

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH; CUTTACK.

O.A.NO. 328 OF 2002

Susanta Kumar Rout.

....

Applicant.

vrs.

Union of India & Others.

....

Respondents.

O.A.NO. 173 OF 2002

Smitarani Sahoo @ Smita Sahoo.

....

Applicant.

vrs.

Union of India and others.

....

Respondents.

FOR INSTRUCTIONS

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

(A.S.KHAN)  
MEMBER (JUDICIAL)

(B.N.SOM)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH;CUTTACK.

O.A.NOS. 328/2002 & 178/2002.  
cuttack, this the 13<sup>th</sup> day of November, 2002.

CORAM:-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. A.S.KHAN, MEMBER(JUDICIAL) .

....

O.A. NO. 328 OF 2002.

Susanta Kumar Rout, Aged about 24 years,  
S/o. Kishore Ch.Rout, Basoi, Parjang,  
District; Dhenkanal.

.... Applicant.

By legal practitioner; M/s. B.M.Patnaik,  
R.Sharma,  
S.Mohanty,  
S.Nanda,  
Advocates.

;Versus;

1. Union of India represented through  
Secretary to Govt., Department of Post,  
Dak Bhawan, New Delhi-1.
2. Chief Postmaster General, Orissa Circle,  
Bhubaneswar, Dist; Khurda.
3. Superintendent of Post Offices,  
Dhenkanal division, Dhenkanal.
4. Sub-divisional Inspector, Post Offices,  
Dhenkanal.
5. Bipin Bihari Behera,  
S/o. Rama Kanta Behera,  
At/Po; Basoi,  
District; Dhenkanal.

... Respondents.

By legal practitioner; Mr.S.B.Jena,  
Addl.Standing Counsel(Central).

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O.A. No. 178 OF 2002.

Smitarani Sahoo @ Smita Sahoo,  
Aged about 27 years,  
D/o. Rama Chandra Sahoo,  
At/Po: Basoi, via: Parjang,  
District: Dhenkanal.

.... Applicant.

By legal practitioner: Mr. T. Rath, Advocate.

; Versus;

1. Union of India represented through  
Chief postmaster General, Orissa  
Circle, Bhubaneswar, dist: Khurda.
2. The Superintendent of Post Offices,  
Dhenkanal division, Dhenkanal.  
dist: Dhenkanal.

.... Respondents.

By legal practitioner: Mr. A.K. Bose,  
Senior Standing Counsel  
(Central).

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN:-

No. 328/2002

THIS Original Application has been filed  
by Susanta Kumar Rout challenging the appointment of  
Respondent No. 5 (Bipin Bihari Behera) as Extra Departmental  
Branch post Master (G.D.S.B.P.M.) of Basoi Branch post  
Office, without considering his application on the ground  
that he being a Scheduled Caste candidate, should have been  
considered before considering the candidature of OBC  
candidates. He, therefore, has prayed for direction of this

Tribunal to the departmental Respondents to appoint him as Extra Departmental Branch Post Master (GDSBPM), Basoi Branch Post Office under phenkanal postal division.

2. The facts of this case are that the Supdt. of Post Offices, phenkanal division, phenkanal, vide notification at Annexure-4 invited applications in the prescribed form from the intending candidates for the post of EDBPM/GDSBPM of Basoi Branch Post Office, in account with Parjang Sub Post Office, under phenkanal Head Post Office. The last date of receipt of application was '09-08-2000' and it was stipulated in the said notification that the post was reserved for ST community. The said notification was partially modified vide Annexure- R/7 dated 18-10-2000 to the extent that if minimum three candidates belonging to ST community do not offer their candidature, the vacancy in question will be treated as dereserved and offered to the candidates belonging to other reserved community, in first to the SC community and then to OBC community. It was also stated that in case no eligible candidates will be found from the reserved communities, the vacancy will be treated as de-reserved and offered to the candidates belonging to other communities. The Applicant applied for this post in response to the said notification. It is his claim that since there was no eligible candidate from of the Applicant ST community, the case, who is belonging to SC community,



should have been considered as per the Notification at Annexure-4. His contention is that his case was not considered with mala fide intention and in violation of the notification referred to at Annexure-4. With this submission, he has prayed for cancellation of the selection and appointment of Respondent No.5, who is belonging to OBC community, and to declare him the successful candidate in place of Respondent No.5.

3. The departmental Respondents, in their counter, have denied the allegations. They stated that in response to the notification dated 13-07-2000 (Annexure-4) and later modified notification dated 18-10-2000 (Annexure-R/7) 28 candidates had submitted their candidature. The said Respondents have also annexed the check-list prepared by them in respect of the candidates at Annexures-R/1 and R/2 containing the particulars of the candidates who had applied for the post. It has been averred by them that although the post was reserved for ST community and they had received ten applications from that community, but none except one fulfilled the eligibility conditions prescribed for the post. In the circumstances, they considered the candidature of the candidates belonging to SC community, but there also the eligible group was found to be less than three in number and therefore, could not be considered for selection. It is in the above circumstances that the recruiting authority considered the candidatures of the candidates belonging to OBC community and selected

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the one from among them and appointed Respondent No.5 against the post. For the final reckoning, only nine candidates fulfilled all the qualifications/conditions prescribed for the post and the community-wise distribution was; two- belonging to SC, six- belonging to OBC and one- belonging to OC. As the SC candidates were two in number, they could not be considered for selection and the best candidate out of the OBC group was selected for the post.

