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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 461 of 2011
Cuttack, this the 23rd day of December, 2015

Ms. Arati Lakra	Applicant
	Versus	
Union of India & Ors.	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C. MISRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 461 OF 2011

Cuttack, this the 23rd day of December, 2015

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)

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

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Ms. Arati Lakra,
aged about 37 years,
C/o Shri M. Kujur,
Qr. No. 382, Type-II, New AG Colony,
PO Nayapalli, Bhubaneswar, PIN 751012.

...Applicant

Advocates: M/s. G.Rath, D.K.Mohanty, S.Rath, B.K.Nayak.

VERSUS

Union of India Represented through its

1. Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi-110001.
2. Prasar Bharati Broadcasting Corporation of India
represented through
Chief Executive Officer, PTI Building,
Copernicus Marg, New Delhi, PIN-110001.
3. Director General,
Doordarshan, Copernicus Marg,
Mandi House, New Delhi, PIN-110001.
4. The Director,
Doordarshan Kendra, Chandrasekharapur,
PO- Sainik School, Bhubaneswar, Dist- Khurda, PIN-751005.

..... Respondents

Advocate(s) : M/s. P.R.J.Dash, U.B.Mohapatra.

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ORDER

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

The entire gamut of the facts is that admittedly out of 13 posts of Production Assistant in Doordarshan Kendra, Bhubaneswar, 9 posts had been filled up already prior to July, 1997 and occupied by the candidates belonging to unreserved category. In pursuance of the

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32 instructions issued by the Directorate of Doordashan to all Regional DDKs, Director, DDK being the appointing authority, issued an advertisement vide Annexure-R/5 inviting applications from the eligible candidates for filling up 3 vacant posts of Production Assistant as a measure of Special Drive Recruitment for the candidates belonging to SC/ST category, keeping the last date of receipt of applications on or before 23.12.2005. Out of three vacancies of Postal Assistant, two vacancies were earmarked for ST category and one vacancy was earmarked for SC category. Accordingly, the selection was conducted and on completion of the selection process, the Screening Committee recommended names of the following two candidates for offer of appointment as Production Assistant in order of merit against the two vacancies belonging to ST category.

1. Shri Bishwakarma Thakur Dash Tudu
2. Shri Basant Kumar Korkara

2. In addition to the above a reserved panel belonging to ST category candidates was prepared containing the names of the following candidates.

1. Lalatendu Keshari Nayak
2. Ms.Arati Lakra(applicant in this O.A.)

3. Consequent upon the merit list, S/Shri Biswakarma Thakur Das Tudu and Basant Kumar Korkara were issued with the offer of appointments as Production Assistant and accordingly, both the candidates took up the assignments Shri Basant Kumar Korkara tendered his resignation with effect from 16.03.2006. In such a situation, Shri Lalatendu Keshari Nayak, whose name was at Sl.No.1 of the reserved panel was issued with the offer of appointment as

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Production Assistant and consequently, he joined the DDK, Bhubaneswar. While the matter stood thus, Shri Biswakarma Thakur Das Tudu resigned from service with effect from 4.10.2010.

4. Grievance of the applicant, Ms.Arati Laka in this Original Application is two- fold. As revealed from the Original Application, she had made her 1st representation dated 22.1.2007 (A/5) to the Director, DDK, Bhubaneswar, the gist of which reads as under.

“Respectfully, I, Smt.Arati Lakra, only a Woman selected S.T. candidate for the post of Production Assistant during December, 2005. Now it is learnt from reliable source that one post of Production Assistant is lying vacant under your kind disposal.

Also this is for your kind information & necessary action that the existing vacancy of Production Assistant is from S.T. Category as per the post based roster instead of OBC as per the Notification No.TW/HW/Welfare & BCW/Deptt./25455 dated 10.09.93(TW). (Copy enclosed).

Accordingly one existing post became OBC from 9/03 onwards.

In view of the above my case may kind be considered for the post of Production Assistant for which act of your kindness I shall remain grateful to you”.

5. Thereafter, applicant went on preferring representation after representation to the higher authorities for the redressal of her grievance and having received no response, she moved this Tribunal in O.A.No.487 of 2010. This Tribunal, vide order dated 8.9.2010 disposed of the said O.A. with direction to Respondent Nos.1 and 2 therein to consider the pending representation of the applicant (Pages 26 to 28 of the O.A.) within a period of sixty days from the date of receipt of the order under intimation to the applicant. In compliance of the aforesaid order, Deputy Director(Admn.) in the Prasar Bharati (Broadcasting Corporation of India), Directorate General, Doordarshan, issued a speaking order dated 18.5.2011(A/13) by stating that it is not

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34 permissible and feasible to appoint applicant as Production Assistant against the vacancy meant for OBC as per roster at DDK, Bhubaneswar.

Aggrieved with this, applicant has moved this Tribunal in the present O.A. seeking the following relief.

- i) To quash the order of rejection communicated in letter dated 18.5.2011 in Annexure-A/13.
- ii) To direct the Respondents to appoint the applicant retrospectively.
- iii) To direct the respondents to pay the applicant all her service and financial benefits retrospectively.
- iv) To direct initiation of disciplinary proceedings against the erring official/officer for violation of the reservation roster while filling up of the post of Production Assistant.
- iv) To pass any other order/orders as deemed fit and proper.

