

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1480/96

Present: Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman.

Hon'ble Mr. B.P. Singh, Administrative Member.

Sri Debasish Shaw  
Extra Departmental Delivery Agent,  
Keshiary Sub-Office, Contai Division,  
residing at Vill & Hasimpur, District-  
Midnapore, West Bengal.

- v e r s u s -

1. Union of India through the Secretary to the Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Post Master General, West Bengal Circle, Yogayog Bhawan, Calcutta.
3. The Superintendent of Post Offices, Contain Division, Dist.-Midnapore.
4. The Sub-Divisional Inspector, Belda First Sub-Division, Midnapore.

...Respondents.

For the applicant : Mr. S.K. Dutta, counsel.  
Mr. T.K. Biswas, counsel.

For the respondents: Mr. B.K. Chatterjee, counsel.

Date of order: 11.04.2002

O R D E R

B.P. Singh, AM

Sri Debasish Shaw has filed this O.A. against the cancellation order of appointment dated 9.9.96 as E.D.A. Keshiary B.O. Contai Postal D. and prayed for the following reliefs:-

"8.

- a) An order quashing and/or setting aside the impugned order dated 9.9.96 issued by the Sub-Divisional Inspector of Post Office, Belda, 1st Sub-Division as well as the impugned decision of the Superintendent of Post Offices, Contai Division contained in its order No.A-189/111 dated 9.9.96 on the basis of which the impugned order dated 9.9.96 has been issued by the Sub-Divisional Inspector, Belda 1st Division, Midnapore.

- b) An order directing the respondents to reinstate the applicant in the post of E.D.D.A., Keshiary Sub-Office which the applicant in the post of E.D.D.A., Keshiary Sub-Office which the applicant was holding prior to his termination and further directing the respondents to pay the salary to the applicant treating him as on duty in the post of E.D.D.A., Keshiary Sub-Office from the date of termination till the date of reinstatement.
- c) An order directing the respondents to formulate a specific policy regarding reservation in respect of filling up of the post of Extra Departmental Agent and after making of such policy if the respondents decide to make a further selection to the post of E.D.D.A., Keshiary Sub-Office against which the applicant was appointed the same may be held according to the said policy and till such selection the applicant should be allowed to continue as E.D.D.A., Keshiary Sub-Office with all consequential benefits."

2. The fact of the case is that a requisition was made to the local Employment Exchange to sponsor the names of eligible candidates for the post of EDDA from SC, OBC, ST and UR category. The applicant was only OBC candidate and there was shortfall in the OBC category in the unit. Therefore, OBC candidate was to be <sup>given</sup> preference above all other candidates as the post was meant for OBC and in case of non-availability of the OBC candidate, then next preference was to be given to the SC candidates and in case neither OBC nor SC candidates were available the vacancy was to be filled up by UR candidate. The applicant being a single OBC candidate fulfilled all the prescribed conditions of eligibility for the post and was given appointment to the post of Extra Departmental Delivery Agent (EDDA), Keshiary Sub Office by order dated 7.9.96 and the applicant joined the office on 7.9.96 itself (Annexure-A/1 collectively). Just after two days of his joining, the appointment of the applicant was cancelled vide letter dated 9.9.96 vide Annexure A/1 collectively without assigning any reason and without following the procedure laid down in Rule 8 of the Extra Departmental Agents. The applicant apprehends that the respondent authorities will

2m

hold further selection for the post of E.D.D.A., Keshiary against which the applicant was already appointed. Since the interest of the applicant is likely to be prejudiced adversely he has filed this O.A. and prayed for the reliefs cited above.

3. We have heard Shri T.K. Biswas, Id. counsel led by Sri S.K. Dutta, Id. counsel for the applicant and Shri B.K. Chatterjee, Id. counsel for the respondents. We have gone through the O.A. and reply to the O.A. alongwith various annexures. The Id. counsel for the respondents has also produced before us official records relating to the selection on the post of E.D.D.A. which have also been gone through by us.

