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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 751 OF 2010
CUTTACK, THIS THE 23rd DAY OF MAY, 2013


Rupsa Mahapatra..... 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


(R.C.MISRA)
MEMBER (ADMN.)


(A.K.PATNAIK)
MEMBER (JUDL.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. NO. 751 OF 2010
Cuttack, this the 23rd day of May, 2013

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HON'BLE SHRI A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)

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Rupsa Mahapatra,
aged about 19 years,
D/o. Sri Tribukram Mahapatra,
Resident of – Bangali Sahi,
P.O.-Telenga Bazar, P.S. Purighat,
Town/Dist- Cuttack

...Applicant

(Advocate(s) : M/s. Jyotirmaya Gupta, T.Mohapatra, S.C.Mekap, P.Padmavati Rao)

VERSUS

Union of India Represented through

1. Chief Post Master General,
Department of Posts,
Orissa Circle, Bhubaneswar
Dist- Khurda.
2. Assistant Director (Recruitment,
Office of The Chief Post Master General,
Orissa Circle, Bhubaneswar
Dist- Khurda.

... Respondents

(Advocate: Mr. J.K.Khandayatray)

ORDER

SHRI R.C.MISRA, MEMBER (ADMN.) :

The applicant, in the present case, has approached the Tribunal for a relief that she should be declared selected for the post of Postal Assistant (SBCO) by way of publication of revised list for the Un-reserved category. The facts of the case are as follows.

The Respondents, in this case, viz. Department of Posts, brought out an advertisement on 15.09.2010 for recruitment of Postal



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Assistant/Sorting Assistant in the Orissa circle. As per the vacancy chart, which was advertised, the applicant applied for the post of Part -III, Savings Bank Control Organisation against 5 posts of Un-reserved category out of a total of 15 posts which were advertised. The applicant was issued with an admit card having Roll No. OR/PA/(SBCO)-06-2010, which permitted her to appear in the computer test on 12.11.2010 and aptitude test on 14.11.2010. It has been alleged by the applicant that during the computer test candidates bearing Roll Nos. 1, 2 and 5 were not present and were disqualified. Only the candidates bearing Roll Nos. 3, 4 and 6 had appeared the tests and were made Sl. Nos. 1, 2 and 3. It is the case of the applicant that as per the roll numbers she was at Sl. No.6 of the merit list and because of the absence of candidates bearing Roll Nos. 1, 2 and 5, she ^{attains} ~~attends~~ 3rd position in the merit list. Besides, she had secured 78% marks in her +2 examination and she is the only woman candidate from Roll No. 1 to 10. Her performance in the aptitude test was also satisfactory and she should have got the third position during the selection. However, results were published and candidates bearing Roll Nos. 1, 4 and 10 have been selected against UR category and two OBC candidates were also selected to fill up two other UR posts. This is the subject of challenge in this Original Application.

The other allegation that has been made by the applicant is that in the result published for Postal Assistant in RMS 'N' Division, the vacancy position was only 13 but 69 candidates have been selected for appointment without any publication of revised vacancy position for information of the general public. In the prospectus, it has been mentioned that candidates equal to 10 times of the vacancy of each community will be called for to appear for the aptitude test but in case of RMS 'N' Division

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even though vacancy was increased to 69, 10 times of the number, i.e. 690 candidates should have been called for aptitude test. On this ground also the results published in the RMS 'N' Division are contrary to the guidelines advertised by the concerned authorities. It is further alleged that the applicant securing 78% marks in +2 examination could not be selected in her category of selection whereas candidates securing less than 60% marks have been easily selected in RMS 'N' Division although in both cases the posts are in the cadre of Postal Assistant. These are the grounds on which the applicant has alleged that the selection has been vitiated by not following the guidelines and, therefore, she approached the Tribunal praying that revised result-sheet be published which should include her name as selected for the post of PA(SBCO).

2. Respondents have filed their counter affidavit in this case and traversing through this affidavit following facts have emerged.

The notification for recruitment of Postal Assistants of Post Offices, Sorting Assistants for Mail Offices and Postal Assistants for Circle Offices and SBCO was issued on 18.08.2010 in order to invite applications for filling up of the vacant posts pertaining to the years 2009 and 2010. The applicant submitted an application in respect of PA (SBCO) and after scrutiny of applications, she was permitted along with other eligible candidates to appear in the computer as well as aptitude test. After completion of the entire process of recruitment, the result was declared and the applicant did not come in merit to be recruited as PA (SBCO). The applicant was allotted with Roll No. OR/PA/(SBCO)-06-2010 for appearing in the computer and aptitude test but it was only a roll number and did not have anything to do with the merit list. The selection was done on merit by



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totaling of the marks secured in three components, viz. 40% of the marks on the basis of result in +2 examination, 50% of the marks on the basis of aptitude test and 10% of the marks on the basis of computer and typing test. It is further submitted in the counter that the total marks secured by the applicant are less than the marks of the other candidates, who were selected under the UR quota. Two OBC candidates have been selected against UR vacancies as they secured more marks than other UR candidates. OBC candidates have come on merit at par with UR candidates and, therefore, another two OBC candidates were selected against the OBC vacancy.