6. It is the case of the applicant that as per Model Roster of reservation with reference to posts for direct recruitment, for cadre strength upto 13 posts, the same are to be manned in the following manner.

1. UR
2. UR
3. UR
4. UR
5. ST
6. UR
7. SC
8. UR
9. OBC
10. ST
11. UR
12. SC
13. ST

7. According to applicant, as against 13 sanctioned posts of Production Assistant, nine persons belonging unreserved category were in position as on 2005. Therefore, in view of DoP&T OM

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No.36038/1/2004-Estt.(Res.) dated 5.8.2004 asking for conducting special Recruitment Drive of backlog vacancies in the reserved category of SCs and STs, the Directorate General of Doordarshan, New Delhi issued instruction letter dated 23.08.2004 for holding Special Drive Recruitment for filling up the vacancies of SCs/STs in all categories which includes the category of Production Assistant of DDK, Bhubaneswar.

8. In the above backdrop, it has been urged by the applicant that since nine posts of Production Assistant has already been filled up by UR category candidates, it included point No.5 meant for ST category and therefore, in terms of the Rules, following was the position for which Special Drive Recruitment was to be conducted.

10. ST
11. ST(carry forwarded vacancy of point No.5)
12. SC
13. ST

9. Grievance of the applicant is that instead of 3 vacancies belonging to ST and one vacancy belonging to SC category, respondents issued advertisement inviting applications for filling up two vacancies of Production Assistant belonging to ST category and one vacancy belonging to SC category, thus committing an error in the calculation of post based roster.

10. On the other hand, it has been submitted that based on the recommendations of the Screening Committee, orders of appointment were issued to S/Shri Bishwakarma Thakur Dash Tudu and Basant Kumar Korkara, who joined DDK, Bhubaneswar as Production Assistant on 04.01.2006. Shri Basant Kumar Korkara having resigned

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from service on 16.03.2006, Shri Lalatendu Keshari Nayak, who was at

Sl.No.1 of the reserved list was issued with the offer of appointment.

Similarly, Shri Bishwakarma Thakur Dash Tudu resigned from service on 4.10.2010.

11. Grievance of the applicant is that two posts of Production Assistant belonging to ST category (carry forward vacancy (Point No.5) and the vacancy caused due to resignation of Shri Basant Kumar Korkara) are lying vacant as of now and since the applicant is a Woman candidate belonging to ST category and she had been placed at Sl.No.2 of the reserved panel should have been issued with offer of appointment after resignation of Shri Basant Kumar Korkara with effect from 4.10.2010.

12. In support of his contention, applicant has cited the precedent that in compliance of the orders of the Tribunal, appointments have been given to Ms.Tripathy and Ms.Das even long after expiry of the period of one year and in similar situation, if applicant is not provided with the appointment, it would be discriminatory thus violating Article 14 of the Constitution.

13. Per contra, respondents have filed their counter. It has been submitted that the total sanctioned strength of Production Assistant in DDK, Bhubaneswar is 13 of which 9 posts were filled up including six posts regularized from eligible panel of Production Assistant under regularization scheme 1992 and 1994, which was approved by the Directorate on 21.11.2003, i.e., prior to filling up the post under Special Recruitment Drive, 2005. In view of law laid down by the Hon'ble Supreme Court, vacancy based roster was replaced by post based

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roster when nine Production Assistants belonging to UR category were in position against 13 sanctioned strength. The appointments were made prior to July, 1997, as per the vacancy based roster and the Government have replaced the vacancy based roster to post based roster as a result of which excess of 3 vacancies in UR category against point No.5,7, & 9 respectively were reserved for SC, ST and OBC as per DOP& T OM No.360/12/2/96 Estt. Dated 2.7.1997. According to them, the excess vacancies will be further adjusted through future appointment without disturbing existing appointment. Accordingly, 3 vacancies (2 ST and 1 SC) were required to be filled through Special Recruitment Drive. In view of the above, one post of ST and one post of SC was for adjusting the existing excess of UR category against ST(point No.5) SC(Point No.7). Another post of ST was against the next point (Point No.9) of the roster. Therefore, according to respondents, there has been no mistake in calculating the number of vacancies reserved for SC/ST while issuing advertisement. It has been submitted that the selection panel remains valid for a period of one year from the date of selection. Secondly any correction/amendment in the number of vacancy or reserved number of vacancy etc. can be made only through corrigendum/amendment.

14. From the pleadings of the parties, it reveals that this Original Application is grounded upon two dimensions emerging the following questions for determination.

- i) Whether applicant having appeared in the examination in pursuance of vacancy notification of 2005 and having her name put in the reserved panel, can make a grievance that had the post based roster been properly calculated the number of vacancy of Production Assistant belonging to ST category would



been three instead of two, thus enlarging the scope and extent of the said notification on the ground that she was a selected candidate her name being placed at Sl.No.2 of the reserved panel ?

ii) Whether any right accrues on the applicant to be appointed to the post of Production Assistant due to resignation of Shri Biswakarma Thakur Dash Tudu (ST category) on 4.6.2010 on the ground that her name had been kept at Sl.No.2 of the reserved panel in respect of vacancy notification, 2005 ?

iii) Whether any discrimination has been meted out to her thus violating Article-14 of the Constitution ?

