

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No.: 453 of 1996.

DATE OF DECISION: ¹⁴12-DEC-2000.

Smt. Punam Kumari, wife of Shri Brajesh Kumar, aged about 20 years, resident of village : Rishaura, P.O.: Rishaura via. Maharajganj, P.S.: Maharajganj, district : Siwan.

.....APPLICANT.

By Advocate : Mr. N.P.Sinha with Mr.I.D.Prasad.

Vrs.

1. Union of India through Director General, Department of Posts, Govt. of India, New Delhi.
2. Chief Postmaster General, Bihar Circle, Patna-800 001.
3. Postmaster General, Northern Region, Muzaffarpur.
4. Superintendent of Post Offices, Siwan Division, Siwan.
5. Sub-Divisional Inspector of Post Offices, East Sub-Division, Siwan.
6. Shri Prahlad Prasad, son of Shri Bharat Mahto, aged about 24 years, resident of village and P.O.: Rishaura via. Maharajganj, and, at present post as EDBPM, Rishaura EDBO in Siwan Postal Division.

.....RESPONDENTS.

By Advocate : Mr. V.M.K.Sinha,
Sr. Standing Counsel.
Mr. S.N.Tiwary (For Respn. No.6).

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.
HON'BLE MR. L.R.K.PRASAD, MEMBER (ADMINISTRATIVE)

O R D E R

JUSTICE S.NARAYAN, V.C.: The applicant, Smt. Punam Kumari, has assailed the appointment of respondent no.6 (Prahlad Prasad), to the post of Extra-Departmental Branch Postmaster (for short, EDBPM), Rishaura Branch Office in account with Maharajganj S.O., by an order dated, 6th February, 1996, of the Superintendent of Post Offices, Siwan (Respondent no.4). She has also refuted the ground assigned

by the Postmaster General, Muzaffarpur (Respondent no.3), in his letter dated, 24th July, 1996 (Annexure-A/11), that she (the applicant), though having higher marks in the matriculation standard, did not actually belong to the other backward community for whom the post-in-question was reserved. She has thus, sought for direction upon the official respondents to consider her case for a selection to the post of EDBPM, Rishaura EDBO.

2. On factual score, suffice it to mention that the applicant and the respondent no. 6 were amongst seven candidates sponsored by the Employment Exchange for selection to the post of EDBPM, Rishaura, in response to the employment notice no.392/A, dated, 2nd November, 1995 (Annexure-A/1), issued by the official respondents. Even though the applicant had got 558 marks in the matriculation standard, as compared to 445 marks obtained by the respondent no.6 in the said examination, it was the respondent no.6, who was selected to the post on the solitary distinguishing feature that he (the respondent no.6) belonged to the Other Backward Community. There was no dispute that both the candidates fulfilled the eligibility criteria, as mentioned in the employment notice (Annexure-A/1), but the official respondents have come-up with the plea that the post in question was reserved for OBC and, accordingly, it was offered to the respondent no.6 who belonged to the said community, whereas, the applicant did not. The applicant, however, pleaded

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inter-alia, that the post was not reserved for Other Backward Community and also that she also belonged to the Other Backward Community.

3. The merit of the case, therefore, hinges on the two points; first, whether the post in question was reserved for Other Backward Community and secondly, in the event of reservation as such, whether the applicant also belonged to the Other Backward Community ?

4. In regard to the first question, our attention was naturally attracted to the employment notice no.392/A dated, 2nd November, 1995, issued by the respondent no.4 asking the District Employment Exchange Officer, Siwan, to sponsor the names of suitable candidates as per eligibility criteria mentioned therein, vide Annexure-A/1. On perusal thereof, we find nowhere mentioned in the employment notice that the post in question was reserved for Other Backward Community. It simply mentioned that if the candidate belonged to Scheduled Caste or Scheduled Tribe or was an ex-Army personnel, it shall be incumbent to file certificate to that effect of the concerned authority. It was thus, obvious on the very face of the employment notice that it was an open offer without ear-marking of the post for any reserved community. That being as such, the plea raised on behalf of the official respondents, or even on behalf of the private respondent no.6 to the effect that the post was ear-marked or reserved only for Other Backward Community

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falls to the ground and, on this score, the applicant's stand has to be upheld. In this view of the matter, irrespective of the point whether a candidate belonged to the Other Backward Community, it was the candidature of the applicant which was above the board and regard having had to the higher marks fetched by her, as compared to that of the respondent no.6 in the matriculation standard, she ought to have been selected to the post in question. Here, it would not be out of place to observe that any decision taken by the authority subsequent to issuing the employment notice to ear-mark the post for certain community ^{an} would be deemed to be arbitrary decision and against the principles of fair play in the matter of selection. Apart from this, the respondents have not come ^{up} with the plea that any decision to ear-mark the post for Other Backward Community was taken subsequent to the issuance of the employment notice. It goes without saying that in case the post was actually reserved for Other Backward Community, it ought to have been clearly mentioned in the employment notice.

5. Now, coming to the other point in question, we find on the record that both the contesting candidates i.e., the applicant and the respondent no.6, claimed themselves belonging to Other Backward Community and, in support thereof, both of them have filed certificates under the signatures of Executive Magistrate and Sub-Divisional Officer, Maharajganj, Siwan. The certificate in the name of the applicant was on the record

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as Annexure-A/13, and that in favour of the respondent no.6 as Annexure-R/6. Both the certificates were issued by the aforesaid authorities under their joint signatures, namely, the Sub-Divisional Officer and the Executive Magistrate, Maharajganj, Siwan. Whereas, the applicant belonged to the caste of 'Kurmi', said to be Other Backward Community, the respondent no.6 to the caste of 'Dhanuk', that also said to be Other Backward Community.


6. In order to distinguish the claim of the applicant and the respondent no.6, in regard to their belonging to Other Backward Community, the official respondents submitted in their written statement that the person belonging to the caste of 'Kurmi' were not recognised as Other Backward Community rather, it was the caste 'Kurmi' (Mahto) who could be categorised as Other Backward Community. This sort of plea could not be substantiated by the respondents at the time of argument. Moreover, even if the official respondents wanted to go for any such distinction, it was incumbent for them to have again referred the matter to authorities concerned who had issued the caste certificates. In face of the hard fact that both the contesting candidates have been able to produce caste certificate in the prescribed proforma declaring them as member of Other Backward Community by competent authorities like, Executive Magistrate and Sub-Divisional Officer of the area, we find it difficult to accept the aforesaid contention of the respondents so as to refuse the claim of the applicant even assuming that the post in question was reserved

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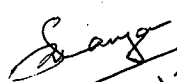
for Other Backward Community.

7. Regard having had to the discussion above, we arrive at a definite conclusion that this OA must succeed and, accordingly, it is allowed. The impugned order dated, 6th February, 1996, appointing the respondent no.6 on the post of EDBPM is thus, hereby quashed and set-aside. The official respondents are directed to re-consider the case of the applicant in the light of the observation above and to pass an appropriate order with utmost expedition. There shall be no order as to costs.

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(L.R.K.PRASAD)
MEMBER(A)

12.12.2000


(S.NARAYAN)
VICE-CHAIRMAN

12.12.2000