4. Mr. B. M. Patnaik, learned Counsel for the Applicant rebutted the submission of the Respondents that there were only two eligible S. C. candidates. He stated that on perusal of Annexures- R/1 & R/2, it would reveal that in fact seven SC candidates had applied and out of which 3 were eligible fulfilling all the conditions prescribed for the post. He, therefore, disputed the averments made by the departmental Respondents in their counter that the condition of minimum three eligible SC candidates was not met stating that one Ms. Chandrika Sethy, whose name appears at Sl. No. 1 in Annexure- R/2 was qualified in all respects and, therefore, it was a mis-statement on the part of the said Respondents to say that there were no three eligible SC candidates available to be considered for the post. In reply, the Respondents both in their counter as also during oral submission, stated that in fact although the name of Ms. Sethy appeared in the check-list at Annexure- R/2, she had in fact applied for the post of GDSBPM, Muktaposi, but erroneously her

application was taken into consideration for Basoi Branch post Office. It was also further submitted that notification for Muktaposi BO was made on 13.09.2000, fixing the last date of receipt of application as 10-10-2000 and that Ms.Chandrika Sethy having not mentioned the name of the Branch post office, for which she was tendering her application, in her application form, the same was erroneously kept in the application bundle of Basoi Branch Post Office. It was submitted by the learned Additional standing Counsel that in fact this mistake was pointed out by the Sub divisional Inspector(Postal) Kamakhyanagar Sub-Division, when the papers were sent to him for verification. We have also perused the relevant records of Phienkanal division concerning the recruitment for the post of Basoi Branch post Office and records relating to the recruitment for the post of EDBPM, Muktaposi Branch Post Office, to satisfy us as to how this error had crept in. We have also perused the report of the Sub-Divisional Inspector(Postal), Kamakhyanagar Sub Division on the basis of whose report, the name of Ms.C.Sethy was taken out of the list for consideration of SC candidates for Basoi BO. The relevant portion of the report is extracted below:-

\*The applications of K.Chandrika Sethy alongwith documents(Sl.35-50) is mentioned at Sl.No.1. She has actually applied for the post of EDBPM, Muktaposi BO in response to public notification dated 13-9-2000 fixing last date to receive application by 10-10-2000 and her application is also received in DO on 9.10.2000 as clear from date stamp of DO by that time public notification for the post of EDBPM, Basoi BO was not issued by Divl. Office. Public notification for Basoi BO was issued on 13.10.2000.

Therefore, it is apprehended that the application with documents of Km. Chandrika Sethy has been tampered from the Selection file of EDBPM, Muktaposi BO and has been inserted into selection file of EDBPM, Basoi BO. As per enclosure note of application (DO.Sl. No.40) it is clear that she has applied for the post of EDBPM, Muktaposi BO as 'she has declared to provide accommodation at Muktaposi village'.

From the report of the said Sub-Divisional Inspector (postal) it is crystal clear that Ms. Sethy could not have applied for the post of EDBPM/GDSBPM of Basoi B.O., as the public notification for that post was issued only on 13-7-2000 (Annexure-4) which was modified in Annexure-R/7 on 18.10.2000. In the circumstances, we accept the contention of the departmental Respondents that in response to the vacancy circulars at Annexures-4 and R/7, Ms. Sethy could not have an opportunity to apply for the post and, therefore, the group of SC candidates applying for the post of EDBPM/GDSBPM, Basoi BO fell below the minimum three. In view of the above facts and circumstances of the case, this Original Application (O.A.No.323/2002) fails and we reject the same for being devoid of any merit.

5. There is another Original Application No.173/2002 filed by Smitarani Sahoo, one of the candidates for appointment to the post of EDBPM/GDSBPM, Basoi BO on the ground that Respondent No.2 had not given due weightage to her experience and higher educational qualification.