15. As mentioned above, Director, DDK, Bhubaneswar issued an advertisement in the year, 2005 inviting applications from the eligible candidates for filling up 3 vacant posts of Production Assistant under the Special Recruitment Drive. Out of three vacancies, two vacancies were earmarked for ST category and one vacancy was earmarked for SC category. 15. On completion of the selection process, the Screening Committee recommended the names of (1)S/Shri Bishwakarma Thakur Dash Tudu and (2) Basant Kumar Korkara for appointment against two vacancies of Production Assistant belonging to ST category. In addition to this, a reserved panel containing the names of (1) Shri Lalatendu Keshari Nayak and (2) Ms.Arati Lakra(applicant in this O.A.) belonging to ST category was drawn up.

16. Based upon the merit list, S/Shri Biswakarma Thakur Das Tudu and Basant Kumar Korkara were issued with the offer of appointments as Production Assistant and accordingly, both the candidates took up the assignments. As Shri Basant Kumar Korkara tendered his resignation with effect from 16.03.2006, Shri Lalatendu Keshari Nayak, whose name was at Sl.No.1 of the reserved panel was issued with the offer of appointment as Production Assistant in view of the

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fact that such appointment had been made within one year, which is the validity period of the panel. While the matter stood thus, applicant submitted a representation dated 22.1.2007(A/5) claiming that instead of two vacancies of Production Assistant belonging to ST category, the vacancy position should have been notified as three. This, in my considered opinion is out of purview of the notification. If applicant was almost certain that the number of vacancy position belonging to ST category should have been three instead of two, what prompted her to abide by that notification and appear in the examination without challenging the legality of the same ? Therefore, at this juncture, applicant is estopped to raise this question nor the Tribunal has any scope to delve into the matter and wind the clock back prior to issuance of vacancy notification.

17. In view of the above, it is improbable and rather impracticable to grant any relief to the applicant on this score in the absence of vacancy notification, 2005 being called in question or challenged in this O.A.

18. Accordingly, issue no.(i) above has to be answered and is answered in the negative and in favour of the respondents.

19. As regard the issue no.(ii), it is to be noted that Shri Biswakarma Thakur Das Tudu resigned from service with effect from 4.10.2010. It is the case of the applicant that after resignation of Shri Biswakarma Thakur Dash Tudu, she should have been appointed to the post of Production Assistant as her name was very much in the reserved panel. No doubt applicant is a candidate selected against the vacancy notification of the year, 2005 her name being put in the reserved panel. Vacancy of Production Assistant was caused due to resignation

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of Shri Biswakarma Thakur Das Tudu in the year, 2010. Therefore, it is quite inconceivable that the reserved panel drawn up against the vacancy notification, 2005 is having a life span till eternity. Conversely, with the filling up two vacancies of Production Assistant in the ST category, by the appointment of Shri Lalatendu Keshari Nayak (Sl.No.1 of the reserved panel), due resignation of Shri Basant Kumar Korkara on 16.03.2006, whatever panel was there stood obliterated. Therefore, applicant could not have any grievance in respect of what had happened in the year 2010.

20. In view of the above, no right accrues on the applicant to be appointed to the post of Production Assistant due to resignation of Shri Biswakarma Thakur Dash Tudu (ST category) on 4.10.2010. Accordingly, issue no.(ii) is answered.


21. As regards the allegation of the applicant that in similar situation, two persons, viz., Ms.Tripathy and Ms.Das were appointed after expiry of the period of one year of the formation of panel as per some other order of the Tribunal, it is the case of the respondents that the reserved panel ordinarily remains valid for a period of one year and in the event of occurrence of vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, such vacancies could be filled up from amongst the suitable candidates in the reserved panel in order of merit. In this regard, respondents have placed reliance on DOP&T OM dated 13.06.2000(R/7).

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22. Be that as it may, the fact remains that there has been no discrimination in the matter of appointment in so far as vacancy notification, 2005 is concerned. The full facts of the so called precedent cited by the applicant have not been furnished, and therefore, no conclusion can be drawn from this claim. But, even if such precedent is there, in which appointments were made from a panel after the expiry of a period of one year, that cannot attract the provision of Article-14 of the constitution with regard to right to equality in favour of the applicant. Law is well settled that Article 14 does not envisage negative equality and in this regard the decision of the Hon'ble Apex Court in the matter of Chaman Lal vs. State of Punjab & Ors. (C.A.No.2273 of 2011 decided on 16.5.2014) reported in 2015(2) SLJ 112 has clearly laid down the law.

23. Accordingly, issue no.(iii) is answered.

24. For the reasons mentioned above, applicant is not entitled to any relief sought for. In the result, the O.A. being devoid of merit is dismissed. No costs.


(R.C.Misra)
Admn. Member


(A.K.Patnaik)
Judicial Member