

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 1015 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

NIRMAL KR. SARKAR

VS.

1. UNION OF INDIA, SERVICE THROUGH THE  
SECRETARY, DEPARTMENT OF POSTS,  
MINISTRY OF COMMUNICATION,  
DAK BHAVAN, SANSAD MARG,  
NEW DELHI - 110 001.
2. CHIEF POST MASTER GENERAL, WEST  
BENGAL CIRCLE, YOGAYOG BHAVAN,  
P-36, CHITTARANJAN AVENUE,  
CALCUTTA - 700 012.
3. SR. SUPERINTENDENT OF POST OFFICES,  
BURDWAN DIVISION, P.O. & DIST. BURDWAN.
4. JOYDEV SAHA, SON OF NARE GOPAL SAHA,  
VILL. & P.O. BAHARAN, DIST. BURDWAN.

For the applicant : Mr. B.R. Das, counsel

For the respondents: Mrs. B. Ray, counsel(Off. respdts.)  
Mr. B.C. Sinha, counsel(pvt. respdts.)

Heard on : 12.11.99

Order on : 07/12/99

ORDER

One, Sri Nirmal Kumar Sarkar, who belongs to General category has filed this O.A. challenging the selection of respondent No. 4, Sri Joydev Saha to the post of Extra Departmental Branch Post Master in Baharan Extra Departmental Branch Office, Burdwan in pursuance of the notification dated 13.5.96(Annexure 'B' to the app.). According to the applicant, he applied for the said post of EDEPM at Baharan EDBO alongwith other candidates and he possessed highest marks in Madhyamik Examination amongst all of them. Therefore, the respondents should have selected him for the post of EDEPM as per rules. But the respondents selected one, Sri Joydev Saha, respondent No. 4 who belongs to

OBC community(as stated by the respondents) ignoring his legitimate claim for the said post. So, the respondents acted arbitrarily and illegally in the matter of selection by giving preference to OBC category and thereby the appointment of respondent No. 4 is liable to be quashed and in place of respondent No. 4 he should be appointed in the post of EDEPM.

2. Respondents denied the claim of the applicant by filing written reply to the O.A. It is stated by the respondents that the allegations as made in the application are not correct. It is denied that the applicant figured top in the selection and it is stated that no such panel was prepared by the department. The respondents stated in the reply that there were two OBC candidates amongst the applicants for the said post and selection was made giving preference to the best OBC candidate as per the dated 13.5.96, Annexure 'B' to theaPP.) Notification and the Notification/itself speaks that OBC would be preferred for the post. It is further stated that had there been no OBC candidate available, candidates other than OBC could have been selected and the applicant was aware of the <sup>1. made to</sup> said, preference. As the applicant ~~does not belong to OBC category~~, he was not selected. The respondents also stated that the respondent No. 4, Sri Joydev Saha was duly selected for the post and joined office on 8.8.96(Annexure R.III). So, his selection cannot be said to be illegal or irregular and thereby the application should be dismissed.

for the applicant,  
3. Ld. counsel/ Mr. B.R. Das strenuously argued before us that the applicant possessed highest marks in Madhyamik Examination amongst the candidates who appeared for the post in question and therefore, he ought to have been selected on the basis of merit. He further contended that preference cannot be given to the OBC candidates in the matter of recruitment for a single post ignoring the merit of other candidates who appeared in the said selection. Mr. Das relied on the judgment of the Hon'ble Apex Court reported in Supreme Court Service Rulings(1950-1994), Vol.8 in the matter of (Government of Andhra Pradesh Vs. P. Dilip Kumar) and another) with other cases. Referring to the said judgement, Para 15 of

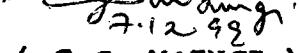
he submitted that entire action of the respondents in the instant case is highly arbitrary and in violation of Article 14 of the Constitution and therefore appointment of respondent No. 4 should be dismissed and necessary directions be given to the respondents to appoint the applicant in accordance with his merit.

4. Ld. counsel, Ms. B. Ray appearing on behalf of the official respondents and Mr. B.C. Sinha appearing on behalf of the private respondent No. 4, jointly contended that the application is misconceived one and is liable to be dismissed. They submitted that the applicant did not challenge the notification dated 13.5.96(Annexure 'B' to the app.) wherein it is specifically mentioned that ~~the~~ <sup>W/O</sup> post is preferred for OBC category. But may be considered for unreserved community/PH candidates also and the applicant appeared before the selection committee knowing the terms and conditions of the notification and selection was done as per that notification dated 13.5.96(Annexure 'B' to the app.). So, no irregularity or arbitrariness was made in the matter of selection of respondent No. 4 who belongs to OBC community and was found otherwise fit for the post.

5. We have heard the ld. counsels for both sides and have perused the records. The respondents have produced the selection list alongwith the reply(Annexure R-II). On a perusal of the said selection list we find that the applicant obtained higher marks in Madhyamik Examination than respondent No. 4, and from that point of view he was eligible for appointment to the said post of EDEPM. But in the notification dated 13.5.96(Annexure 'B' to the app.) it is clearly mentioned that preference would be given to the OBC candidates and that means if no suitable candidate from OBC community was available only then/other categories would be considered. The applicant ~~is~~ appeared in the selection knowing the terms and conditions of the notification and without raising any objection. As the respondents obtained suitable candidate from the OBC community, they <sup>have duly</sup> selected respondent No. 4

as per rules and the question of appointment of the applicant did not arise. Moreover, the applicant did not challenge the said notification dated 13.5.96(Annexure 'B' to the app.) before appearing in the interview for appointment to the said post of EDEPM and for that reason he is estopped to challenge the selection and appointment of respondent No.4 who is from OBC community. In the judgment of the Hon'ble Apex Court reported in 1993(3) SLJ-230(Pravin Jindal Vs. State of Haryana) it is held that mere appearance at the selection test does not clothe a candidate with the right to selection and/or appointment. We have also gone through the judgment of the Hon'ble Supreme Court reported in Supreme Court Service Rulings(1950-1994), Vol.8 in the matter of Government of Andhrapradesh Vs. P. Dilip Kumar and another-400 as submitted by the 1d. counsel for the applicant, Mr. B.R. Das. On a perusal of the said judgment, we find that it does not help the applicant in any way since it is not applicable in this case.

6. In view of the aforesaid observations, we do not find any irregularity or illegality in the matter of selection of respondent No.4 in the post of EDEPM in pursuance of the notification dated 13.5.96(Annexure 'B' to the app.) and we are of the view that the application is devoid of any merit and is liable to be dismissed. Accordingly, we dismiss the application awarding no costs.

  
7.12.98  
( G. S. MAINAGI )  
MEMBER(A)

  
7.12.98  
( D. PURKAYASTHA )  
MEMBER(J)

S.M.