

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO. 1154 OF 96 WITH MA NO. 71 OF 97

Present : Hon'ble Mr. Justice S.N.Mallick, Vice-Chairman

Hon'ble Mr. M. S. Mukherjee, Member (A)

1. Niladri Sekhar Dutta,
Vill. & P.O. Nalbona,
P.S. Goaltore, Dist. Midnapore

VS

1. Union of India through the
Post Master General,
Netaji Subhas Road,
Calcutta-700 001
2. The Sr.Superintendent of Post Offices
Midnapore Division,
P.O. Midnapore
3. The Sub-divisional Inspector of
Post Offices, Garhbeta Subdivision,
P.O. Garhbeta, Dist. Midnapore
4. The Employment Exchange Officer,
Midnapore Employment Exchange,
P.O. Midnapore
5. The Branch Post Master,
Nalbona PO, P.O. Nalbona,
PS Goaltore, Dist. Midnapore
6. The Prodhan, Nalbona 8 No. Gram
Panchayet, Office at Ghagra,
P.O. Nodasali, PS Goaltore,
Dist. Midnapore
7. The Officer-in-Charge,
Goaltore Police Station,
P.O. Goaltore, Dist. Midnapore
8. Sri Swapan Kumar Gorai,
S/o Kalipada Gorai,
Vill. Sarbera, P.O. Sat-Bankura,
P.S. Garhbeta, Dist. Midnapore
9. The Chief Post Master General
West Bengal Circle, Jogagog Bhawan,
Ganesh Chandra Avenue,
Calcutta

..... Respondents

For the petitioner : Mr. S.N.Dutta, Counsel

For the Postal respondents : Mr. S.K.Dutta, Counsel

For Pvt. respondent No. 8 : None

Heard on : 4.12.97 : Order on : 16.12.97 17.12.1997,

O R D E R

M.S.Mukherjee, A.M.:

This is a petition u/s 19 of the Administrative Tribunals Act, 1985, in which the petitioner is aggrieved by the action of the respondent postal authorities for selection of private respondent No. 8 for the post of Extra-Departmental Delivery Agent (EDDA), Nalbona branch post office by ignoring the claim of the petitioner.

2. The petitioner has prayed for the following reliefs :

i) For quashing the order of selection and appointment of respondent No. 8 and

ii) to direct the official respondents to rather select the petitioner and appoint him instead.

3. It is contended by the petitioner that the respondent postal authorities issued an employment notice on 11.4.96 and the advertisement was accordingly hung up in the notice board of the District Employment Exchange, Midnapore, inviting applications from eligible candidates for the post of EDDA, Nalbona branch post office. According to the said notice, the applicant must be an inhabitant of the postal delivery zone of the concerned branch post office and that candidates belonging to OBC/SC/ST would be given preference for the selection and further that the applicants have to be sponsored through the employment exchange. A copy of the advertisement has been annexed by the petitioner to the petition as annexure-A.. The petitioner's further contention is that a number of candidates including the petitioner and respondent No. 8 appeared before the selection committee and according to the petitioner, he is the best qualified person amongst the candidates in the selection. Yet the respondents have illegally selected respondent No. 8 and appointed him to the said post. The petitioner's contention is that the respondent No. 8 is not an OBC candidate and he has produced a certificate like that and further

that he (respondent No. 8) does not belong to the Nalbona postal jurisdiction area. This will appear from the voter list of certain village Sarbera under PO Sat Bankura, a copy of which has been added to the petition as Annexure-H. This will show that the respondent No. 8 belongs to certain other village. On the other hand, the petitioner had produced ~~the~~ ^{Other} ~~requis~~ ^{known} ~~requis~~ document that he belongs to OBC category and he had also the requisite academic qualification and he also belongs to the area for which documentary evidence has been submitted. Therefore, the petitioner contends, he should have been selected rather than respondent No. 8. He has, therefore, prayed for the aforesaid reliefs.

4. The official respondents have contested the case by filing a written reply. Their contention is that in response to the requisition from the postal deptt. the employment exchange sponsored 11 candidates including the petitioner and respondent No. 8 and all the candidates were considered by the selection committee. Out of these candidates, 3 belonged to OBC category which included the petitioner and respondent No. 8 and certain other candidate i.e. Madhusudan Mahato. Since OBC candidates have to be considered on preferential basis, respondent No. 8 was eventually selected as being the best candidate strictly in terms of the rules. The official respondents have, therefore, urged for rejection of the case.

5. Private respondent No. 8 has not entered any appearance although he had been duly served.

6. We have heard the learned counsel for the parties and have gone through the documents produced. At the stage of hearing, the learned counsel for the official respondents also produced the original selection records for our inspection. In view of urgency of the matter, we propose to dispose of the case at the stage of admission itself.

