

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.568/2012**

Cuttack this the 3<sup>rd</sup> of ~~December~~ 2014

Prabina Kumar Sahoo.....Applicant

-Versus-

Union of India & Ors.....Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the tribunal or not? *yes*

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

12

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CORAM

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

Sri Prabina Kumar Sahoo,  
Aged about 22 years,  
S/o-Sri Chakradhar Sahoo,  
At/PO-Arkil,  
Via-Talcher,  
Dist-Angul,  
Odisha- 759100  
Now working as GDS Packer of Kaniha S.O.

.....Applicant

By the Advocate(s)-Mr.P.K.Padhi  
Mrs.J.Mishra

-Versus-

Union of India represented through

1. The Secretary-cum-Director General of Posts  
Bhawan,  
SansadMarg,  
New  
Delhi-110 116
2. Superintendent of Post Offices,  
Dhenkanal Division,  
At/PO/Dist-Dhenkanal, 759001.
3. Inspector of Posts,  
Talcher Sub Division,  
At/PO-Talcher,  
Dist-Angul-759100.
5. Chief Post Master General,  
Odisha,  
At/PO-Bhubaneswar,  
Dist-Khurda, 751001.



13

.....Respondents

By the Advocate(s)-Mr.P.R.J.Dash

**ORDER****R.C.MISRA, MEMBER(A)**

Applicant is presently working as G.D.S.Packer of Kaniha S.O. His grievance is directed against the show cause notice dated 4.7.2012 (A/7) by virtue of which his appointment/engagement as G.D.S.Kaniha S.O. is sought to be terminated.

2. Facts of the matter in a nut shell are that in order to fill up the vacant post of G.D.S.Packer, Kaniha S.O., Respondent-Department issued a notification inviting applications from the candidates belonging to OBC community, inter alia, fixing the last date of receipt of applications to 23.11.2010. In response to this, applicant claiming to be a candidate of OBC category, submitted his application within the prescribed time, without however, furnishing the OBC certificate, albeit, according to him, he had submitted SEBC certificate that was readily available with him. Having been found the most meritorious, he was issued with the offer of appointment to the post in question on contract basis vide A/1 dated 20.12.2010, followed by another order provisionally appointing him to the said post as per A/2 dated 27. 12. 2012. While working as such, applicant was issued with a notice dated 04.7.2012 (A/7) to show cause as to why his engagement

14

against the post of GDS/Packer, Kaniha S.O. should not be terminated. Responding to this, applicant submitted his reply vide A/8 dated 28.7.2012 and at the same time moved this Tribunal in the present O.A. praying for the following relief.

“...quash Annexure-A/7 and direct the Respondents to allow the applicant to continue as GDS Pakcer of Kaniha S.O.”.

3. This Tribunal vide order dated <sup>31</sup>~~28~~.07.2012 admitted the O.A. and directed notice to the Respondents. As an interim measure, the Tribunal directed as under.

“Since the applicant has already replied on 28.07.2012 (Annexure-A/8) to the show cause notice issued to him on 04.07.2012 (Annexure-A/7), as an interim measure, it is directed that until a decision is taken by the Respondents on Annexure-A/8, termination of engagement against the post of GDS/Paker, Kaniha S.O. shall not be given effect to.

Respondents are at liberty to file their show cause/objection to interim relief within a period of two weeks hence”.

4. In the above background, Respondents have filed a detailed counter opposing the prayer of the applicant. They have submitted that consequent upon the vacancy of the Post of GDS Packer, Kaniha Sub Post Office, caused due to retirement of the formerly incumbent, an open notification dated 25.10.2010 was issued for filling up the said vacancy reserving post for OBC community and in the event of non-availability of

15

03 eligible OBC candidates, the vacancy will be filled from amongst the candidates in the descending order, as under.

- (a) ST
- (b) SC
- (c) OC

5. The total nos. of candidates were 29 and on scrutiny, applicant having secured the highest marks was selected for the post of GDS PKR, Kaniha SO. According to Respondents, the post was reserved for OBC community whereas applicant had submitted SEBC certificate instead of OBC certificate. During the course of review by the reviewing authority, i.e., the Superintendent of Post Offices, Dhenkanal, it was noticed that the applicant had not submitted OBC certificate in accordance with the rules as notified. Again, an OBC certificate bearing the name of the applicant issued by the Tahasildar, Kaniha vide Misc. Case No.1753/2010 duly verified by Respondent No. 3 on 24.12.2010, was found to have been kept in the Personal File of the applicant. On examination, it was found that on 9.12.2010, i.e., after the cut-off date of submission of the applications for the post of GDS Packer, Kaniha S.O, OBC certificate had been submitted by the applicant. Based on this ground, Respondent No.2, vide letter No.A-77/ChII dated 28.05.2012 cancelled the appointment of the applicant with an instruction to Respondent No.3 to take immediate action for cancellation of the same and accordingly, applicant was issued with show cause notice as aforementioned.



