

In The Central Administrative Tribunal
Calcutta Bench

OA 1484 of 1996

Present : Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman
Hon'ble Mr. B.P. Singh, Administrative Member

Md. Abdul Latif Molla, son of Sunnat
Molla, Vill: Chota Bakri, P.O. Chandaneswar,
P. Station: Bhangore, Dist:
South 24-Parganas.

..... Applicant

- Versus -

- 1) Union of India, through the Secretary, Post and Telegraph, Dakta Bhawan, New Delhi.
- 2) Sub-Divisional Inspector Postal, Sonarpur Sub-Division, P.O. Sonarpur, Dist: South 24-Parganas.
- 3) Balaram Nath, son of Birendra Nath, Vill: and P.O. Chandaneswar, Dist: South 24-Parganas.
- 4) Branch Post Master, Chandaneswar, P. Station: Bhangore, Dist: 24-Parganas (South).
- 5) Superintendent of Post Offices, Baruipur, Dist: South 24-Parganas.

.... Respondents

For the Applicant : Md. S.K.A. Sufian, Lt. Counsel

For the Official : Mr. B.K. Chatterjee, Lt. Counsel
Respondents

For Pvt.Respndt. : Mr. N. Bhattacharjee, Counsel

Heard on : 22-1-2002

Date of Order : 6.2.02

O R D E R

B.P. SINGH, AM

Md. Abdul Latif Molla, resident of Chota Bakri, P.O. Chandaneswar, District - South 24-Parganas has filed this application against the selection of UBC candidate on the post of Extra Departmental Delivery Agent (EDDA) at Chandaneswar Post Office and has prayed for the following reliefs :

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a) To give employment to the applicant to the post of E.D.B.A. as advertised by the Postal Department.

b) To direct the respondents to give employment to the applicant to the post of E.D.D.A.

c) To set aside appointment given to respondent No.3.

2. The fact of the case as it appears from the O.A. is that the Sub-Divisional Inspector Postal, Sonarpur Sub-Division, South 24-Parganas made a requisition to the local Employment Exchange asking for names of suitable candidates for the post of Extra Departmental Delivery Agent (EDDA) as stated in para 4.3 as per notice enclosed as Annexure-C. The petitioner applied before the Employment Exchange which sent the application to the Sub-Divisional Inspector of Post Offices. Since the application has not reached the Inspector of Post Offices, the Inspector on 22.7.96 advertised for the post independently as per notice enclosed as Annexure-D. The petitioner received a call letter for interview and he appeared in the interview on 14.8.96. The private respondent No.3 Shri Balaram Nath also appeared in the interview alongwith the other candidates on the same date. After the interview no result was published. The applicant went to the Office of Inspector of Post Offices on 19.8.96 and enquired about the result. He came to know that the post was transferred to OBC category. The applicants submits that in the advertisement there was no mention that the post was reserved for OBC. In spite of that an OBC candidate, namely, the pvt. respondent No.3 was appointed ignoring the claim of the applicant; though the applicant was better candidate. Since the post was for open category as per notices and not reserved for OBC the treatment of the post as reserved for OBC was irregular and illegal. The applicant, being a better candidate, should have been appointed on the post. The applicant submits that he also belongs to OBC category as per certificate, issued by the Local Panchayat, enclosed as Annexure-G which the petitioner did not produce at the time

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of submission of the application as the same was not asked for. Being aggrieved by the decision of the Inspector of Post Offices i.e. respondent No.2 the applicant filed this U.A. and prayed for the reliefs as stated above.

3. We have heard Ld. Counsel Mr. Md. Sufian for the applicant and Mr. B.K. Chatterjee for official respondents and Mr. N. Bhattacharjee for private respondent No.3. We have gone through the U.A. and reply to the U.A. on behalf of the respondents along with various enclosures enclosed therewith. We have also been shown official records relating to competitive merit and selection of the candidate.

4. Ld. Counsel for the applicant reiterated the fact and submitted that the post of E.O.D.A. at Chandaneswar Post Office was kept as open as per advertisement issued for the post and interview was held accordingly. The appointment of UBC candidate, namely, respondent No.3 in preference to other candidates is, therefore, illegal. The ld. counsel further submits that the petitioner was a better candidate than the pvt. respondent No.3. Therefore, he was entitled to be appointed to the post. The ld. counsel further submits that when the interview was taken approved candidate should have been selected. Therefore, selection of some other candidate is violative of principle of natural justice. The ld. Counsel further submits that the selection made and appointment given to respondent No.3 is illegal and against the notice inviting application for the post and the terms and conditions for appointment on the post. Therefore, the same should be set aside and the applicant should be ordered to be appointed on the post.

