JUSTICE B.PANIGRAHI, VICE-CHAIRMAN(J)

...

Jitendra Majhi aged 21 years, Son of
Sanatan Majhi at Padampur Post Ganjeibadi
Via-Dolasahi, Dist-Bhadrak

...

Applicant

By the Advocates

M/s.A.K.Mishra
J.Sengupta
D.K.Panda
P.R.J.Dash
G.Sinha

-VERSUS-

1. Union of India represented through its Secretary to Government of India, Department of Posts, Daktar Bhawan, New Delhi
2. Chief Postmaster General, Orissa Circle, Bhubaneswar
3. Superintendent of Post Office, Bhadrak Division, Bhadrak
4. Padmabati Mohanty, EDBPM, Ganjeibadi, Bhadrak

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Respondents

By the Advocates

Mr.S.Behera, A.S.C.
Mr.S.K.Patri(Res.4)

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O R D E R

Per B.Panigrahi, V.C.(J): In this case, the applicant has challenged the legality, validity and propriety of the order passed in favour of Res.No.4 appointing him in the post of Extra Departmental Branch Post Master(in short EDBPM), Ganjeibadi Branch Office within Dolasahi S.O., Bhadrak.

2. Pursuant to the advertisement dated 14.11.2000 for the post of EDBPM, Dolasahi in S.T. category, the applicant along with others have submitted their applications

for being considered in the said post. It was, however, indicated in the notification that the post is meant for ST/SC/OBC and in the absence of suitable ST candidates, the candidature of SC/OBC could be considered. Undisputedly the applicant belonged to S.C. category whereas the Private Res. No.4 belonged to OBC category. The applicant has claimed to have enclosed education certificate, income certificate, caste certificate and other relevant records agreeing to provide suitable rent-free accommodation in the event he would be selected for the post.

3. The official respondents did not appoint the applicant from S.C. category instead chose Res. No.4 for the said post from OBC category and accordingly, issued appointment to her.

4. The learned counsel appearing for the applicant has submitted that although his client secured the maximum marks from out of the SC candidates and was further agreeable to comply with all such requirement as would be asked by the Respondents, even then the official respondents preferred Res. No.4 by ignoring the applicant's ^{of} claim. In order/preference if any appointment is to be offered, the applicant deserves to get such post at the first instance; failing which it will go to the other selected candidates from different category.

5. While considering submissions, counter submission advanced by the parties and after perusal of the grounds stated in the application, reply and rejoinder, it is seen, as per the merit list the applicant Jitendra Majhi secured 56.53% marks in the H.S.C.Examination

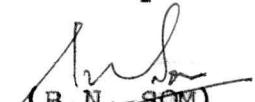
from out of SC category candidates. It is true that the private respondent from the OBC category secured 66.95% marks in the H.S.C.Examination. In the event the applicant's candidature is legally ignored then the private respondent gets chance to be selected for the post of EDBPM. From the advertisement it may be noted that initially the post was reserved for ST; in the absence of such suitable candidates it shall go to the next category, i.e., S.C. In the event no suitable candidate from S.C. is available, then such choice goes to the other category of candidates, i.e., OBC. Here, the applicant secured the highest percentage of marks among the said SC candidates. Had ~~other~~ other categories not been considered to the aforesaid post, the applicant would have claimed preference. The official Respondents failed to consider the applicant's case only on the ground that he was unable to provide rent free accommodation in the village for the purpose of holding post office. Thus in this background it is to be carefully cogitated as to whether the claim of the applicant could be lawfully ignored for want of providing rent free accommodation before his appointment to the post of EDBPM. In the application he has enclosed that he is willing to provide accommodation, taking a house from one Madhu Sudan Sahu. Shri Madhusudan Sahu was also a signatory to Annexure-2 to the application. The learned counsel appearing for the official respondents has submitted that a confidential inquiry was made wherein the said house owner denied to give ~~an~~ accommodation. The stage for providing a rent free accommodation for the purpose of post office

shall only arise after a provisional appointment is made in favour of the applicant. Undisputedly, the official respondents had never offered any provisional appointment in favour of the applicant. The condition of such provisional appointment ought to have been (i) for providing rent free accommodation, (ii) for undertaking to go for training ~~and~~ in that event he shall be finally appointed. Before issuing such regular appointment, these requirements appear to us to be futile exercise and shall serve no purpose. It has also to be borne in mind that the applicant cannot be insisted to provide rent free accommodation before such provisional appointment. In the event he failed to provide accommodation, then the candidates from the same category could have been ~~category~~ considered. Ignoring the claims of the S.C./ we are at a loss to understand, as to how, the authority exercised their discretion to the other category of caste, viz., OBC. In this regard, we refer to a Full Bench judgment of the Central Administrative Tribunal reported in A.T.Total Judgment (2004)(1) Page-1 in the case of Ranaram vs. Union of India & Ors. The principles laid down in the aforesaid decision in pari materia the same as the point involved in this case. The learned counsel appearing for Res. No. 4, however, while advancing his submission stated that since the applicant failed to provide rent free accommodation which is evident from a confidential report submitted by an officer, the official respondents, therefore, were justified in preferring the claim of the private respondent for giving

appointment to the said post. We find that there is little substance in the aforesaid contention. Undisputedly the Res.No.4 belongs to OBC for which for preference would be given when other suitable candidates are available from S.C. category.

In the aforesaid situation, we have therefore no option but to hold that the official respondents had illegally ignored the applicant's claim to the post of EDBPM, Ganjeibadi Branch Office. Accordingly, we quash the selection and appointment of Res.No.4 to the said post and direct the respondents-Department to consider the applicant's case by issuing a provisional letter of appointment in his favour wherein it can be indicated that the applicant if failed to provide suitable accommodation within six weeks from the date of receipt of provisional appointment, then his provisional appointment shall stand cancelled and in that event, the case of other candidates from the same category can be considered.

With the observation and direction as above, we dispose of this O.A. No costs.


(B.N. SOMPALLI)
VICE-CHAIRMAN (A)


(B.PANIGRAHI)
VICE-CHAIRMAN (J)

BJY