

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 20 of 2003

Cuttack, this the 18th day of November, 2004

Bipin Bihari Dehury Applicant
Vs
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *No*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*

Subd

(M.R.MOHANTY)
MEMBER (JUDICIAL)

Abha

(B.N.SM)
VICE-CHAIRMAN

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CORAM :

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

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Shri Bipin Bihari Dehury, aged about 19 years, S/o Shri Laxmidhar Dehuri, Vill : Ramachandi, P.O. Banra, Via. Munduli Colony, Dist. Cuttack.

..... Applicant

Advocate for the applicant - Mr. P.K.Padhi

Vs

1. Union of India, represented by it's Chief Post Master General(Oriissa Circle), At/P.O. Bhubaneswar, Dist. Khurda, 751001.
2. Sr. Superintendent of Post Offices, Cuttack City Division, At : P.K.Parija Marg, P.O. Cuttack G.P.O., Dist. Cuttack, 753001.
3. Assistant Superintendent of Post Offices, Cuttack East Sub Division, At/P.O. Cuttack G.P.O., Dist: Cuttack, 753001.
4. Jitendra Sahu, At/P.O. Godisahi, Via: Munduli Colony, Dist. Cuttack.

..... Respondents

Advocate for the Respondents - M/s. S.K.Swain, B.K.Biswal,
D.R.Rath, B.Rout(For R-4)
Mr. U.B.Mohapatra (SSC)

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O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Bipin Bihari Dehury has filed this O.A. being aggrieved by his non-selection to the post of GDS Mail Deliverer of Godisahi Branch Post Office. He has approached the Tribunal with a prayer to quash the selection of Respondent No.4 to the post and to give direction to Respondent No.3 to appoint him in that place.

2. The facts of the case in short are that the Respondents had advertised the post on 4.10.02(Annexure-4) stating that the post is to be filled up by a candidate from ST community. However, in case three eligible candidates from that community would not be available the vacancy would be filled up from the candidates belonging to another community i.e. OBC/Un-reserve. In response, they received 20 applications, 3 from ST community, 9 from OBC, 1 from SC and 7 from OC. Out of three ST candidates, one was not eligible on the ground that he did not state about his income i.e. could not prove his independent source of livelihood, another application was received after the due date, hence rejected. As two of the ST category candidates could not fulfil the eligibility condition, only one was left in the fray, the Respondents in terms of para 2 of the vacancy notification decided to consider the application received from OBC candidates and selected Respondent No.4 being the best among them.

3. The applicant has assailed this action of the Respondents on the ground that as the post was reserved for ST community it was not open to the Respondents to have it filled up by a candidate from another community without considering the case of the applicant who was otherwise eligible.

4. The Respondents have rebutted this argument stating that nowhere in the notification there is such mention that the post is reserved for ST Community, and therefore, the plea taken by the applicant in the O.A. is untenable in the eye of law. The Respondent No.4, on the other hand, by filing a written note of argument has stated that selection to the post could not have ^{been} ~~been~~ made outside the terms and conditions as mentioned in the advertisement at Annexure-4. Drawing strength from our decision in O.A. No. 634/01 he has further submitted that law is well settled that the selecting authorities have no power to go beyond the conditions reported in the advertisement; nor have they any power to deviate from the condition notified in that regard. In the case, in O.A. No. 634/01, the entire process of selection was set aside and the appointment of the applicant was terminated without giving any notice. On the other hand, an OBC candidate was given appointment to the post being found the most meritorious. The selection of SC candidate was not considered on the ground that there were no ~~re-
eligible~~ ^{arrangeable} candidates in the zone of consideration.

5. The Lt. Counsel, on the other hand, by referring

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to our decision in O.A. No. 404/01 dated 5.8.04 has submitted that the present case of the applicant is squarely covered by the decision in that O.A. In the case involved in O.A. No. 404/01 selection of a candidate from ST community was not made on the ground that there remained one candidate in the selection field. In that case, we had found that the applicant from ST community was eligible in all respects for the post and her non-selection was clearly a case of error of judgment. To that extent, our decision in the earlier case holds good here also.

6. From the above case laws, the law is well settled that unless and otherwise a clause is struck down, the Authorities are bound to adhere to the procedure laid down by them in the matter of selection as a policy decision. By virtue of the provision made by the Respondent department at para 8 of their letter dated 27.11.97 (quoted in O.A. 404/01) it was incumbent upon the Respondent No.3 to obtain permission from his next higher authority before deciding to make a selection from another community. The application of the applicant may now be forwarded to the next higher authority for considering whether it would have been expedient to make selection to the post in question from the preferred community i.e. ST, and, in case the answer is in the affirmative, the Respondents are directed to offer any other post in GDS category, other than GDSBPM/EDBPM to the applicant in the

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interest of justice.

Y. S. Jaiswal

(M.R.MOHANTY)
MEMBER (JUDICIAL)

B.N.BM

(B.N.BM)
VICE-CHAIRMAN

RK/SD