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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.110 OF 2010
Cuttack, this the 20th Day of June, 2013

R. Pattnayak..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(R.C. MISRA)

MEMBER(A)


(A.K. ATNAIK)

MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO.110 OF 2010
Cuttack the 20th day of June, 2013

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

Rajashree Pattnayak,
aged about 19 years,
D/o. Debendra Kumar Pattayat,
At/PO-Salipur,
Dist-Cuttack-754202.

...Applicant
(Advocates: M/s- J. Sengupta, G. Sinha)

VERSUS

Union of India Represented through

1. The Secretary Department of Posts,
Ministry of Communications,
Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar.
3. Superintendent of Post Offices,
Cuttack South Division,
Cuttack-753001.
4. Bishnu Chandra Pradhan,
C/o- Binodini Dei,
At-Chandbali Chhak,
PO-Athagarh,
Dist-Cuttack – 754029.

... Respondents
(Advocate: M/s-S.B. Jena, M.R. Das)

ORDER

A.K. PATNAIK, MEMBER (J)

The facts which are essential to be stated for adjudication of this case are that the applicant is an UR candidate. In pursuance of the notification/advertisement at Annexure-A/1, she had applied and appeared at the test for appointment as Postal Assistant. Although she did well in all

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the tests she could not be appointed. Then she applied under the RTI Act to ascertain the reasons for her non selection under UR category. From the information supplied to her, she came to know that she was placed at Sl.No.8 of the select list for the UR category but due to the fact that the Respondent No.4 who belongs to OBC Category was included at Sl.No.1 of the merit list of UR Candidates she was included in the waiting list of candidates and resultantly was denied appointment as a UR candidate. Hence by filing the instant OA, she has sought to quash the merit list prepared by the Respondent No.3 in so far as it relates to UR candidate and to direct the Respondents to include her name in the Z Register Part II which contains the select list of UR candidates in place of Respondent No.4. She has also sought for a direction to the Respondents to issue order of appointment as PA in her favour.

2. The claim as put forth by the applicant was resisted by the Respondent-Department, contending, inter alia, that the applicant was a candidate for recruitment to the post of Postal Assistant under Cuttack South Division in response to the advertisement published by the Assistant Director (Recruitment), Office of the CPMG, Odisha Circle, Bhubaneswar. Thirteen vacancies were notified to be filled up with the breakup of vacancies as UR-8, SC-Nil, ST-02, OBC-1, PH-1 and ExSM-1. The selection process comprises of 40% weightage for percentage of marks secured in 10+2 or 12th Class, 50% weightage for marks secured in aptitude test and 10 marks for computer test. The Applicant who belongs to UR category applied for appointment against (8) eight UR vacancies and submitted her document. Accordingly, on completion of the selection process, a merit list was prepared by the Respondent No.3 and eight candidates were selected for appointment against eight UR Vacancies. The Respondent No.4 (Shri Bishnu Charan Pradhan) who was an applicant

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under OBC category, secured highest marks (58.44) among all the candidates applied and appeared at the selection and was therefore placed at the top of the list of UR vacancy. The Applicant secured 52.666 marks and could not come up in the merit list of UR vacancy and was placed at Sl.No.1 of the waiting list prepared by the Respondent No.3. Since the Respondent No.4 an applicant under OBC category was selected for appointment under UR vacancy, the applicant who initially applied under UR category could not be selected for the post. It has been averred that the principle adopted was in accordance with the DoP&T instruction No.36012/22/93-Estt.(SCT) which needs no interference. Accordingly, the Respondents have prayed for dismissal of this OA.

3. Respondent No.4 has not filed any reply or appeared despite service of notice.

4. We have heard Mr. Jayadev Sengupta, Learned Counsel appearing for the Applicant and Mr. S.B.Jena, Learned Additional CGSC appearing for the Respondent-Department and perused the records.

5. Mr. Sengupta, submitted that the Respondent No.4 having applied and appeared as an OBC candidate by availing the relaxation, even if had secured highest marks in the selection, should not have been adjusted against UR vacancy and had he not been brought to the UR vacancy, the applicant being placed at Sl.No.8 ought to have been appointed to the post in question. Therefore, by stating so, Mr.Sengupta has reiterated the relief claimed in this Original Application. The argument advanced by Mr.Sengupta was strongly refuted by the learned Addl. CGSC Mr.Jena by stating that though the Respondent No.4 applied as an OBC candidate but he had not availed of any relaxed standard of consideration for the post. As

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such the action of the Respondents being in accordance with the DoP&T instruction needs no interference by this Tribunal.

