

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 450 of 2008

Reserved on 7.1.2015

Pronounced on 15th January, 2015.

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Kumari Sharmila Yadav, aged about 20 years, D/o Sri Daya Ram
Yadav, R/o L-III-37, Pragti Puram Colony, Rae-bareilly

By Advocate : Sri Praveen Kumar

.....Applicant

Versus.

1. Union of India through Secretary its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. CPMG, U.P. Circle, Lucknow.
3. Director of Postal Services, (Headquarters) Hazatganj, Lucknow in the office of Chief Posts Master General, Lucknow.
4. Superintendent of Post Offices, District Raebareli.
5. Atul Kumar, S/o late Sri Ram Narayan, /o 369/165, Katra Dhuda Yaar Khan, Saadatganj, Lucknow.
6. Kamal Kumar, S/o Sri Bisheshar Prasad, R/o village & Post Asgar Nagar majra Para Kunoar, P.S. Satrikh, Post Patau, District Barabanki.

.....Respondents.

By Advocate : Sri S.K. Awasthi for R-1 to R-4, Sri Surendran P. for R-5 and Sri S.P. Singh for R-6

ORDER

By Ms. Jayati Chandra, Member(A)

In this O.A., the relief(s) has been sought in the following manner:-

- (a) *this Hon'ble Tribunal may very graciously be pleased to quash and set-aside the order dated 14.11.2008 passed by respondent no.4 as contained in Annexure no. 12 to this Original Application.*
- (b) *this Hon'ble Court may very graciously be pleased to direct the respondent nos. 1 to 4 to adjust the respondent no.5 against the vacancy of Scheduled Caste quota and appoint the applicant on the post of Postal Assistant in General Class quota and stay the*

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training of Opposite party no.5 during the pendency of this O.A.

- (c) *this Hon'ble Court may very graciously be pleased to pass such other order or further order or direction which it may deem appropriate and proper in the circumstances and allow this original Application with substantial costs throughout."*

2. The facts of the case are that the respondents had advertised a number of vacancies for appointment on the post of Postal Assistant. As per para 'C' of notification, two posts of Postal Assistants were advertised for District Rae-bareilly, one post was reserved for Scheduled Caste candidate while the other post was unreserved. The Department of posts (Annexure no.1) has laid down the procedure to be adopted which recruiting Postal Assistant. Para 5 deals with the method of selection. Para 5.1 states that 40% weightage will be given to the marks scored by the applicants in the school leaving examination and a merit list of such candidates will be drawn up. In para 5.3, it is provided that "out of this merit list, candidates equal to 10 times of vacancies (for each community separately as per the vacancies reserved for each community) will be called for to appear in the Aptitude test/ written test and computer/type test" The applicant, who belongs to OBC community, had applied for consideration of appointment on the post of Postal Assistant against unreserved post at Rae-bareilly. It is seen from Annexure no.4 that the applicant had secured 31.84% weightage points on the basis of her marks secured by her in High-school examination, while the respondent no.5 Sri Atul Kumar, who is a Scheduled Caste candidate, and who had applied for consideration of his appointment on the said post of Postal Assistant against reserved vacancy and had secured 22.88% weightage points. Respondent no.6 i.e. Kamal Kumar who had also applied for consideration against Scheduled Caste category had secured 28.32% weightage points. In accordance with the guidelines for recruitment, two separate lists of candidates, who had been short-listed on the basis of weightage points obtained by them as per their 10 + 2 or 12 + examination had been drawn up. The applicant's name appears at sl. No. 8 in the list of Short-listed candidates of O.C. candidates. The name of respondent no.6 figures at sl. No. 1 in the short-listed list of Scheduled Caste candidates, while the name of respondent no.5 figures at sl. No. 10 of the same list. However, in

the final combined list of General and Scheduled Caste candidates the name of the applicant has been figured at sl. No. 8 which shows she had secured a total of 56.84% marks, while respondent no.6 i.e. Kamal Kumar had obtained 49.32% marks and respondent no. 5 i.e. Atul Kumar had obtained 61.88% marks. The respondents have considered the respondent no.5 as against the vacancies for General categories and have given appointment to respondent to him. Respondent no.5 and Sri Kamal Kumar has been given the appointment against the post reserved for Scheduled Caste candidates. In this way, the respondents have violated the conditions of DoP&T circular dated 1.7.1998. The applicant gave a representation against such decision as the respondent nos. 5 & 6 could not have been considered as Scheduled Caste candidates selected against OC quota as he had obtained very low weightage points at the first stage of short-listing on the basis of school leaving marks. In fact, both the respondent nos. 5 & 6 had been included in the merit list of Scheduled Caste candidate. However, the respondents turned down her representation; hence this O.A.