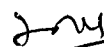
4. The Id. counsel for the applicant has reiterated the fact and submitted that the action on the part of the respondents in cancelling the appointment of the applicant is totally arbitrary and illegal when the applicant was duly selected after due preference as a reserved category candidate belonging to OBC community. The Id. counsel has further submitted that the order cancelling the appointment of the applicant is malafide and against the principles of natural justice and fairplay and in violation of fundamental rights guaranteed under Arts 14 and 21 of the Constitution. The act of the respondent authorities is totally illegal and against the departmental guidelines and, therefore, the same requires to be quashed by allowing the application and granting the reliefs prayed for.

5. The Id. counsel Sri Chatterjee for the respondents has submitted reply in opposition to the application and has denied and disputed all the allegations and contentions which are not matter of record or expressly admitted. The Id. counsel has further submitted that requisition on the local Employment Officer, Belda, District Midnapore was issued to nominate three candidates for each group of SC, OBC, ST and other community candidates. In response to the said requisition the Employment Office nominated 15 candidates consisting of ST-1, SC-4, OBC-1 and Others-9. As per requisition notice the selection was to be made amongst



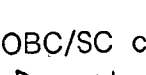
the SC and OBC candidate. Sri Arun Kr. Shil, SC candidate secured 70% marks in Madhyamik Examination whereas the applicant who belonged to OBC category secured 43% marks in the Madhyamik Examination. The respondent No.4 (SDIP) Belda selected the applicant and appointed him provisionally as E.D.D.A., Keshiary. The applicant joined Keshiary on 7.9.96. During the selection process for the post of E.D.D.A. a complaint was received by respondent No. 3 who called for the entire recruitment file from respondent No.4 directing him to keep the selection process pending vide communication dated 4.9.96. Inspite of this direction the respondent No.4 selected the applicant in irregular manner. The respondent No.3 noticed irregularities in the selection process for the post of E.D.D.A., Keshiary and accordingly cancelled the order of appointment of the applicant vide letter dated 9.9.96. The Id. counsel has further submitted that there were glaring irregularities in the selection process as well as in following the procedure prescribed for selection and, therefore, the appointment order was justifiably cancelled terminating the service of the applicant. The claim of the SC candidate who secured 70% marks in the Madhyamik Examination was ignored vis-a-vis the applicant who secured only 43% in the Madhyamik Examination. The competent authority, therefore, rightly and justifiably cancelled the whole selection process which was conducted in an irregular manner violating departmental rules and instructions. Thus the action of the respondent authorities is not arbitrary or illegal, but is according to the departmental rules and procedures. The allegations made against the cancellation of appointment order resulting termination of the appointment of the applicant are baseless and without any substance. Therefore, the applicant does not deserve any relief as prayed for in the application and his application should be dismissed accordingly.

6. The Id. counsel for the respondents has also produced relevant official records relating to the selection on the post of E.D.D.A., Keshiary. We have gone through bio-data of all the 15 candidates sponsored by the Employment Exchange which has been prepared in the



statement form under the signature of respondent No.4. The details of caste, date of birth, Employment Exchange Registration No., qualification and percentage of marks in Madhyamik Examination are given about each of the candidates. From the percentage of marks amongst the SC candidates Sri Arun Kumar Shil has secured 70% marks in Madhyamik Examination. There is only one OBC candidate viz. the applicant who has secured 43% marks in Madhyamik Examination. Out of the SC and OBC candidates, Sri Arun Kumar Shil, SC candidate has secured the highest marks. This candidate has also secured the highest marks amongst all the 15 candidates. No reason on the statement of bio-data has been given in not selecting Sri Arun Kumar Shil except that against the name of the applicant the remarks has been made "selected as per requisition norms." The original proforma enclosed with the letter addressed to Employment Officer, Belda expressly shows that "post is not reserved but preference will be given to OBC/SC." From this proforma report, it is clear that preference was to be given to OBC/SC candidate amongst all the sponsored candidates by the Employment Exchange. We have also seen the telegraphic communication from respondent No.3 which was received by the respondent No.4 on 4.9.96 by which the respondent No.4 was directed to ensure that the selection of E.D.D.A., Keshiary is kept pending. In spite of this telegraphic direction from respondent No.3 to respondent No.4, the respondent No.4 issued the appointment order dated 7.9.96 in favour of the applicant according to which the applicant joined as E.D.D.A., Keshiary on the same date. Thus from the official records, the facts stated by the Id. counsel for the respondents are corroborated.

