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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No. 632 of 2009

Cuttack, this the 24<sup>th</sup> day of October, 2011

Smt. Lovabati Mallick .... Applicant


-v-

Union of India & Others .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? X
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? X

  
(A.K.PATNAIK)  
Member(Judl)

  
(C. R. MOHAPATRA)  
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No. 632 of 2009

Cuttack, this the 24th day of October, 2011

C O R A M:

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

AND

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

.....

Smt. Lovabati Mallick, aged about 40 years, W/o.Arun Kumar Nayak, resident of Dumduma Housing Board Colony, House No. 807, Phase-II, Bhubaneswar-751 019, Dist.Khurda, Orissa at present working as Upper Division Clerk in the Office of Executive Engineer, Central Ground Water Board Division-X, Bhujal Bhawan, Kandagiri Chhak, Bhubaneswar-751 030, Orissa.

.....Applicant

By legal practitioner:Mr.K.C.Kanungo, Counsel

-Versus-

Central Ground Water Board represented through

1. Chairman, Central Ground Water Board, Ministry of Water Resources (Govt. of India), Bhujal Bhawan, N.H-IV, Faridabad, Hariyana.
2. Director (Admn.), Central Ground Water Board, Ministry of Water Resources (Govt. of India), Bhujal Bhawan, N.H-IV, Faridabad, Hariyana.
3. Regional Director (SER), Central Ground Water Board, Bhujal Bhawan, Khandagiri Chhak, Dist. Khurda, Bhubaneswar-751 030, Orissa.
4. Executive Engineer, Central Ground Water Board Division-X, Bhujal Bhawan, Khandagiri Chhak, Dist. Khurda, Bhubaneswar-751 030, Orissa.
5. Union of India represented through the Secretary, Ministry of Personnel, Public Grievance and Pension Deptt of Personnel & Training, North Block, New Delhi-1.

....Respondents

By legal practitioner:Mr.U.B.Mohapatra, SSC

.....  
ORDER

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

The facts, in brief, are that to fill up one post of Assistant through LDCE, notification dated 11-01-2007 followed

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by corrigendum dated 12-1-2007 was issued inviting applications from the existing eligible UDCs having five years regular service as UDC in CGWB as on 9.4.2007. *l*

In the notification it was made specifically clear to the intending UDCs that as per the norms, candidates securing 33% marks in each subject and 40% in aggregate will only be declared qualified in the said examination,

Smt. Lovabati Mallick one of the UDCs under the CGWB, applied and appeared at the said examination along with other candidates. She had secured 104 marks out of total mark of 300 [i.e. 50 marks in 1<sup>st</sup> paper, 22 in 2<sup>nd</sup> paper and 32 in 3<sup>rd</sup> paper]. As she failed in two papers thus, could not be declared qualified.

Subsequently, for filling up of one post of Assistant coming under LDCE quota examination was conducted on 10<sup>th</sup> and 11<sup>th</sup> April, 2008 but the applicant did not appear in the said examination.

For the year 2008-09 another vacancy falling under LDCE quota was made available. For filling up of the said vacancy notification was issued under Annx.R/III inviting applications from existing UDCS fulfilling the required conditions for holding the examination. *l*

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Applicant applied and appeared at the examination held as per schedule on 10<sup>th</sup> & 11<sup>th</sup> July, 2009. She secured 124 marks in aggregate out of total marks of 300 but she failed in the 3<sup>rd</sup> paper as she secured only 30 marks. Whereas one Smt. Indu Tripathy, UDC who appeared at the examination along with Applicant and others, has obtained 233 out of 300 marks in aggregate [paper wise 75, 79 and 79 marks in the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> paper) and thus stood first. Hence, Smt. Tripathy was selected and promoted to the post of Assistant.

Applicant's contention is that she belongs to reserved community and thus, is entitled to relaxation/concession in qualifying marks in each subject even in the Limited Departmental Competitive Examination for Assistant as per the Government of India instruction under Annexure-A/3 (OM No. 36012/23/96-Estt.(Res.)-Vol.II Dt.03.10.2000. In other words, it is the case of the Applicant that had the Respondents followed the relaxation norm provided in Annexure-A/3, she could have been selected against the vacancy of 2006-2007/in place of Smt. Tripathy (against the vacancy of 2008-2009.

Hence, being aggrieved by her non-selection, the Applicant has approached this Tribunal in the present Original

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Application filed under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

“(8) RELIEF(S) SOUGHT:

In view of the submissions set forth in paras 4 above, the Applicant humbly prays that your Lordship will be graciously pleased to quash Annexure-A/11 to the extent it retains 33% as qualifying mark in each paper for the ends of justice;

AND

Be further pleased to direct the Respondents to extend the relaxation/concession in qualifying mark in each paper for the ends of justice;

AND

Be further pleased to direct the Respondent No.1 to reassess/review the result of limited Departmental Competitive Examination, 2007 in respect of the Applicant by lowering down the qualifying marks in aggregate and in each paper keeping in view the directives of the OM Dt.03.10.2000 at Annexure-A/3;