7. The first grievance of the petitioner is that

respondent No. 8 who had been selected for the post is not an inhabitant of the postal jurisdiction of the post office for which appointment has been made. In support, he has produced inter alia a copy of the voter list for 221 Garbeta (Paschim) (SC) Vidhan Sabha electoral roll for 1995 (Annexure-H). According to this, one Swapan Kr. Gorai, son of Kalipada Gorai (sl. No. 63) belongs to village Sarberha, but the candidate has to belong to the jurisdiction of Nalbona branch post office. The petitioner also relies on the employment notice allegedly issued by the authorities vide annexure-A to the petition. According to the same, the applicant has to belong to the delivery jurisdiction of Nalbona branch post office prior to selection. However, the said copy of the employment notice is not an authenticated copy of the employment notice actually displayed. The official respondents have produced before us the original office records which contains the office copy of the said employment notice dt. 10.4.96 issued by the office of SDI of Post Office, Garbeta Sub Dn. Garbeta bearing No. A2/Nalbona. According to the same, it was laid down that the candidates to be selected has to "take his residence under the delivery jurisdiction of Nalbona PO before appointment." There is lot of difference between residence prior to selection and residence being taken up after selection but prior to appointment. The official respondents have further stated that through the concerned BDO they have verified that respondent No. 8 had taken up residence within the delivery zone of Nalbona branch post office. Therefore, the evidence of voter list regarding residence of respondent No. 8 during the previous years is not relevant. We, therefore, reject this objection of the petitioner on this count.

8. The next objection of the petitioner is that the respondent No. 8 does not belong to OBC category. In support,

he has produced letters written by Prodhan, Gram Panchayet etc. to this effect. But it is not denied that respondent No. 8 had produced original OBC certificate issued by the SDO, Midnapore district. Once the competent authority has issued the OBC certificate, a candidate's status is determined on the ^{if only} basis of such certificate. Just because some other members of the public or authorities hold different views, the status of the candidate does not automatically change till the competent authority which has issued the OBC certificate, does not cancel the same. It is not the case of the petitioner that the said OBC certificate has been cancelled by the competent authority. Therefore, we reject this objection of the petitioner as well.

9. The third objection of the petitioner is that he had secured higher marks than respondent No. 8, yet he has not been selected. According to the recruitment notice, the minimum educational qualification is Class VIII passed but ^{if however} Matriculate or its equivalent has to be preferred. According to the selection records produced by the learned counsel for the official respondents, respondent No. 8 is Higher Secondary passed whereas the petitioner is Madhyamik passed (Compartmental). Moreover, respondent No. 8 had secured 54.9% marks in the Madhyamik examination whereas the petitioner had secured only 42.11 marks in the said examination. So, it is obvious, that the respondent No. 8 had secured higher marks than the petitioner. Therefore, the petitioner cannot have any legitimate grievance against respondent No. 8.

10. In view of the above facts, the petitioner cannot have any case. However, on scrutiny of the selection records, we find that although respondent No. 8 had secured higher marks than the petitioner, yet he did not secure the highest marks amongst all the candidates who possess the requisite

qualifications. For example, there was one Shri Arun Kumar Mondal, a general category candidate, who has secured 62.77% marks in Madhyamik Examination. This was the highest marks amongst all the candidates and he also possesses all other requisite qualifications. But Shri Mondal has not been selected. Mr. S.K. Dutta, the 1d. counsel for the official respondents has submitted that there were 3 OBC candidates and the based upon ^{the} principle that OBC candidates had to be preferred and by following this principle, respondent No. 8 has been selected. Moreover, Shri Arun Kr. Mondal or any other general category candidate has not challenged the selection of respondent No. 8 and the Tribunal needs not look into the matter.

11. We are afraid, we cannot subscribe to this contention. Admittedly, according to the employment notice or the departmental instructions, preference has to be given to OBC/SC/ST candidates, if any. But we have to note that the intention is to give preference and not reservation. ^{On the basis of any quota} Where it is a case of preference, the correct legal position is that other things being equal, a candidate belonging to OBC/SC/ST has to be given the job in preference to the general category candidates and amongst the OBC/SC/ST candidates, inter se merit would be considered for those candidates who had secured the highest marks in the relevant academic examination. But if a general category candidate has secured still higher marks, the OBC/SC/ST candidate cannot get preference over such general category candidate. Such preference can be given only when the post is reserved. But admittedly for the ED Agents, there is no reservation quota for SC/ST/OBC candidates.

12. In holding the above view, we rely on the ruling of this Bench in the case Shubnath Dhara -vs - Union of India & Ors (OA 712 of 1995) decided on 15.11.96 wherein all the relevant circular on the subject have been analysed and

requisite interpretation has been given.

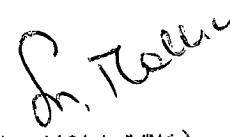
13. Under the circumstances, it is clear that the selection of respondent No. 8 in preference to the general category candidate, who secured higher marks and who was otherwise qualified, has not been in order. Therefore, the selection of respondent No. 8 has to be quashed and it is directed to be quashed forthwith.

14. In view of the above and in overall view of all the ^{of impert} relevant facts, we allow the petition and dispose of the same ^Λ with the following orders :

- i) The impugned selection and consequential appointment of respondent No. 7 as EDDA, Nalbona branch post office is forthwith quashed, as prayed for by the petitioner.
- ii) But it does not automatically give any consequential relief to the petitioner for his own appointment and selection.
- iii) The official respondents shall make fresh selection from amongst the candidates who had ^{appeared} ~~applied~~ for earlier selection strictly in accordance with the rules and in the light of interpretation given above and the on the basis of such selection, appointment shall be given to the appropriate candidate accordingly.
- iv) There will be no order as to costs.


(M.S. MUKHERJEE)

MEMBER(A)


(S.N. MALLICK)

VICE CHAIRMAN