5. Shri B.K. Chatterjee, ld. counsel for the official respondents denied each and every allegations and contentions made in the application except those admitted. Ld. counsel submits that the application is without any substance. Therefore, it

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should be dismissed being devoid of merit. The 1d. Counsel submits that there is no provision for holding selection test or any interview for appointment to the post of E.D.O.A. and as such there was no occasion to send any question paper along with the call letter to the candidates. Actually, after receiving applications from the candidates, call letter along with prescribed form is sent to the candidates to furnish their bio-data as also other information as required under the Rules for selection to the post.

6. The 1d. counsel further submits that though requisition was sent to the local Employment Exchange but the same did not sponsor any candidate within the stipulated period. Therefore, according to the prescribed procedure application was invited from the willing candidates direct.

7. The 1d. counsel further submits that in the present case selection was held in due compliance with the Recruitment Rules. Since there was short fall in the OBC community, preference was given to the OBC candidate. He further submits that although the post was not reserved for OBC category but to maintain minimum percentage of OBC representation in total number of ED officials of the recruiting unit preference was given to the OBC candidates who appeared in the said selection.

8. The 1d. counsel further submits that the caste certificate produced by the applicant has not been issued by the appropriate competent authority. He submits that caste certificate should be issued by the SDU. Since the caste certificate in favour of the applicant was issued by the local Pradhan who is not competent authority to issue such certificate, the said certificate cannot be taken into consideration for considering the case of the applicant as OBC.

9. In view of above, 1d. counsel submits that application is baseless and without any substance. Therefore, application does not deserve any relief and as such application should be dismissed.

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10. Shri N. Bhattacharjee, 1d. counsel for the private respondent No.3 submits that there is no irregularity in issuing advertisement or holding interview or non-intimation of result of the interview to the applicant, as the selected candidate is given appointment letter and directed to join the post. The 1d. counsel has also challenged the application to be within the limitation period as provided under Section 21 of AT Act, 1985. The 1d. counsel further submits that the pvt. respondent No.3 passed the Madhyamik Examination in 3rd Division and secured 341 marks out of 900. The pvt. respondent No.3 belongs to CBC community yogi as certified by S.D.O. Baripur, South 24-parganas and he was correctly selected and appointed by the respondent No.2. The 1d. counsel further submits that 27% of the vacancies to the civil posts and service under the Govt. of India ~~(O)~~ to be filled up through direct recruitment shall be reserved for other backward classes. The E.D.D.A. posts are civil posts and are filled up by direct recruitment. Therefore, selection and appointment of the pvt. respondent No.3 was according to the guideline of the Govt. of India, Department of Posts. The 1d. counsel further submits that there was ~~nowhere~~ mention in the advertisement notice dated 22nd July, 1996 that the post is open or reserved for OBC. Application was invited according to the notice to fill up the post and appointment was made according to the Roster point of vacancy which is quite in accordance with Departmental Rules and procedure on the subject. Therefore, the question of transferring the post of OBC according to their sweet will does not arise as has been alleged by the applicant. In view of above submission, the 1d. counsel submits that there is no merit in the application. Hence, it is not maintainable and it should be rejected.

11. The 1d. counsel for the applicant has produced the original comparative chart for the post of EDDA at Chandaneswar Post Office. From the chart it is clear that it contains a list of 26 applicants with their ~~advertisements~~ ^{addresses}. The chart also shows date of birth,

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educational qualification, whether SC/ST, employment exchange card No and remarks column. In the remarks column in certain cases remarks are recorded regarding absence of the candidates and in one case regarding OBC certificate from Panchayet. The name of the applicant appears at Sl.No.1 of the chart and the name of the pvt. respondent No.3 Shri B. Nath appears at Sl.No.3. There is no column showing the comparative merit of various candidates. The marks obtained by them in the prescribed educational qualification has not been recorded. An order has been recorded by the appointing authority i.e. respondent No.2 as "representation of OBC in this unit is nil. Among candidates OBC preferred as per deptt. Considering all aspects the candidate Sl.No.3 Sri Balaram Nath selected for the post". The reason for the order which has been recorded by the appointing authority may be respondent No.2.

12. From the above it is undisputed that the Employment Exchange was approached to sponsor suitable candidates for the post of EDDA at Chandaneswar Post Office. The Employment Exchange could not sponsor suitable candidates within the stipulated period. Therefore, the respondent No.2 issued local notice calling for applications from the willing candidates. A large number of candidates applied accordingly including the applicant and the pvt. respondent No.3. It is also clear from the notice issued by the respondent No.2 that there was no mention about reservation of the post for any category or preference to be given to any particular caste. In other words the advertisement was open to all eligible and willing candidates belonging to any caste or community.