AND

Be further pleased to direct the Respondent No.1 to reassess/review the result of Limited Departmental Competitive Examination, 2009 in respect of the Applicant by lowering down the qualifying marks in paper (General knowledge of Financial Rules and Service Matters) keeping in view the directive of the OM Dt.03.10.2000 at Annexure-A/3;

AND

Be further pleased to hold that the Applicant has qualified/passed in the Limited Departmental Competitive Examination 2009 and be pleased to quash Annexure-A/10 (Result Sheets) to the extent it has declared the Applicant as ‘failed’ for the ends of justice;

AND

Be further be pleased to pass any order/orders direction/directions and relief/relief(s) as the Hon’ble Tribunal deems fit and proper;

AND

For such kind acts, the Applicant, as is duty bound, shall ever pray.”

2. Respondents’ contention is that copy of the DOP&T instruction regarding providing reservation in promotion was made available to them by the applicant through her representation. The representation of the Applicant was forwarded to the Ministry. In response thereto, the Ministry

sought clarification from the DOP&T. The DOP&T clarified that when OM dated 3.10.2000 is clear, there is no necessity to any further instruction and there is no other instruction/guidelines regarding relaxation/concession in promotion for SC/ST candidates through Limited Departmental Competitive Examination issued meanwhile. This was intimated by the Ministry in letter under Annexure-R/V dated 30.09.2009. Accordingly it was decided by the competent authority that the concession of 5% marks would be allowed in aggregate to SC/ST candidates. The process of selection was finalized in adherence to the Rules and the instructions at Annexure-R/V. Even after allowing 5% concession in aggregate the applicant could not qualify in the examination so as to be promoted to the post of Assistant ignoring the case of the candidate who stood first in the examination without any concession marking. It has further been asserted by the Respondents that even by giving the benefit of relaxation of 5% marks in each and every paper the applicant could not have attained the merit position as the candidate who stood first in the merit secured 233 marks in aggregate out of 300 marks and have secured more than 75% marks in each paper. Hence the Respondents have prayed for dismissal of this OA.

3. Applicant through rejoinder has brought to our notice about the circulars/instructions issued by other Departmental making provision for giving relaxation/concession marking to SC/ST candidates in LDCE.

4. Learned Counsel appearing for the parties have reiterated the stand taken in their respective pleadings and we feel that to avoid repetition there is no need to reiterate such arguments put forward in course of hearing especially when interpretation and implementation of the Government of India instruction at Annexure-A/3 is sought by the Respondents. Therefore, before proceeding further to deal with the contentions of the respective parties, it is worthwhile to extract the instruction under Annexure-A/3 for the non-compliance of which this OA has been filed with the impugned order under Annexure-A/11 and the letter under Annexure-R/V based on which the Respondents granted the benefit to the applicant and others in the examination conducted for filling up of the post of Assistant.

Annexure-A/3 dated 3<sup>rd</sup> October, 2000 reads as under:

"ANNEXURE-A/3

3<sup>rd</sup> October, 2000

OFFICE MEMORANDUM

Subject: Reservation in promotion-Prescription of lower qualifying marks/lesser standard of evaluation.

The undersigned is directed to refer to Department of Personnel & Trainingg's OM No.36012/12/96-Estt.(Res.) dated

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22<sup>nd</sup> July, 1997 vide which various instructions of the Government providing for lower qualifying marks lesser standards of evaluation in matters of promotion for candidates belonging to the Scheduled Castes and Scheduled Tribes had been withdrawn, on the basis of the Supreme Court's judgment in the case of S.Vinod Kumar Vs Union of India.

2. The undersigned is further directed to say that the matter has been reviewed, consequent to which the following proviso to Article 335 has been incorporated in the Constitution by the Constitution (Eighty-Second Amendment) Act, 2000.

"Provided that nothing in this Article shall prevent in making any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

3. In pursuance of the enabling proviso of Article 335 of the Constitution, it has now been decided to restore, with immediate effect the relaxations/concessions in matters of promotion for candidates belonging to SCs/STs by way of lower qualifying marks, lesser standards of evaluation that existed prior to 22.7.1997 and as contained in the instructions issued by the Department of Personnel and Training from time to time including OM No.8/12/69-Estt. (SCT) dated 23.12.1970, No.36021/10/76-Estt. (SCT) dated 21.1.1977 and para 6.3.2 of the DPC guidelines contained in Department of Personnel and Training's OM No. 22011/5/86-Estt.(D) dated 10.4.1989. In other words, the effect of these instructions would be that the Department of Personnel and Training's OM No. 36012/23/96-Estt.(Res.) dated 22<sup>nd</sup> July, 1997 becomes inoperative from the date of issue of this OM.

4. These orders shall take effect in respect of selections to be made on or after the date of issue of this OM and selections finalized earlier shall not be disturbed.

5. All Ministries/Departments are requested to bring these instructions also to the notice of their Attached/Subordinate offices and Autonomous Bodies/Public Sector undertakings under their control for compliance."