6. It has been submitted that as per order of this Tribunal dated 31.07.2012, the Respondent No. 2 directed the applicant to appear before him on 11.10.2012 to put forth his claim. Accordingly, the applicant did appear, but, he could not produce any proof that he had indeed, submitted OBC certificate along with other documents to the Respondent No.3 before the last date of receipt of application. Hence, an order sheet was prepared by the Respondent No.2 vide memo No.A-77/Ch-II dated 11.10.2012, but the applicant did not sign the said order sheet and left the office of Respondent No.2.

7. With these submissions, Respondents have submitted that applicant was not at all eligible for the Post of GDSPKR, Kaniha S.O. as he had not submitted OBC certificate before the last date of submission of applications and therefore, the O.A. being devoid of merit is liable to be dismissed.

8. Applicant has not filed any rejoinder to the counter.

9. We have heard the learned counsel for both the sides and looked into the pleadings.

10. It is the case of the applicant that he being 'Chasa' by caste belongs to OBC community. So far as declaration of SEBC or OBC in respect of a class or category of persons is concerned, this is only a terminology and therefore, in the strict sense, applicant should be deemed to be a candidate belonging to OBC category. According to applicant, he having secured 76% mark,



17

i.e., 574 out of 750 marks in the HSC Examination was found the most meritorious and as such he was appointed to the post in question. However, immediately after submission of his application for the post of GDS Packer <sup>2</sup> and he had furnished to Respondent No.3 the OBC certificate, as soon as he obtained so.

11. Applicant, it has been submitted, being a Chasa, comes under OBC Community & SEBC under Central & State list and having been found the most suitable amongst all the candidates, was duly selected by the Respondent No.3. There being no complaint or allegation by the Respondent No.2 that such an appointment arose out of mala fide or with oblique motive during the course of the selection and appointment and that the OBC certificate being already on record, such a coercive action ought not to have been taken, particularly when due to short space of time fixed for submission of applications, applicant could not produce the same. In addition to this, applicant has assailed regarding circulation of vacancy notification thereby giving a very <sup>narrow</sup> ~~unwide~~ scope to the prospective candidates aspiring to apply for the post and accordingly, fixing a very short space of time of receipt of applications. According to him, the Respondents have failed to do so within the scope and extent of Articles-14 and 16 of the Constitution. Last but not the least, it has been submitted by the applicant that cancellation of appointment or for that matter show cause notice being based on the conclusions arrived at by the

18

reviewing authority while reviewing the appointment amounts to acting at the dictate of the authority higher to appointing authority and therefore, the impugned show cause notice at A/7 is liable to be set aside.

12. We have considered the submissions made by the learned counsels for both sides threadbare.

13. The sole point that arises for determination is whether the Respondents were justified in admitting the applicant to be OBC category candidate in the absence of any documentary evidence in support thereof and if so whether that was based on legally valid reasons.

14. Admittedly, applicant belongs to OBC category and having secured the highest marks amongst all the candidates in the zone of consideration, he had been issued with the offer of appointment in the post of GDS Packer Kaniha S.O. and has worked in that post for about more than one and half years. No doubt his ~~capacitation~~<sup>eligibility</sup> in holding the post of GDS Packer, Kaniha S.O. has <sup>not</sup> been questioned at any point of time. But the fact remains, whether during the course of scrutiny in the absence of OBC certificate being furnished, applicant could have been held a candidate belonging to OBC category. Applicant on his own admission, while submitting his application for the post, had indicated himself a candidate belonging to OBC category and instead of submitting OBC certificate, he had submitted





19

SEBC Certificate. It is also an admitted position that the last date of receipt of applications was fixed to 23.11.2010 whereas he obtained the OBC certificate from the competent authority and had submitted the same after the last date was over. This being the situation, at the very threshold during the course of scrutiny, his application ought to have been rejected outright as his application was not a complete application. There is no explanation offered by the Respondents as to how and under what circumstances, his application was entertained, he was considered eligible and ultimately, he was appointed against a post reserved for OBC category thereby leaving out of consideration the valuable rights of other OBC candidates, who had submitted their applications complete in all respects before the last date fixed for receipt of applications. Therefore, it is quite apparent that by manipulation of facts appointment order had been issued in favour of the applicant. Inferred from this, applicant even did not have a right to be considered for the post in question – let alone appointment. Therefore, it is to be held that the applicant had never submitted his application complete in all respects before the last date of submission of applications in pursuance of the notification.

15. Having regard to the above discussions, we answer the point in issue that the Respondents were not justified in admitting the applicant <sup>as</sup> ~~to be~~ OBC category candidate in the



20

absence of any documentary evidence in support thereof nor was there <sup>P</sup>action based on legally valid reasons.

16. As quoted above, this Tribunal, as an interim measure, directed that until a decision is taken by the Respondents on Annexure-A/8, termination of engagement against the post of GDS/Pakcer, Kaniha SO shall not be given effect to. In the counter, Respondents have not stated anything about the decision, if any, taken by them on Annexure-A/8, which is a reply filed by the applicant to show cause notice(A/7). Be that as it may, we grant liberty to the Respondents to take a decision on Annexure-A/8, if not already taken and communicate the same to the applicant.

With the above, we hold that the applicant is not entitled to any relief sought for in this O.A., which is accordingly dismissed, leaving the parties to bear their own costs.

**(R.C.MISRA)**   
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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