13. The main point to be considered in this application is whether the appointing authority was legally within its right to make selection and appointment against the terms and conditions laid down in the notice calling for applications from willing candidates for appointment on the post of EDDA at Chandaneswar Post Office. We have seen the notice and found that there was no mention of any reservation of vacancy or preference to be given to the

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candidate of any particular community. In other words, ~~notices~~ invited applications from all eligible and willing candidates and it is clear that the appointing authority will consider all such candidates and select the most suitable one without any reference to any caste or without giving any preference to any candidate belonging to a particular caste. But this has not been done in this case. Preference to OBC candidate has been given in view of the D.G. Post letter dated 5-10-94 as pointed out by the ld. counsel for the official respondents. We would like to re-produce the same for information :

"Reservation for OBCs - Attention is invited to letter No.7-2/94 SCT, dated the 25th August '94, addressed to all CPMsG/ PMGs, etc. forwarding a copy of the booklet (copy of Compendium of Instructions on Reservation for Other Backward Classes in Service and Posts under Govt. of India) issued by Department of Personnel & Training, vide their G.M. No.36012/22/93-Estt.(SCT), dated the 8th June, 1994.

2. The question whether the scope of the aforesaid policy guidelines issued by the Department of Personnel and Training for application to Groups 'B' 'C' and 'D' cadres should also be extended to cover Extra Departmental Cadres has been engaging the attention of this office for sometime past. Since EDAs are the feeder cadres for filling up posts in Departmental Group 'C'/'D' cadres and any deficiency in the representation of candidates belonging to OBCs in ED categories will result in inadequate representation for candidates belonging to OBCs in Departmental cadres also, a decision has been taken that the provisions contained in the Compendium of Instructions on Reservation for Other Backward Classes in Services and Posts under the Government of India issued by the Department of Personnel and Training will also apply to ED categories. As in the case of representation for SC and ST and persons belonging to physically handicapped categories, no specific point will be reserved for appointment of candidates belonging to OBCs in ED categories.

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However, efforts will be made to secure representation for candidates belonging to OBCs on the same scales as are applicable to Departmental Groups 'C' and 'D' cadres.

3. Contents of this letter may kindly be brought to the notice of all concerned for information/guidance/compliance/action".

We do not disagree with the government policy regarding reservation for OBC as stated above. But we do take objection to 'no mentioning' about the reservation for OBC or preference to be given to OBC in the notice calling for applications. The appointing authority, namely, respondents No.2 was well aware about the shortage of representation of the OBC candidates. He should have taken care to invite application for OBC candidates making reservation for OBC on the post or he should have mentioned about the preference to be given to OBC over other candidates due to shortfall in the representation of the OBC candidates in the unit. He failed to do so, therefore, it is difficult for us to agree with an act of reservation for OBC candidates against terms and conditions of the notice. The appointing authority is required to assess the vacancies on the post and distribute them according to the percentage of reservation for each community before notice calling for application to fill up those posts was issued. No specific mention has been made in the notice regarding reservation and preference. This procedure has been overlooked in this particular case.

14. There is nothing on record produced before us to show that even the OBC candidate has been selected against from the list of 26 candidates. There were three OBC candidates as has been shown in the comparative chart.

15. Since the notice inviting applications for the post of EDDA at Chandaneswar Post Office was not made for any particular community, it was clear that each and every eligible willing

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candidate would apply for the post. It was the duty of the appointing authority to consider the candidature of all the eligible candidates and select and appoint the best among them. This has apparently not been done in the present case.

16. Advertisement/notice inviting applications for vacancies would lay down the terms and conditions for appointment and anybody who fulfills those terms and conditions would apply accordingly. The terms and conditions cannot be subsequently changed to the prejudice of the applicants. In this case the terms and conditions do not provide for reservation to any community. Therefore, selection made against the reserved community in reference to the notice is without jurisdiction and illegal.

17. In view of above discussions and observation, we find partly merit in the application of the applicant because the selection/appointment made on the post is against the terms and conditions given in the notice inviting application for the post of EDDA at Chandaneswar Post Office. We would find that appointment made to pvt. respondent No.3 is against the terms and conditions provided in the notice. We, therefore, order as under :

- i) The order of appointment to pvt. respondents No.3 is quashed.
- ii) Before the above order is given effect to, we direct the respondents specially the respondent No.2 to consider the case of all the 26 candidates including the applicant and the pvt. respndt. No.3 according to rules and procedures, select the best eligible candidate and give appointment to such candidates on the post giving effect to above order,
- iii) In case the pvt. respondent No.3 is not found the best candidate in the above exercise, he should be given alternate employment as EDA against the first available vacancy in the unit as per provision of the Rules,

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iv) Fresh consideration of all the 26 candidates including the applicant and the pvt. respondent No.3 should be completed within a period of six weeks from the date of communication of this order.

18. We do not pass any order as to cost.

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(B.P. Singh)

Member(A)



(G.L. Gupta)
Vice-Chairman

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