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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

O.A.NO. 525 OF 2001

Cuttack, this the day of April, 2004

G. K. Barik

.....

Applicant

Vrs

W.O.I & ors

.....

Respondents

FOR INSTRUCTIONS

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

S.K.NAIK

(S.K.NAIK)
MEMBER(A)

B.PANIGRAHI

(B.PANIGRAHI)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK

O.A. 525/2001

Date of order: 16.04.2004

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. S.K. Naik, Administrative Member.

G.K. Barik

- v e r s u s -

1. Union of India represented through it's Chief Postmaster General, Orissa Bhubaneswar, District-Khurda.
2. Senior Superintendent of Post Offices, Puri Division, At/P.O./Dist.Puri.
3. Pitabas Mallik, aged about 29 yrs. son of Birat Mallik, Village-Takara, P.S. Dapalla, District-Nayagarh.

...Respondents.

For the applicant : Mr. S.K. Das, counsel.
For the respondents : Mr. S.B. Jena, counsel.

O R D E R

Per Justice B. Panigrahi, VC

The present O.A. is directed mainly against the order of this Tribunal dated 4.9.2001 passed in O.A. 187/2000.

2. The factual matrix leading to the filing of this case is as follows:-

Pursuant to a notification dated 15.11.99 inviting applications for the post of E.D.M.C., Chilika-Nuapada, BPO, the applicant applied for the same being an OBC candidate. According to the notification vide Annexure-1, preference for filling up the post would be given to

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the reserved community candidates in descending order subject to fulfilment of the conditions prescribed in the rules. In other words, the post was primarily reserved for ST candidates but if minimum three eligible candidates belonging to ST community were not available, then the post could be filled up by OBC candidate. In all 52 applications were received, out of which three candidates belonged to ST community and 14 candidates belonged to OBC community. But none of the ST candidates was matriculate. Therefore, the respondent authorities restricted the selection from amongst the OBC candidates only and the applicant being more meritorious and fulfilled all the eligibility conditions amongst the OBC candidates in the Field, selected him and he was also given appointment on provisional basis as per Annexure-2 w.e.f. 11.1.2000. The applicant joined the post accordingly and has been working till date.

3. Challenging the aforesaid selection, one Sri Pitabas Mallik, who belonged to ST community and was also a candidate for the post filed O.A. No. 187/2000. In that O.A. he actually challenged the appointment of one Sri Deepak Pani, respondent No. 4 therein. During the course of hearing the respondent authorities took the plea that non-selection of ST community candidate on the ground that none of them was a matriculate, was not proper as the essential qualification as per the advertisement was only Class-VIII passed whereas preferential qualification was matriculation. It was, therefore, contended by the respondent authorities that since the three ST candidates, who applied for the post, having the essential qualification of Class-VIII passed ought to have been considered first and that they could not have ignored on the ground that they were not possessed¹ the preferential qualification of matriculation.

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The respondent authorities, therefore, took the stand that the selection of Pvt. respondent No.4 of that O.A. was not justified. In that view of the matter, the Tribunal by its order dated 4.9.2001 held that the question of quashing of selection and appointment of the respondent No.4 would not further arise in view of the stand taken by the respondent authorities. However, it was made clear that even though the appointment of respondent No.4 was not proper, the applicant therein would not be automatically appointed to that post and it was for the respondent authorities to consider his case along with the other ST candidates within the zone of consideration.

4. Incidentally, it is pertinent to point out here that the present applicant was not made a party to that O.A. although he was the person who was appointed on the said post and not Sri Deepak Pani, respondent No.4 of that O.A., who was in fact appointed in another post vide Annexure-4.

5. The contention of the present applicant is that since he was not a party to the earlier O.A. he could not file any review application to review the said decision of the Tribunal in terms of the decision of the Hon'ble Supreme Court in the case of Gopabandhu Biswal Vs. Krishna Chandra Mohanty reported in AIR 1998 SC 1872 and that is why he has filed an independent O.A. to set aside the earlier decision of the Tribunal instead of filing a review application as observed by the Apex Court.

6. During the course of hearing Id. counsel for the applicant has contended that since the applicant was not a party to the earlier proceedings, the decision rendered therein is not applicable to him and

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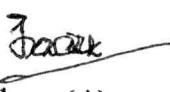
his service cannot be terminated on the basis of the said decision of the Tribunal. In fact the applicant has rendered more than three years service in the meanwhile and, therefore, his service cannot be terminated now without providing him an alternative employment or without following the D & A Rules.

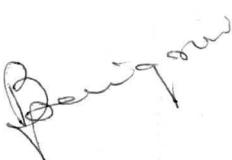
7. Ld. counsel for the respondents has, however, contended that the earlier selection was not proper as the concerned appointing authority was under misconception that possession of preferential qualification of matriculation was necessary by the ST candidates for being considered for selection. This view of the appointing authority was not correct as all the three ST candidates applied for the post were having essential qualification of Class VIII passed. In that view of the matter, the earlier selection was held to be not proper and, therefore, in pursuance of the decision of the Tribunal in the earlier O.A. the authorities want to take steps to cancel the appointment of the present applicant and to start a fresh selection process. However, because of an interim order the applicant's service could not be terminated nor any fresh selection could be made.

8. We have considered the matter very carefully. Admittedly, the present applicant was not a party to the earlier proceeding and, therefore, the said decision cannot be said to be binding on him. However, in the earlier O.A. we find that the Tribunal did not cancel the selection and appointment of respondent No.4 therein, but the respondent authorities themselves pointed out the irregularity in his selection as the post was advertised to be reserved for ST community failing which the post could have been filled up by an OBC candidate.

Since the ST candidates were having the essential qualification of class VIII passed, they should have been selected to that post. The Tribunal gave liberty to the respondents to make proper selection and to consider the candidature of the applicant of the earlier O.A. along with other ST candidates.

9. Be that as it may, since the present applicant was not a party to the earlier O.A. the said decision cannot be applied to his prejudice without giving him an opportunity. Otherwise also, if the concerned appointing authority committed mistake in not selecting ST candidates and instead selected the applicant, he cannot be held responsible for that.
10. In view of the above discussions, we are of the opinion that in case the Respondents/authorities after scrutiny of the records, found the selection of the present applicant was not in accordance with rules or Advertisement, his service may be terminated but his name shall be kept in the waiting list for the purpose of providing him an alternative job in accordance with DGP&T Letter No.43-4/77-Pen, dated 23.02.1979.
11. With the above observation and direction the present application stands disposed of. No costs.


Member (A)


Vice-Chairman.