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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 536 OF 2001
Cuttack, this the 16 day of April, 2004

..... **Applicant**

Vrs

..... **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)
MEMBER(A)

(B.PANIGRAHI)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK

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

O.A. 536/2001 Sk. Jafiruddin

O.A. 133/2002 Sk. Edris

- v e r s u s -

Union of India and Ors.

For the applicants : Mr. A.K. Misra, counsel.(O.A.536/2001)
Mr. S.K. Nanda, counsel.

For the respondents : Mr. S.B. Jena, counsel.(O.A.536/2001)
Mr. A.K. Bose, counsel (O.A. 133/2002)

Date of order: 16.04.2004

O R D E R

Per Justice B. Panigrahi, VC

These two OAs have been heard analogously and are being disposed of by this common order as they are inter-related involving selection and appointment to the post of EDBPM, Kuda B.P.O.

2. In O.A. 536/2001, the applicant Sk. Jaffiruddin has challenged the order issued by the respondent authorities dated 1.8.2001 by which his appointment to the said post, was kept in abeyance.

3. The case for the applicant is that pursuant to an advertisement dated 16.10.2000 issued by the SPOs, Bhadrak Division inviting applications for the post of EDBPM, Kuda B.P.O. in account with Matto SPO under Bhadrak H.O., the applicant submitted his application. The post was originally reserved for ST, but it was provided that if suitable ST candidates were not available then candidates of other community (OC)

would be considered. The applicant belongs to other community. By a letter dated 25.7.2001 the applicant was intimated that he was selected for the said post and he was accordingly directed to undergo necessary training. The applicant underwent the training and training completion certificate was also issued to his favour on 31.7.2001. The grievance of the applicant is that inspite of his selection and completion of training successfully, the respondent authorities all on a sudden issued impugned order dated 1.8.2001 keeping his appointment in abeyance. Being aggrieved he has filed this O.A. challeging the said order dated 1.8.2001 and seeking a direction on the respondents to allow him to join his post with immediate effect and to grant him all financial benefits retrospectively.

4. O.A. 133/2002 has been filed by one Sk. Idris who was also a candidate for the said post having filed his application pursuant to the notification dated 16.10.2000 referred to above. It is his case that his father-in-law was the permanent incumbent of that post and on his retirement the post became vacant. His grievance is that even though he fulfils all the eligibility conditions, the respondents purportedly selected one Sk. Jafiruddin (applicant of O.A. 536/2001). His further grievance is that although he applied for the post, he was never communicated the result of selection. However, he came to know that the selection of Sk. Jafiruddin was kept in abeyance and the authorities without considering the candidature of the applicant and others, who had applied in response to the notification dated 16.10.2000, issued a fresh notification dated 5.11.2001. However, the applicant also submitted his application in response to the fresh notification. His prayer is for a direction to the respondent authorities to publish the select list pursuant to the earlier

notification dated 16.10.2000 and in case Sk. Jafiruddin, who was purportedly selected and subsequently whose selection was kept in abeyance, the authorities should consider the candidature of the applicant, in his place.

5. The respondents have contested both the applications by filing separate replies. It is their case that the post of EDBPM (GDSBPM), Kuda B.O. fell vacant on 17.11.2000 consequent upon retirement of the permanent incumbent. Accordingly, for filling up the said post, notification was issued by respondent No. 3 on 16.10.2000 fixing the last date of receipt of the application as 6.1.2000. Simultaneously, Employment Exchange was also requested to sponsor the names of suitable candidates by 15.11.2000. The post was originally reserved for ST community but it was also provided that in case suitable candidates were not available, the candidature of OC community applicants would also be considered. In all 15 applicants submitted their applications with necessary documents, out of which 3 belonged to ST community and 5 to SC community and 6 belonged to OC category. On scrutiny it was found that the 3 ST candidates were not eligible due to non-submission of ownership of landed property or income certificate in their own names and as such their candidature were not considered. Amongst the remaining candidates, the applicant of O.A. 536/2001 i.e. Sk. Jafiruddin was found to have fulfilled all the conditions required for the post and he was, therefore, provisionally selected by a communication dated 24.7.2001. He was also asked to undergo training. But just before completion of four days' training it came to the notice of the concerned authorities that the said selected candidate i.e. Sk. Jafiruddin did not submit income certificate in his own name along with his application within the last

