

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

O.A. 1409 of 1997

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. N.D. Dayal, Administrative Member.

Subrata Mukherjee

- v e r s u s -

Union of India & Ors.
(Dept. of Posts)

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

For the respondents : Mrs. K. Banerjee, counsel.

Date of order: 29.07.2004

O R D E R

Per Justice B. Panigrahi, VC

In this application it emerges that the petitioner has sought reliefs as follows:-

- (i) To direct the respondents to cancel, withdraw and/or rescind the impugned appointment dated 18.10.1997 of the respondent No.6 forthwith;
- (ii) To declare that the applicant is the only candidate amongst the candidates sponsored by the Employment Exchange for appointment to the said post of EDMP;
- (iii) To direct the respondents to give appointment to the applicant to the said post of EDMP forthwith;
- (iv) To direct the respondents to deal with and/or dispose the representation dated 10.11.97;
- (v) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue."

2. Incontrovertible facts are that a post of Departmental Packer had fallen vacant on account of promotion being given to the incumbent who was holding the aforesaid post. The Sub-divisional Inspector Postal Raniganj Sub-Division sent requisition on 5.9.97 to the Local Employment Exchange, Rangiganj for sponsoring the names of the candidates for the aforesaid post. It was inter-alia stated in the requisition letter that

preference would be given to the OBC candidates. The Employment Officer sponsored the names of eight candidates including the name of the applicant Shri Subrata Mukherjee for the aforesaid post. The respondent No. 5 sent information to all the sponsored candidates to appear on 14.10.97 for bio-data verification. The Employment Exchange sponsored the name of respondent No.6 as lone candidate from OBC category. The applicant along with four others were sponsored as OC candidates. The applicant undisputedly secured highest marks in the Madhyamik Examination compared to the respondent No.6, Shri Monoranjan Mondal. The case of the official respondents is that since the Local Employment Exchange was asked to sponsor names by giving preference to OBC candidates, therefore, they are not obliged to consider the respective merit of the general community candidates including the applicant who belong to OC. Therefore, respondent No.6 was given appointment, notwithstanding the fact that he secured lesser marks compared to the present applicant since the former belong to the OBC.

3. Mr. Dutta, Id. counsel appearing for the applicant has submitted that the respondent No.5 ^hould not have ignored the applicant's claim illegally when he secured the highest marks in the bio-data verification. An inexorable plea has been advanced by the applicant's counsel that in the notification nothing has been stated with regard to the reservation. The authorities have only asked for the candidates who were to be sponsored by the Local Employment Exchange without disclosing from which category the selection would take place. Had the authorities asked to sponsor the names of only the OBC category candidates, there may not have any question for sponsoring OC candidates for the aforesaid post. Undisputedly, the applicant secured 1st Divn. in Madhyamik Examination and possessed better academic career. Therefore, his claim would not have ignored by giving appointment to respondent No.6.

4. Ms. Banerjee, Id. counsel appearing for the official respondents has invited our attention to the fact that the case where the representation of the reserved category candidates would be less, then it is open to the authorities to send requisition for sponsoring the candidates from the reserved category and irrespective of possessing lesser academic career, the candidates belonging to the reserved category has to be preferred to. In support of her submission she has relied upon a circular issued by the Office of the Post Master General, Howrah dated 22.6.95. It has been stated in the aforesaid circular that-

"2(b) Whether the candidates belonging to SC/ST community are to be given preference over those belonging to OC irrespective of the fact that the candidates belonging to OC have obtained much higher marks in the examination which makes them eligible to seek appointment in case the selection is made on the basis of marks.

This has to be seen in this context whether adequate representation is available for candidates belonging to SC/ST in the recruiting unit concerned. If it is not available, then the best course would be to make it clear in the notification issued to the Employment Exchange itself that preference would be given to candidates belonging to reserved communities, if this is done, there is every possibility that the Employment Exchange may nominate more than ~~one~~ one candidates belonging to SC/ST etc. In such a situation the candidates belonging to reserved communities will have to compete amongst themselves and the point that the OC candidates have secured higher percentage of marks in matriculation examination and should or should not be preferred will become immaterial. However, in other cases, if SC/ST candidates satisfies, all the minimum prescribed eligibility conditions including the educational qualification and the representation that category is not adequate, the question of his competing with OC candidates does not arise. He has to be given preference over candidates irrespective of the percentage of marks secured subject only to the condition that he satisfies all the other prescribed eligibility criteria."

After carefully going through the contents of the circular, an indelible impression is gathered that in case sufficient representation from the reserved category is not made, then it is open to the official respondents

to ask the Employment Exchange to sponsor more than one candidates belonging to SC/ST category. On perusal of the circular, we are of the view that the official respondents must specify in the circular that the preference shall be given to the reserved community candidates. It also must be stated that the Employment Exchange shall sponsor more than one candidates belonging to reserved category. The validity of the circular was examined by a judgment of this Tribunal in O.A. No. 712 of 1995 in the case of Shibnath Dhara Vs. UOI & Ors. in which it was held that preference cannot be given by the authorities by ignoring the claim of the other category candidates with higher merits unless the post is specifically earmarked for reserved candidates as per roster. It has also been stated that the doctrine of preference by ignoring the claim of other candidates having higher merits appears to be ultra vires to the provision of Constitution. Accordingly, in the judgment it was indicated that the Department shall consider the claim of the OBC/SC/ST candidates along with all eligible candidates including non-OBC, SC and ST candidates and such selection shall be based purely on merit. From the resume of the judgment, we find that fact in issue of the present case is identical and similar to the facts stated in the above judgment. Therefore, in the aforesaid circumstances, we have no reason to hold that the selection of respondent No. 6 is legal/valid.

5. Considering the instant case from another angle, we find that the Employment Exchange sponsored the name of the respondent No.6 alone which also offends the circular letter No.17-366/91-ED & TRG dated 26.05.95 which speaks that the Employment Exchange may sponsor the name of more than one candidates belonging to reserved category. Undisputedly, the respondent No.6 was the only candidate from OBC and, therefore, his selection is bad in law.

6. From the totality of the facts and circumstances, we, therefore, direct that the respondents shall cancel the appointment of the respondent No.6 and instead the appointment be given to the applicant who had

secured the highest marks in the Madhyamik Examination. It is, however, seen that the respondent No.6 has all along been serving since 1997. Since he was chosen by the respondents for which he could not be blamed, therefore, in this situation, the respondent No. 6 shall also be accommodated against an immediate vacancy within the Sub Division.

7. In view of the aforesaid discussions, we allow the application and accordingly it is disposed of.



Member (A)



Vice-Chairman.