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6. Applicant in this Original Application (OA No. 178/2002) has stated that she is a graduate in Arts from Utkal University and she had applied for this post for which the qualification was matriculation only. She submits that since she was possessing all other required conditions for the post, the Recruiting Authority should have given due weightage to her higher educational qualification and put her above other candidates for the post. In support of her contention, she has referred to a decision of the Chandigarh Bench of the Central Administrative Tribunal in the case of SHER SINGH VRS. UNION OF INDIA AND OTHERS reported in AISLJ 1997(2) CAT 303 to the effect that the Chandigarh Bench of the Tribunal had directed the Director General of posts to amend the relevant rules making provision for giving due weightage for the higher qualification and experience for the post of EDBPM. On the strength of the aforesaid decision, she has prayed that the Tribunal may direct the Respondents to consider her candidature by giving due weightage to her higher qualification and experience as EDBPM. We have given our anxious thought to the points raised in this Original Application i.e., whether the Applicant was entitled to weightage for possessing higher educational qualification than the prescribed one in the vacancy notification for the post. The Recruitment Rules for the post of GDSBPM/EDBPM printed in Swamy's compilation of Service Rules for postal ED Staff at page 76, the educational qualification for the

post has been prescribed as 'Matriculation'. In the said Rules/instructions, it has also been emphasized that no preference will be given to the candidates who may apply for the post with higher educational qualification. The condition has also been incorporated in the notification issued by the Superintendent of Post Offices, Dhenkanal Division, at Annexure-3 in para-4. It runs thus:

"4. No weightage will be given to the applicants having higher qualifications as such documents relating to higher qualifications above matriculation need not be submitted\*.

Learned Counsel for the Applicant Shri T. Rath strenuously argued that the decision of the Chandigarh Bench of the Tribunal has set the law in the matter and that ~~direction~~ has been given to the Director General of Posts to amend the said Rules as per the ratio of that judgment. On the other hand, Mr. A.K. Bose, learned Senior Standing Counsel for the Respondents submitted that the decision of the Chandigarh Bench of the Tribunal was in the form of ~~obiter dictum~~ <sup>Led</sup> ~~was~~ not set any law or rules in the matter. The decision of the Chandigarh Bench of the Tribunal was a mere suggestion ~~and was not striking down the Rules/~~ instructions with regard to the Recruitment for the post of EDBPM/GDSBPM.

7. Learned counsel for the Applicant has also drawn our attention to the decision of the Hon'ble ~~Supreme~~

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Court in the case of K.C. SHARMA AND OTHERS VRS. UNION OF INDIA AND OTHERS reported in 1998 Supreme Court cases (L&S) 226 ; and K.I. SHEPHARD AND OTHERS VRS. UNION OF INDIA AND OTHERS reported in AIR 1988 SC 686 . We have gone through those decisions and are of the view that the aforesaid citations relied on by the learned Counsel for the Applicant are not directly related to the case in hand.

8. The moot point is that the Recruitment Rules for GDSBPM not only prescribe educational qualification as matriculation, the recruiting authority also advised the Applicants possessing higher qualification not to submit documents in support of their attainment of higher qualification(s) as no weightage would be given to such higher qualification(s). If we accept the contention of the learned Counsel for the Applicant, in this regard, it would definitely tantamount to prescribing/framing new rules providing eligibility conditions/qualifications for appointment to the post of GDSBPM. The point <sup>to</sup> ponder is do we have jurisdiction to traverse that area. To seek an appropriate answer, we would like to refer to the decisions of the Honourable Supreme Court rendered in the case of THE COMMISSIONER, CORPORATION OF MADRAS VRS. MADRAS CORPORATION TEACHERS' MANDRAM AND OTHERS reported in AIR 1997 SC 2131 in which Their Lordships have been pleased to observe as follows:-

\* xx xx.the **question** is; whether the Tribunal can give direction to create a post or to prescribe the minimum qualifications for the post ? It is well settled legal position that it is the legal or executive policy of the Government to create a post or to prescribe the qualifications for the post.The Court or Tribunal is devoid of power to give such direction.\*

We would also like to rely on the decisions of the Hon'ble Apex Court in the case of V.K.SOOD Vrs. SECRETARY, CIVIL AVIATION AND OTHERS reported in AIR 1993 SC 2285 in which it was observed by the Hon'ble Supreme Court that Rules cannot be impeached on grounds that they prescribe tailor made qualifications to suit particular individual or are discriminatory. It was also held that the Supreme Court also cannot regulate prescription of qualification -moreso, when matters are of technical nature. Finally, it was observed by Their Lordships of the Hon'ble Supreme Court that "moreover, it is for the rule making authority or for the Legislature to regulate the method of recruitment, prescribe qualifications etc. xx xx xx.This is not the province of this Court to trench into and prescribe qualifications in particular when the matters are of the technical nature". In otherwords, the law has been well settled by the Apex Court that in the matter of framing recruitment rules and prescribing eligibility conditions for any post under Govt,the matter is solely left to the executive authorities to do the needful and courts/Tribunals cannot interfere in such matters.


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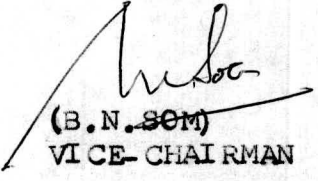


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9. In view of the above, this Original Application has also no merit and is accordingly rejected.

10. In the result, both the Original Applications are dismissed.No costs.

  
(A.S.KHAN)  
MEMBER (JUDICIAL)

  
(B.N.SOM)  
VICE-CHAIRMAN

The Hon'ble V.C.  
KNM/CM. is authorised  
to pronounce  
this order on  
my behalf  
also.

  
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