3. The respondents have stated that after compilation of final list, it is seen that the respondent no.5 had obtained highest marks over all i.e. 61.88% against 56.84% secured by the applicant. Sri Atul Kumar respondent no. 5 was considered against open category in accordance with DoP&T circular dated 1.7.1998 (Annexure no.3). The respondent no.6 Sri Kamal Kumar, who had secured highest marks amongst all other Scheduled Caste candidates although lower than the marks secured by the applicant was considered against the vacancy of Scheduled Caste.

4. The applicant has filed Rejoinder Reply refuting the contentions made in the Counter Reply and reiterating the averments made in the Original application.

5. During the course of hearing, learned counsel for the applicant has placed reliance upon the decision of Hon'ble Supreme Court in the case of Union of India & others Vs. Dalbir Singh & Another reported in 2009 SCC 2438 wherein it was held that the respondent, therein, cannot be directed to be considered in general merit only because he has scored more marks than last

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selected candidate in general merit. He has also reliance upon the decision of Hon'ble High Court at Delhi in the case of A.K. Gautam Vs. Union of India & others wherein the O.M. dated 1.7.1998 issued by the DoP&T has been considered.

6. We have heard the learned counsel for the parties and have also perused the pleadings on record.

7. In the instant case, the respondents have relied upon the circular dated 1.7.1988 issued by the DoP&T for considering the respondent no.6, who belongs to Scheduled Caste category and had applied for appointment. The relevant extract of DoP&T circular reads as under:-

"1.....

2. O.M. dated May, 22, 1989 referred to above and the O.M. no. 36022/2/96-nstt.(RES) dated July, 2, 1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies.

3. In this connection, it is clarified that only such SC/ ST/ OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selected on SC/ST/OBC candidates, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc. the SC/ST/ OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies."

From the plain reading of the aforesaid O.M., it is clear that the Scheduled Caste candidate is to be counted against open category vacancy only when they are selected on the same standard as applied to the general category candidate and they are selected on their own merit. In the present case, the recruitment circular states that there is a stage by stage procedure. The first procedure is enshrined in para 5.2 states that merit list will be prepared on the basis of marks in the category secured by them in 10 + 2 or 12 + examination and only then a merit list will be drawn on the basis of 40% weightage points on the marks secured by the candidates. Out of such list, only 10 times the number of vacancies for each community. Accordingly a merit list of 10 persons were separately drawn up for OC and SC vacancies. The

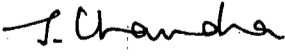
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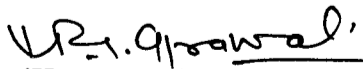
weightage points for OC candidates were obtained by Sri Ashish Kumar (35.6%) and lowest by Sri Abhinav Tripathi (31.6%). The applicant had secured 31.84% weightage points.

The respondent nos. 5 & 6 figure in the merit list of Scheduled Caste vacancy. Respondent no.6 had secured 28.32% weightage points (highest) and Respondent no.5 secured 22.88% (lowest) weightage points.

8. It is only when these two lists were merged after final round that it was seen that the respondent no.5 had secured highest marks and had been selected against the general category candidate. This is against the letter and spirit of the letter dated 1.7.1998 issued by the DoP&T. It no-where provides that consideration of Scheduled Caste candidate against unreserved vacancy will be made on the basis of final aggregate of marks. Infact the respondent no.5 who had gained less weightage points in the initial merit list and who had been figured in the Scheduled Caste candidates should have been considered only against Scheduled Caste category. Considering him against an open vacancy at this stage is tantamount in relaxation of first stage point, which he would secure only on the basis of relaxed standard. Out of two Scheduled Caste candidates Sri Kamal Kumar and Sri Atul Kumar, may be considered as per their position in the final merit list of Scheduled Caste candidate, but they/he cannot now be considered against general category vacancy.

9. In view of discussions made above, the O.A. succeeds. The order dated 14.11.2008 is quashed. The respondents are directed to give offer of appointment to the applicant treating her to have secured highest marks in the category of general candidates. The above exercise shall be completed within a period of four months from the date of receipt of certified copy of this order. No costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Girish/-