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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 80 of 2001

Cuttack, this the 20th day of August, 2004
Sept.

Sri Bhagirathi Ghadei Applicant

Vrs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Ys*
2. Whether it be circulated to all the Branches of the Central Administrative Tribunal or not ? *Ys*

(M.R.MOHANTY)
MEMBER (J)

(B.N.SQM)
VICE-CHAIRMAN

02/09/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 80 of 2001
Cuttack, this the 2nd day of ~~August~~, 2004
Sept.

CORAM :

HON'BLE SHRI B.N.SQM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(J)

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Sri Bhagirathi Ghadei, aged about 24 years, S/o Balaram Ghadei, resident of village-Durdura, P.O.- Durdura, Via.- Mahipur, Dist.- Nayagarh.

..... Applicant

Advocates for the Applicant - Mr. A.K.Acharaya.

Vrs.

1. Union of India, represented through its Secretary, Department of Posts, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist.- Khurda.
3. Senior Superintendent of Post Office, Puri Division, Puri, At/PO/Dist. Puri.
4. Sub-Divisional Inspector, Post Office, West Sub-Division, Nayagarh, Dist.- Nayagarh.
5. Truptimayee Rath, D/o. Niranjan Rath, resident of village - Durdura, P.O. - Durdura, Via - Mahipur, Dist.- Nayagarh.

..... Respondents

Advocates for the Respondents - Mr. S.B.Jena, M/s. D.P.Dhalsamant, P.K.Bhera.

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ORDER

SHRI B.N.SQM, HON'BLE VICE-CHAIRMAN

Sri Bhagirathi Ghadei has filed this O.A. assailing the action of Respondent No.3 in appointing Respondent No.5 to the post of EDBPM, Durdura Post Office in violation of the condition set in notification of the Department dated 29.8.2000 (Annexure-5), wherein it was specifically mentioned that preference would be given to the SC/ST/OBC candidates, in that descending order.

2. The grievance of the applicant is that, although, the post was advertised with the condition that the preference would be given to the SC/ST/OBC candidates, but the Respondent No.3 appointed Respondent No.5 who belongs to OC category. As, the appointment has been made in infraction of the condition laid down in the notification, dated 29.8.2000, the Respondents were influenced by extraneous consideration in giving appointment to Respondent No.5, and such an action being illegal should be quashed. The Respondents, on the other hand, has submitted that no doubt preference was to be given to SC/ST/OBC candidates, but, that was subject to fulfilment of the condition that at least three applications from the particular reserve community should be available for consideration. The vacancy was notified both through Employment Exchange as also through public notification. The Employment Exchange did not sponsor any candidate, but in response to public notification twelve applications were received. Applications of two candidates were rejected due to non submission of requisite documents, and in the group of ten candidates who remained in the fray, there was no candidate from ST community, there were three SC candidates, three OBC candidates and four

SC

OC candidates. Out of these, before the selection could be finalised, one OC candidate, one OBC candidate and one SC candidate withdrew their candidatures, leaving two SC, two OBC and three OC candidates in the zone of consideration. As the number of candidates in preferential category got reduced below three, the SC/OBC candidates could not be considered for preferential treatment as per the instruction of DG Post dt. 27.11.97. Respondent No.3 treated the vacancy unreserved and Respondent No.5, who had secured highest percentage of marks in HSC examination and fulfilled all other eligible criteria was selected for the post, which was in confirmity with the instructions issued by Director General Post vide his letter No. 17/366/91 ED and Trainning dated 12.3.93.

3. We have heard the Ld. Counsel for the parties and have also perused the record placed before us.

4. The short question raised in this O.A. is, whether preferential treatment to the candidates belonging to reserve community will not be available, if, the number of candidates belonging to that category in the zone of selection falls below three candidates. The argument of the Respondent is that, in terms of para 5 of DG Post Circular dated 27.11.97 (Annexure-R/3) in case the minimum number of three eligible candidates belonging to the particular reserve community is not nominated or does not offer their candidatures, the vacancy in question will be treated as unreserved and offered to the candidates belonging to the other reserve category or other community candidates as the case may be. The applicant has not been able to effectively counter this argument of the Respondents. However, the stand of

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the Respondent is not found convincing by us, as we have already held in O.A. Nos. 440/01 and 303/00, that the instruction contained in para 5 of the DG Post letter under reference, is to be read in conjunction with the instruction contained in the para 8 of that letter, where it has been stated that even if the minimum number of three eligible candidates is not available, the selection can still be made from the preferential category, after the candidature of the available candidate/candidates is/are approved by the next higher authority.

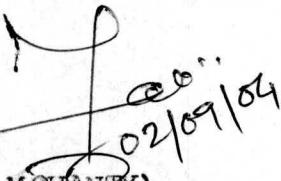
5. The facts of this case are squarely covered by our decision, in the earlier two O.As. We would like to quote here (decided on 5.8.2004) our decision in O.A. 404/01, as follows :-

" A plain reading of this instruction at para 8 makes it clear that if after scrutiny of all the applications received from Employment Exchange and through open advertisement, it is found that the number of eligible candidates belonging to a reserved community falls below minimum of three candidates, selection can still be made from the available candidate or candidates by placing the matter before the next higher authority having regard to the reservation policy of the Respondent-Department in this regard. However, from the counter submitted by the Respondents it is clear that they had not kept in view these instructions issued by DG, Posts, at para 8 of this letter dated 27.11.97. On our query, the Ld. Sr. Standing Counsel also confirmed that the Respondent No.2 had not referred the matter to the next higher authority before he took the decision that no selection could be made from the ST community as there remained one candidate for selection and therefore, the post was declared unreserved and the selection was made by appointing a candidate from OBC community. We have also referred to the check list at Annexure-3 and found that the applicant, i.e., Smt. Sita Behera was eligible in all respects for the post and her non-selection was clearly a case of error of judgement. To that extent, this O.A. succeeds".

6. In the instant case also the Respondent No.3 has committed an error of judgement in not referring the matter to

the next higher authority in terms of para 3 of the DG, Posts letter dated 27.11.97 before treating the post unreserve. As the reservation policy of the Government was violated though erroneously, the selection of Respondent No.5 can not be sustained and hence quashed. To that extent this O.A. succeeds. The candidature of the SC category may now be referred to the higher authority for consideration in terms of para 3 of the DG, Posts letter dated 27.11.97. In the event of none of the SC candidates being found suitable, the two OBC candidates may be considered thereafter. In case, the Respondents are able to select a reverse category candidate, the appointment No.5 of Respondent L will have to be terminated following the prescribed procedure. We, however, find that Respondent No.5 has, in the meantime, worked for more than three years. She is, therefore, entitled to the benefit of a retrenched GD Sevak and we accordingly direct the Respondents to offer her an alternative appointment, should she be willing to accept one such.

7. This O.A. is disposed of accordingly. No costs.


02/09/04
(M.R.MOHANTY)
MEMBER (JUDICIAL)


(B.N. SQM)
VICE-CHAIRMAN

RK/SD