Regarding increase in the vacancy in RMS 'N' Division, the explanation given in the counter affidavit is that in the first advertisement it was mentioned that the vacancies for RMS 'N' Division are likely to increase. After filling up of the promotional quota vacancies for the year 2006 to 2009 from among the GDS staffs, the unfilled promotional quota vacancy^{ies} were merged with the direct quota vacancy for which the vacancy^{ies} of RMS 'N' Division were subsequently increased to 69 and the same was publicized through the departmental website on 02.10.2010. Due to unavailability of 690 eligible candidates, the required number of candidates could not be called to appear at the computer and aptitude test. It is the contention made in the counter affidavit that there is no provision for reservation of woman candidate for the recruitment of Postal Assistant and Sorting Assistant in the Department of Posts. Further, the candidate under reserved community can be selected under UR vacancy if he or she comes within the meritorious UR candidates. In the instant case, two OBC candidates have been selected against UR vacancies as they have secured more marks than other UR candidates. The thrust of the counter affidavit is

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that the selection of PA in SBCO for which the present applicant in this O.A. had applied has been purely made on merit and if the applicant has not been selected it is because she has secured less marks than candidates who have been selected. The allegations made by the applicant in the case have been completely denied in the counter affidavit of the departmental authorities.

3. We have heard Ld. Counsels for both the parties in this case. Ld. Counsels have also filed their written notes of arguments.

4. In the note of arguments filed by Ld. Counsel for the applicant, the grounds taken in the O.A. have been reiterated. It has been again mentioned that the wide circulation for the increase of vacancy for RMS 'N' Division have not been made. Some case laws have been cited to drive home the point that appointment beyond the advertisement should be taken as malafide.

5. In the note of arguments filed by Ld. Counsel for the Respondents, while reiterating the points given in the counter affidavit it has been pleaded that applicant cannot challenge the process of recruitment after participating in the selection process. In this regard the judgment of the Hon'ble Apex Court in case of Dhananjay Malik and Others Vs State of Uttaranchal and others reported in (2008) 1 SCC (L&S) 1005 has been cited. It has been further mentioned that the applicant has challenged the increase of vacancies through notification in the departmental Website on 02.10.2010 pertaining to PA/SA posts which are different from PA (SBCO) posts. Since the applicant had applied for PA (SBCO) cadre, her challenging the increase in vacancy in the PA/SA cadre ^{in RMS 'N' Division} is misconceived.

6. We have heard Ld. Counsels for both the parties and gone through the records in this case.



7. From the pleadings, it is quite clear that applicant had submitted her application for selection in the cadre of PA (SBCO). Although, she participated in the aptitude test and computer test, she has not been selected. Although, she has challenged the filling up of the UR vacancy by the OBC candidates as well as increase of vacancy in the cadre of PA/SA in which she has not participated, the various issues in this regard have been answered in the counter affidavit filed by the Respondents in this case. The applicant has participated in the selection process and on publication of the result she did not find herself successful and has, therefore, approached the Tribunal.

8. In the O.A. filed as well as in course of the hearing the applicant has not brought any cogent ^{or coherent} fact to the notice of this Tribunal on the basis of which it can be concluded that she was wrongly eliminated in the process of selection even though she had proved her merit in the examination that she went through. In the case of Dhananjay Malik and Others Vs State of Uttaranchal and others reported in (2008) 1 SCC (L&S) 1005, which has been cited by the Ld. Counsel for the Respondents, the following decision has been made by the Hon'ble Apex Court:

“8. In Madan Lal v. State of J&K this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitioners. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he





cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

10. In the recent judgment of Marripati Nagaraja v. Govt. of A.P., SCR at p. 516, this Court has succinctly held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process."

9. In the present case, applicant might have felt aggrieved because she was not finally selected for the post of PA (SBCO) even though she had thought that she has performed very well in the various tests, ^{but} she has not placed any material facts before this Tribunal to prove that her merit was ignored by the departmental authorities during the tests. Since no convincing reasons have been provided by the applicant, the Original Application is devoid of merit and, therefore, is disallowed.


(R.C.MISRA)
MEMBER (Admn.)


(A.K.PATNAIK)
MEMBER(Judl.)