7. From the above, it is clear that the post of E.D.D.A, Keshiary was to be filled up preferably by OBC/SC candidate though in the requisition letter the Employment Exchange was requested to send the names of ST/UR candidates as well. A list of 15 candidates was received from the Employment Exchange in which there was one candidate from OBC, four candidates from SC, one candidate from the ST and remaining candidates from the UR category. The preference in the selection for the post of E.D.D.A., Keshiary was to be given to the OBC/SC candidate

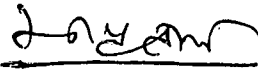


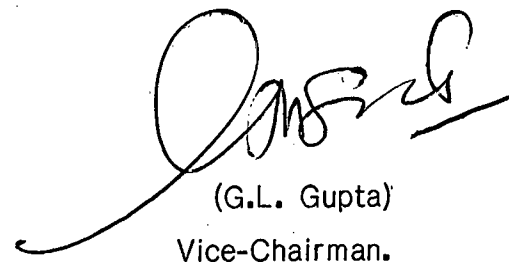
provided these candidates fulfilled the prescribed eligibility conditions. We find that in all there were five candidates belonging to OBC/SC category and all of them fulfilled the eligibility conditions for the post. This being the position the best and the most meritorious candidate amongst them should have been considered for selection for the post of E.D.D.A. Amongst the total 5 candidates belonging to OBC/SC, Sri Arun Kumar Shil, SC candidate was the best and <sup>the</sup> most meritorious candidate as he has secured 70% marks in the Madhyamik Examination. According to the proforma enclosed with the requisition OBC/SC candidate was to be preferred. In other words, since candidate from one category was not to be preferred to the candidate of the other category as there was no mention about this in the proforma, the best and the most meritorious candidate amongst the OBC/SC candidates should have been selected and offered appointment on the post which was obviously not done. The OBC candidate viz. the applicant was selected and appointed on the post though he was not the best and the most meritorious candidate amongst all the five OBC/SC candidates. The respondent No.3 on review noticed this as well as other irregularity in the process of selection and, therefore, he cancelled the appointment order and thereby the appointment of the applicant on the post. We have also noticed from the official records that respondent No.4 was directed by the respondent No.3 to keep selection on the post of E.D.D.A., Keshiary pending till the file of selection called for by the respondent No.3 was returned to him with due observation/direction. In spite of this direction which was duly received by the respondent No.4 on 4.9.96, he did not wait for further direction of the respondent No.3 and went ahead in issuing the appointment order dated 7.9.96. The copy of this order received by the applicant on the same date and he assumed the charge and post of E.D.D.A., Keshiary on same day. This God speed haste in issuing the order, delivering the order and assuming the charge does throw suspicion on the selection process and appointment of the

204

applicant ignoring timely direction of respondent No.3 to keep the selection pending. We do not find any irregularity in the order of respondent No.3 in the case. He has acted according to the departmental instructions in exercise of the power vested in him as controlling authority of respondent No.4 in the larger interest of the administration.

8. In view of the above, we do not find any merit in the O.A. and, therefore, dismiss the same without any order as to cost.

  
(B.P. Singh) 11042002  
Member (A)

  
(G.L. Gupta)  
Vice-Chairman.

a.k.c.