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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1473 OF 2003  
Cuttack this the 07th day of April 2005

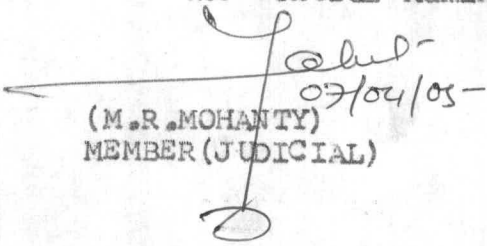
U.R. Das @ Padhiary ... Applicant(s)

- VERSUS -

Union of India & Ors. ... 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

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1473 OF 2003  
Cuttack this the 07th day of April 2005

CORAM:

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

Smt. Usharani Das alias Padhiary, aged about 27 years,  
Wife of Golakha Chandra Padhiary, Vill-Kalidaspur,  
PS/Dist-Balasore

... Applicant

By the Advocates

M/s. B.C. Patry  
S. Bose, G.P.  
Pattnaik  
R.K. Sahoo

- VERSUS -

1. Union of India represented through Chief Postmaster General, Orissa, Bhubaneswar, Dist: Khurda
2. Superintendent of Post Offices, Balasore, At/PO/PS/Dist: Balasore
3. Harish Chandra Behera, Postal Asst. Jaleswar Post Office, At/PO: Jaleswar, Dist: Balasore
4. Susanta Kumar Nath, Postal Asst., At: Jaleswar Post Office, At/PO/Dist: Balasore
5. Tanuja Prusty, Balasore Head Post Office, At/PO/PS/Dist: Balasore
6. Pragati Behera, Postal Asst., Balasore Head Post Office, At/PO/Dist: Balasore

... Respondents

By the Advocates

Mr. U.B. Mohapatra, SSC

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: This Original Application has been filed by Smt. Usharani Das @ Padhiary (applicant) being aggrieved by her non-selection to the post of Postal Assistant (in short P.A.), Balasore Postal Division.

2. The facts of the case in brief are that in response to the vacancy notification No. RE/6-1/Ch.II/97 (Sub) dated 3.8.1999 inviting applications from the intending candidates for recruitment to the cadre of

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Postal Assistants/Sorting Assistants in various Postal/Railway Mail Services Division of Orissa Circle, she had applied as an O.C. candidate. She being a 1st Class Graduate with Honours from Utkal University was confident that she would be selected. The Respondents had advertised in all five posts with community-wise distribution, i.e., 2 for OC, 2 for OBC and 1 for ex-service men. Her grievance is that while she was not selected, the Respondent No.2 selected 2 OBC candidates, viz., S/Shri Harish Chandra Behera and Susanta Kumar Nath (Res. 3 & 4) against OC quota on the plea that they had secured the highest marks in the examination. It is the further case of the applicant that those candidates selected against OBC quota vacancies were granted age relaxation for recruitment as they were above 25 years of age on the cut off date set for the purpose in the vacancy notification. The applicant has, in the circumstances, alleged that the appointments of all the private Respondents (Res. 3 to 6) have been done illegally and the case of the applicant was ignored intentionally and that was violative of the rules governing reservation of posts in Govt. service and also runs contrary to the departmental rules framed in this regard. She has, therefore, approached the Tribunal to direct Res. 1 and 2 to give her appointment by declaring the appointments of private Respondents to the post in question null and void.

3. The facts of the case are not in dispute. The Respondents have, in their counter, admitted that the private Res. 3 and 4 had crossed the age of 25 years as on the date specified in the notification. But their

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candidatures were considered by giving them age relaxation available to OBC candidates. They have disclosed that ~~in~~ their overall merit those two candidates were placed at 1st and 2nd position in the merit list. It is the further argument of the Respondents that they were selected against un-reserved community vacancies as per the provisions contained in DOPT O.M. No.36012/13/88-Estt.(SCT) dated 22.5.1989(Annexure-R/1). They have further stated that in order of merit the first four positions were occupied by the private Res. 3 to 6, all of whom belong to OBC categories and the applicant Mrs.Usharani Padhiary, according to her merit, got the 6th position, the 5th position being occupied by one Shri Sanjeeb Kumar Das, an OC candidate. They have, therefore, submitted that the applicant could not come within the zone of consideration since her ~~placed~~ in the merit list was at Sl. No.6 and the vacancies available to be filled up were only five.