date fixed for submission of applications, rather he submitted such income certificate in his own name only on 21.1.2001 i.e. after the last date of submission of applications. Accordingly, it was decided by the competent authority that the appointment of Sk. Jafiruddin (applicant of O.A. 536/2001) was not regular and, therefore, his appointment was kept in abeyance by the impugned order dated 1.8.2001 and it was ultimately cancelled by order dated 15.10.2001 (Annexure-R/7). After such cancellation, the authorities also scrutinised the applications of the remaining candidates, but none was found to have fulfilled the eligibility conditions and, therefore, it was decided to issue a fresh notification, which was done on 5.1.2001 and the last date of receipt of applications was fixed on 27.11.2001. Thus the respondent authorities have contended that since Sk. Jafiruddin did not submit income certificate in his own name within the last date of receipt of applications, his selection was erroneous and accoridngly it was cancelled.

6. So far as the O.A. 133/02 is concerned, the stand taken by the respondents is that the pursuant to the notification dated 16.10.2000, the applicant Sk. Edris also submitted his application but finally Sk. Jafiruddin (applicant of O.A. 536/01) was selected on the basis of comparative merit. However, subsequently when his (Sk. Jafiruddin) appointment was cancelled, the candidature of the remaining candidates including the applicant O.A. 133/2002 was also considered but none was found eligible and, theefore, a fresh notification was issued on 6.11.2000 and the present applicant also submited his application against this notification. It is their stand that there is no rule to communicate the result of selection to each and every candidate and, therefore, the applicant cannot claim communication of the result of his selection or

non-selection on the basis of his application made pursuant to the earlier notification dated 16.10.2000 or subsequent notification dated 6.11.2000.

7. As it appears the only ground on which the appointment of Sk. Jafiruddin, applicant of 536/2001 was cancelled was that he did not submit income certificate in his own name within the last date of receipt of applications though he submitted such certificate subsequently on 29.1.2001, which was before [illegible] his appointment on 24.7.2001.

8. In terms of latest Deptt. of Posts circular No. 22-12/2001-GDS dated 17.9.2003 the condition of income from landed property and also from other sources has been reconsidered and reviewed and it has been decided as follows:-

> "3.1 The condition of income preferably derived from landed property or immovable assets for recruitment to the posts of Gramin Dak Sevaks (GDSs)including GDS BPM/SPM, will be deleted.
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> 3.2. As GDS is a part-time employee, a candidate applying for the post of any category of GDS will have to supplement his income from other employment sources so as to have adequate means of livelihood to support himself and his family. A certificate to this effect will have to be obtained from the candidate before he/she is given an appointment letter."

9. It is, therefore, quite clear that income certificate is not required to be produced along with the application or within the last date of submission of the application. The certificate can be obtained from the candidate before he/she is given appointment letter. It appears that the respondents have decided to cancel the appointment of Sk. Jafiruddin (applicant of O.A. 536/2001) on the basis of earlier circular dated 6.12.93 (Annexure-R/5) which was in vogue at the relevant point of time. In the meanwhile, the position has undergone changed in view of the latest

circular of the department. In this context reference may be made to the Full Bench decision in the case of H. Lakshmana and Ors. Vs. Supdt. of Post Offices, Bellary reported in 2003 (1) ATJ 277 in which the 1993 circular was considered and it was held that the said circular neither depicts an absolute condition nor a preferential condition as regards possession adequate means of livelihood. This decision was subsequently followed in another Full Bench decision in Rana Ram Vs. UOI, 2004 (1) ATJ 1.

10. From the check list of candidates prepared by the respondents who had applied in response to the notification dated 16.10.2000, we find that Sk. Jafiruddin (applicant of O.A. 536/2001) obtained 59.46% marks whereas Sk. Idris, (applicant No. 133/2002) secured 39% marks in HSC examination. Therefore, no doubt Sk. Jafiruddin was more meritorious candidate than Sk. Idris.

11. We have noted that the respondents have not yet filled up the said post in view of the interim order granted by this Tribunal although they issued a fresh notification on 6.11.2000.

12. In view of the change in rule position we consider it fit to dispose of both the applications with a direction to the respondent authorities to review the selection process by considering all candidates who had applied in terms of their earlier notification dated 16.10.2000 and to finalise the selection on the basis of the amended rules within a period of three months from the date of communication of this order. The interim order stands vacated.

13. This common order will govern both O.A. 536/2001 and O.A. 133/2002. No costs.

Member (A)

Vice-Chairman.