

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.803 of 2005

Cuttack, this the ~~17th~~ day of February, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Kumari Mala Mohapatra, Aged about 25 years, D/o. Shri Ashok Kumar Mohapatra, Village-Dandisahi, Post-Mallikapur, PS-Mangalpur, Dist. Jajpur, Orissa.

.....Applicant

By Advocate:M/s. D.P.Dhalsamant, P.K.Behera.

- Versus -

1. Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack-753 001.
4. Chief District Medical Officer, Cantonment Road, At/Po/Dist. Cuttack.

....Respondents

By Advocate: Mr.P.R.J.Dash, ASC

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Mr.A.K.Bose, GA (State)

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant is a deaf and Dumb which comes under the category of physically handicapped. By publishing notification dated 09.05.2002, Superintendent of Post Offices, Cuttack North Division, Cuttack invited application from eligible candidates for filling up of the post of GDSBPM of Mallikapur Branch Post office. It was made clear to the candidates that the post is meant to be filled up by OC candidate and preference will be given to PH candidate. As per the

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Rules, mark in the HSC examination is the criteria for selection to the post of GDSBPM of course subject to fulfillment of other conditions stipulated in the Rules. From among the candidates who offered their candidature, five PH candidates were intimated vide letter dated 01.10.2002 to be present in the office of the Superintendent of Post Offices, Cuttack North Division, Cuttack on 11.10.2002 with original documents/testimonials in support of their education etc. for verification. Accordingly, original documents of applicant and other PH candidates were verified and it was found that the Applicant had secured more marks than other PH candidates i.e. 511 marks in HSC examination. It is alleged by the Applicant that instead of issuing the offer of appointment in her favour, Respondent No.3 without any reason in letter dated 24.12.2002 sought for opinion of the CDMO, Jajpur whether with the disability, the applicant can be able to perform the job of GDSBPM. In turn, the CDMO, Jajpur sought the opinion of the CDMO, Cuttack pursuant to which the Applicant was asked by the CDMO, Cuttack vide letter dated 13.03.2003 to attend the District Disability Medical Board of Cuttack District on 22.3.2003. Applicant appeared before the District Disability Medical Board of Cuttack on 22.3.2003 and finally she was issued the certificate of having 65% disabilities (Annexure-A/8). In spite of submission of such certificate by the Applicant and in spite of the fact that she had secured the highest marks in the HSC examination having all eligibility criteria to be appointed to the post in question no offer of appointment was issued to her. After being unsuccessful to get justice in the hands of the authorities, she approached this Tribunal

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in the present Original Application filed U/s.19 of the A. T. Act, 1985 seeking direction to the Respondents to complete the process of selection and issue offer of appointment to the applicant forthwith without insisting certificate in regard to the capability of the Applicant to discharge the duty of GDSBPM.

2. Respondents 1 to 3 did not dispute the fact that from among the PH candidates the applicant stood first for having secured highest marks in the HSC examination. They have averred that on receipt of the letter under Annexure-R/3 from the office of the CDMO, Cuttack certifying that with the disability condition, the applicant is not fit to discharge the duties of GDSBPM. On receipt of such letter the CPMG was moved seeking permission to issue offer of appointment to the post in question to Shri K.C.Jena a PH candidate who stood second in the select list and fit in all respects to discharge the duty. Though all formalities for issuing offer of appointment in favour of Mr. Jena were over but for the ban order in the meantime imposed on recruitment, the post has not been filled up till date.

3. In the counter filed by Respondent No.4/CDMO, Cuttack it has been averred as under:

“4. That in reply to paras 4.6 it is humbly submitted that a letter bearing No. 269 dated 25.1.2003 had been received from the CDMO Jajpur for medical board examination of the applicant to assess her fitness for appointment as a Branch Post Master. The above examination was undertaken because of the specific letter of the Supdt. Of Post Offices who wanted to know as to whether the applicant can perform assigned the duties of BPM. However, as the concerned BPM duty chart was not available in the office of the respondent No.4, the CDMO, Jajpur was requested to supply the necessary rules and guidelines and the applicant was instructed to appear the board on 02.04.2003 at 2 PM. However, instead of attending the Board, the applicant represented vide her

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representation dated 29.03.2003 to extend the date of examination on the ground of her final degree +3 examination. Considering the above representation the respondent No.4 intimated he vide letter No. 5051 dated 16.05.2006 to attend the Medical Board on 02.06.2003 dated 02 PM. Instead of attending the board the applicant represented that she will attend the board on receipt of the reply from the CPMG, Bhubaneswar.”

4. By filing rejoinder the Applicant has stated that on the face of the disability certificate granted by the competent authority under Annexure-A/8 certifying a particular percentage of disability of applicant there was no need for the Respondents to seek second opinion. However, pursuant to the order of the CDMO, the applicant appeared before the District Disability Medical Board, Cuttack on 15.02.2003 as would be evident from the certificate granted by the CDMO under Annexure-A/12. She has also disputed the genuineness of the letter of the CDMO, Cuttack under Annexure-R/3. Subsequently, through affidavit, it was brought to the notice of this Tribunal that the letter purportedly issued by the office of the CDMO under Annexure-R/3 is a forged one. He has also disputed the genuineness of the letter dated 24.3.2003 asking the applicant to appear before the Medical Board on 2.4.2003. Accordingly, the Applicant has stated that as she has been issued the disability certificate by properly constituted Medical Board, direction may be issued to the Respondents to issue the offer of appointment in her favour.

5. During hearing respective parties have reiterated their stand taken in the pleadings and having heard them at length perused the materials placed on record.

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6. It is not in dispute that applicant secured highest marks from among the PH candidates applied and appeared before the Respondent No.3 for selection to the post of GDSBPM. The genuineness of the handicapped certificate under Annexure-A/8 granted by CDMO, Cuttack and produced by the Applicant has not been disputed by the Respondents either in the counter or during hearing. It is seen that the Applicant although otherwise eligible to be selected and appointed to the post in question but for the letter of the CDMO, Cuttack under Annexure-R/3 she was deprived of such appointment. Respondent No.4/CDMO, Cuttack in the counter filed separately did not whisper anything in regard to the letter dated 24.3.2003 of the CDMO, Cuttack asking the applicant to appear before the Medical Board on 2.4.2003 or in regard to the letter under Annexure-R/3 based on which the Applicant was denied appointment although she stood first from amongst the PH candidates before the selecting authority. The Respondents 1 to 3 also did not file any material to prove the above contention of the applicants false. When in spite of the certificate under Annexure-A/8 the Respondents thought it proper to refer the matter CDMO for certification, it is not known what prompted them not to verify the authenticity of the letter under Annexure-R/3.

7. From the narrations made above, we find substantial force in the contention of the Applicant. Accordingly, the Respondent No.3 is hereby directed to consider issuance of the offer of the Applicant to the post in question, if she fulfills other conditions required for appointment to the post, within a period of 45 days from

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