The impugned order under Annexure-A/11 dated

12<sup>th</sup> October, 2009 reads as under:

"ANNEXURE-A/11 dated 12<sup>th</sup> October, 2009  
Sub: Relaxation/concession in promotion for SCs/STs through Limited Departmental Competitive Examination-clarification regard.

I am to invite a reference to your letter No. Div.x/3-356/90-Estt./670 dated 08<sup>th</sup> June, 2009 on the subject matter



and to say that clarification has been sought from the Ministry on the representation of Smt. Lovabati Mallick, UDC. Ministry after consulting with Department of Personnel & Training have clarified that there are no further instructions/guidelines regarding relaxation/concession in promotion for SC/ST candidates through Limited Departmental Competitive Examination. However, keeping in view DoP&T's OM No. 36012/23/96-Estt.(Res.) Vol.II dated 03.10.2000, the Competent Authority has decided that henceforth 5% relaxation in qualifying marks will be granted to SC/ST candidates in the total aggregate marks prescribed for unreserved candidates in the Limited Departmental Competitive Examination for the posts of LDC/UDC/Assistant i.e. 33% marks in each paper and 35% aggregate under relaxed standard for SCs/STs candidates. The criterion of minimum passing marks of 33% in each paper and 40% aggregate prescribed for unreserved candidates for the above mentioned Limited Departmental Competitive Examination would continue.

Person concerned may be informed accordingly."

The Circular issued by the Government of India,

Ministry of Water Resources, CGWB, Faridabad under

Annexure-R/V dated 30<sup>th</sup> September, 2009 reads as under:

**"CIRCULAR**

**Dated 30/09/2009**

In pursuance to DoP&T's OM No. 36012/23/96-Estt(Res.) dated 03.10.2000, the Competent Authority has decided that henceforth, 5% relaxation in qualifying marks will be granted to SC/ST candidates in the total aggregate marks prescribed for unreserved candidates in the Limited Departmental Competitive Examination for the posts of LDC/UDC/Assistant i.e. 33% marks in each paper and 35% aggregate under relaxed standard for SCs/STs candidates. The criterion of minimum passing marks of 33% in each paper and 40% aggregate prescribed for unreserved candidates for the above mentioned Limited Departmental Competitive Examination would continue."

5. Now coming to the merit of the matter, it is noted that the prayer of the applicant is to quash Annexure-A/10 (Result Sheets) to the extent it has declared the Applicant as 'failed' & to hold that the Applicant qualified/passed in the Limited Departmental Competitive Examination 2009, to reassess/review the result of limited Departmental Competitive

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Examination, 2007, the result of Limited Departmental Competitive Examination, 2009 by lowering down the qualifying marks in aggregate and in each paper keeping in view the directives of the OM Dt.03.10.2000 at Annexure-A/3 and to quash to quash Annexure-A/11 to the extent it retains 33% as qualifying mark in each paper for the ends of justice.

6. After going through the various arguments advanced by the parties with reference to the pleadings, materials placed in support thereof and the provisions of the A.T. Act, 1985, no explanation or reason is forthcoming as to why she kept quiet after having failed in the examination, 2007 and after becoming unsuccessful what step she had taken till filing of this OA. Hence we are of the considered view that in so far as reviewing the result of 2007 examination it is clearly hit by Section 20 and 21 of the A.T. Act, 1985. Hence this prayer of the applicant is rejected.

In so far as the prayer of the applicant to quash her result in the examination 2009 and issue of direction to the Respondents for recalculation by allowing relaxed standard of mark as provided in Annexure-A/3, it is the specific case of the Respondents that relaxation of 5% has been allowed in aggregate to SC/ST candidates but the applicant's claim is for allowing such relaxation in each and every paper. Respondents' stand is that they have allowed the concession marking pursuant


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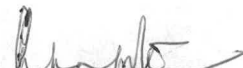
to the instruction under Annexure-R/V & A/11. It is the further stand of the Respondents that even by allowing concession marking in each and every paper, the Applicant could not have been selected on the face of the marks secured by Smt. Tripathy who has been promoted to the post of Assistant. Though the applicant is aware that there was only one post against which Smt. Tripathy has been promoted and in case the applicant succeeds she will replace by affecting the interest of the other, she has not made her as a party to this OA. Be that as it may, we have gone through the instructions under Annexure-A/3, A/11 & R/V so also instructions of other departments relied on by the Applicant in her rejoinder. But we are not convinced that the Respondents are under obligation to apply the instructions or the procedure adopted by other Departments. The instruction under Annexure-A/3 is not explicitly clear that concessional marking should have been made in each and every paper. But at the same time we cannot lose sight of the fact that there cannot be different interpretations of the DOP&T instruction under Annexure-A/3. In view of the above, we leave the matter to the Respondent No.1 to examine the matter of giving relaxed standard in the Limited Departmental Competitive Examination to the SC/ST with reference to Annexure-A/3 keeping in mind the instructions of the other departments relied in the rejoinder

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by the Applicant and communicate the decision to the applicant in a well reasoned order within a period of 120 days from the date of receipt of copy of this order.

7. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.

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

  
(C.R.MOHAPATRA)  
Member (Admn.)