6. The DoP&T instruction, as referred to above, clearly provides that those OBC candidates who come in the general merit list will not be adjusted against the reserved quota. The OBC candidates who could not come in the merit list but have obtained the basic minimum standard can be appointed against the reserved vacancies.

7. In this context, we may refer to the decision in case of *Ritesh R. Sah v. Dr. Y.L. Yamul & Ors.*, (1996) 3 SCC 253. In the said case, the question that emerged for consideration before the Hon'ble Apex Court was whether a candidate who belonged to the Scheduled Caste or any other reserved category could be counted against the quota meant for the reserved category even if he was entitled for selection for admission in open competition on the basis of his own merit or would he be treated as an open competition candidate. Their Lordships in paragraph 13 of the said decision expressed the view as under:

“13. There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the Constitutional mandate enshrined in Article 16(4).”

8. Their Lordships referred to *Indra Sawhney v. Union of India*, reported in 1992 Supp (3) SCC 217 wherein it has been held thus:

“In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for



Scheduled Castes; they will be treated as open competition candidates.”

9. Reliance was also placed on ***R.K. Sabharwal v. State of Punjab***, reported in (1995) 2 SCC 745 wherein the Constitution Bench was considering the question of appointment and promotion and roster points vis-à-vis reservation and had opined thus:

“When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State if not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats.” [Emphasis added]

10. The Division Bench, in the said decision, referred to the pronouncement in ***Ajay Kumar Singh v. State of Bihar***, (1994) 4 SCC 401 and came to hold thus:

“In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a



reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.” [Underlining is ours]

11. At this juncture, we may refer with profit to the Full Bench decision of the Andhra Pradesh High Court in ***Dr. B. Kaladhar & Ors. v. Government of A.P., Health, Medical and Family Welfare Department & Ors.***, 2005 (6) ALT 723 wherein, after discussing various judgments of the Apex Court, the Full Bench has expressed the view as follows:

“If we examine the judgments of the Supreme Court rendered in the cases of Ritesh R. Sah, Neethi Chandra and Anurag Patel□s, referred to above, it emerges that the Supreme Court laid down a principle to the effect that the merit obtained by a candidate belonging to a reserved category, cannot be treated, or permitted to become, a factor, to deprive or minimize the options to him, when compared to a candidate belonging to the same category, and accommodated in the reserved seats or posts. This principle, in turn, came to be applied in different manners, in different cases, depending on the procedure adopted for selection of candidates. It is the principle, that becomes a guiding factor, than the application part of it. The principle – the ratio decidendi, as we understand is that a higher ranked/merited candidate belonging to a reserved category, should not suffer a deprivation in the choices of either a seat or an institution of

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his choice vis-à-vis a lesser ranked/merited candidate of the same social class, by the operation of a reservation principle. Any admissions programme that accords with such principle is valid.”

12. At this stage, it is immensely instructive to refer to paragraph 811 of *Indra Sawhney* (supra) which reads as follows:

“811. In this connection it is well to remember that the reservation under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition filed on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

13. In the said case, while dealing with the philosophy and objectives of reservation has opined thus:

“411. The aim of any civilized society should be to secure dignity to every individual. There cannot be dignity without equality of status and opportunity. The absence of equal opportunities in any walk of social life is a denial of equal status and equal participation in the affairs of the society and, therefore, of its equal membership. The dignity of the individual is denied in direct proportion to his deprivation of the equal access to social means. The democratic foundations are missing when equal opportunity to grow, govern, and give one's best to the society is denied to a sizeable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithals to avail of them are denied. Nevertheless, the consequences are as potent. 412. Inequality ill-favours fraternity, and unity remains a dream without fraternity. The goal enumerated in the Preamble of the Constitution, of fraternity assuring the dignity of the individual and the unity and integrity of the nation must, therefore, remain unattainable so long as the equality of opportunity is not ensured to all.

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416. The trinity of the goals of the Constitution, viz., socialism, secularism and democracy cannot be realised unless all sections of the society participate in the State power equally, irrespective of their caste, community, race, religion and sex and all

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discriminations in the sharing of the State power made on those grounds are eliminated by positive measures."

14. In ***Student's Union v. AIIMS***, (2002) 1 SCC 428, the Apex Court has held that merit must be the test when choosing the best.

15. Going by the undisputed facts of the case via-v-s the laws enunciated by the Hon'ble Apex Court and the DoP&T instruction, we find no flaw in the decision making process of placing the Respondent No.4 at Sl.No.1 of the UR vacancy and resultantly putting the name of the Applicant at Sl.No.1 of the waiting list and accordingly hold this OA meritless. In the result this OA stands dismissed by leaving the parties to bear their own costs.


(R.C.MISRA)


(A.K.PATNAIK)

Member (Admn.)

Member (Judl.)