4. We have heard the learned counsel for both the parties and perused the records placed before us.

5. The learned counsel for the applicant, both in the O.A. and during oral submission, had insisted on production of certain documents maintained by the postal authorities. The Respondents had resisted the production of those documents on the ground that those were confidential documents and hence claimed privilege.

6. In ~~her~~ rejoinder, the applicant has maintained

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the earlier stand to the effect that production of those registers is necessary to show that she was illegally denied appointment by the Respondents. We find lot of force in this argument as advanced by the learned counsel for the applicant, because, the moot question to be decided here is whether the two vacancies meant for the OC community candidates could have been given to the OBC community candidates when they were considered under relaxed standards. The issue can be resolved by referring two Govt. letters on this subject produced by the Respondents along with their counter. Those two letters are as follows :

- i) DOPT O.M.No.36012/13/88-Est/SCT. dated 22.5.1989; and
- ii) O.M.No.25011/1/98-Est.(Res.) dated 1.2.1998 issued by the Govt. of India, Ministry of Personnel, P.G. & Pensions, Department of Personnel & Trg.

The Respondents in their counter have admitted that Res.3 and 4 had crossed the maximum age limit of 25 years as on the date specified for the purpose in the notification. At the same time, by referring to Para-2 of the O.M. dated 22.5.1989 (supra), they have stated that the Govt. has laid down the policy that in case of direct recruitment to vacancies in posts under the Central Government, the SC and ST candidates, who are selected on their own merit without relaxed standards along with the candidates belonging to the Other Communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from among the eligible SC/ST candidates, which will comprise

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SC/ST candidates, who are lower on merit than the last candidate on the merit list.

7. However, they have not referred to the instructions issued by the Ministry of Personnel vide their letter dated 1.7.1998. We have, therefore, carefully perused the contents of that letter and we find that the instructions contained in the said letter were not kept in view by the official respondents while preparing the merit list, in so far as community-wise distribution of vacancies is concerned. We are also constrained to observe that the official respondents had not properly appreciated the instructions laid down in Govt. of India letter dated 22.5.1989, wherein it was clearly spelt out in Para-2 thereof that the Government had allowed selection of reserved category candidates selected on their own merit as against general category vacancies provided they had competed in the selection process without application of relaxed standards. The same instruction has only been elaborated in their subsequent letter dated 1.7.1998, which we quote as under :

" In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidate, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc. the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consi-

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deration against unreserved vacancies".  
(Emphasis supplied)

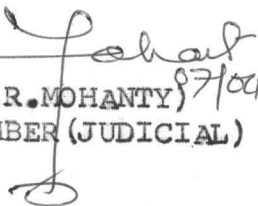
8. From the above instructions, the point is clear that the private Res. 3 and 4 having received the benefit of age relaxation were not entitled to be selected as general candidates although they had secured the 1st and 2nd position on the basis of marks awarded to them by the Selection Committee. In other words, as the Res. 3 and 4 had enjoyed the benefit of age relaxation, although they have secured 1st and 2nd position in the merit list, but they would not consume the OC quota points, thus leaving the selectors to fill up the two general/un-reserved vacancies by OBC candidates.

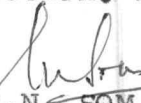
9. The Respondents are bound by the instructions issued by the Central Government in their letters dated 22.5.1989 and 1.7.1998 and any deviation made by them is unsustainable in the eye of law. It would be profitable in this respect to recall the decision of their Lordships of the Hon'ble Supreme Court in Ramchandra Adke case (reported in AIR 1975 SC 915), wherein it has been held that "where a power has been given to do a thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden".

10. In view of the above discussion, we hereby direct the Respondents-Department to review the selection list which they have prepared following their notification dated 3.8.1999 for filling up five vacancies of PS/SA for Balasore Division and

offer appointment to the applicant as per her merit position. This will consequentially affect the future of Respondent 6, for whom the official Respondents may consider creating supernumerary post as early as possible, as the official has now worked for some years and may be age barred for Government job.

11. Thus the O.A. succeeds and is disposed of with the above observation and direction. No costs.

  
(M.R. MOHANTY) 87/09/05-  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

BJY