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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:  
AT HYDERABAD

O.A.No.1291 OF 1996.

DATE OF ORDER:7-12-1998.

Between:

Kettu Sathiraju. .. Applicant

and

1. The Superintendent of Post Offices,  
Rajahmundry Division, Rajahmundry,  
District East Godavari.
2. Smt.V.Jhansi Kumari, w/o P.V.V.S.N.Murthy,  
ED/Branch Postmaster, Kapavaram B.O.,  
a/w Anaparthi-533 342, Bikkavolu Mandalam,  
East Godavari District.

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr.S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS:: Mr.N.R.Devaraj

: Mr.C.Dhananjaya for R-2

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

AND

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: ORDER :

ORAL ORDER(AS PER HON'BLE SRI R.RANGARAJAN, MEMBER (A) )

Heard Mr.S.Ramakrishna Rao, learned Counsel for the Applicant, Mr.N.R.Devaraj, learned Standing Counsel for the Official Respondents, and Mr.V.Suryanarayana Sastry for Mr.C.Dhananjaya, learned Counsel for the Respondent No.2.

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2. A notification bearing No.BE/Kapayaram 80, dated: 5-1-1996 (Annexure.A-I, page.9 to the OA) was issued for filling up the post of Extra Departmental Branch Postmaster at Kapayaram ED Branch Post Office under Anaparthi Sub Post Office of Mandapeta Head Office. Four candidates applied for that post in response to the notification and the applicant and Respondent No.2 were amongst them. It is stated that the open notification was to be initiated as the Employment Exchange failed to sponsor the candidates. Respondent No.2 was selected.

3. This OA is filed praying for setting aside the selection of Respondent No.2 in pursuance of the notification dated:5-1-1996 and for a consequential direction to the respondents to appoint the applicant for the post of ED/BPM,Kapayaram, considering his merit.

4. The main contention of the applicant in this OA is that the notification dated:5-1-1996 does not indicate anywhere in regard to the reservation for the SC reserved candidates. The Respondent No.2 was selected just because she belongs to a SC Community. Even if there was shortage of percentage of reservation for SC, selection of Respondent No.2 is irregular as no mention of reservation had been made in the notification dated:5-1-1996. As per the notification dated:5-1-1996, it is evident that the most meritorious candidates fulfilling all the conditions laid down in the notification will have to be selected and posted. The applicant being the most meritorious candidate fulfilling all the conditions should have been posted instead of Respondent No.2, who had been recommended

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in view of the fact that she belongs to the reserved SC Community. For the above contention, the applicant relies on the Judgment of the Calcutta Bench of this Tribunal reported in 1997(36)ATC 41, SHIBNATH DHARA Vs. UNION OF INDIA & OTHERS.

5. The Official Respondents admit that there was no mention in the notification dated: 5-1-1996 in regard to the reservation of the post for SC candidate.

~~But it is~~ stated in the reply that the Respondent No.2 was posted in that post as there was shortage of SC candidate and on that pretext Respondent No.2 was posted even though a mention has not been made in regard to the reservation of the post to SC/ST candidates. It is also stated in the reply that the applicant is meritorious.

6. A reply has been filed on behalf of the private respondent. In this reply it is stated that she is a resident of that village /as she has divorced her husband and her interest was looked after by her father who has no connection with the department and she is having a child and hence her case has to be considered as she belongs to SC Community.

7. The Calcutta Bench of this Tribunal had categorically stated in the reported case referred to above that if a ED post/<sup>is</sup> reserved for SC/ST candidates, a mention should have been made in the notification in regard to that reservation. If no such mention has been made, the question of appointing a SC/ST reserved candidate in that post even if there is shortage in the percentage for

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for reserved Community does not arise. In view of the above categorical assertion of the Calcutta Bench of this Tribunal, the OA has to be allowed as there is no mention for reservation in the notification. This fact has also been accepted by the Official Respondent..

8. The learned Counsel for the unofficial respondent relies on the Judgment of the Bombay Bench of this Tribunal, reported in Swamy's CL Digest 1995/1 in SARJERAO AKARAM SHETE Vs. UNION OF INDIA AND OTHERS in OA.No.605 of 1991 to substantiate his case. We have gone through this Judgment. In the Judgment nowhere it is stated that the reservation was indicated in the notification and because of that the Bench allowed the application. In the absence of that case details, reliance on this Judgment by Respondent No.2 is not appropriate.

9. The Respondent No.2 also relies on the Judgment of the Ernakulam Bench of this Tribunal reported in Swamy's CL Digest 1994 in KP.CHANDRAN Vs. SUB-DIVISIONAL INSPECTOR, MANNARGHAT AND OTHERS in OA.No.391 of 1993, to state that she had to be appointed. Para.2 of the Judgment is very relevant. It states "A member belonging to SC is entitled to preference or reservation, in given cases. This will have to be understood in the context of facts, and not in an absolute sense".

10. From the above quotation it is evident that preference can be given only if the preference is so stated in the notification. The present notification

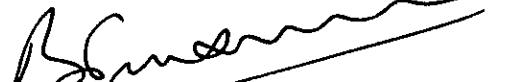
dated:5-1-1996, as stated earlier, does not indicate the preference or reservation. Further the preference or reservation has to be understood in the context of        facts and not in an absolute sense. If there is shortage of SC/ST cadre of ED then the preference can be given but that should be stated so in the notification. The facts in the case of SARJERAO AKARAM SHETE does not indicate the fact as stated above. Hence, rejection of that case is in order in view of the Judgment in K.P. CHANDRAN's case.

11. In view of what is stated above, the following direction is given:-

Applications received in response to the notification dated:5-1-1996 should be re-examined and the most meritorious candidate fulfilling all the conditions as set out in the notification should be selected as ED Branch Postmaster of that Post Office.

Time for compliance is three months from the date of receipt of a copy of this Order. Till such time the regular appointment is made, the present ED <sup>SPM</sup> shall be continued as a provisional candidate in that Post Office.

12. With the above direction, the OA is disposed of. No costs.

  
( B.S.JAI PARAMESHWAR )

7.12.98  
 MEMBER (AUDL)

  
( R.RANGARAJAN )

MEMBER (ADMIN)

DATED: this the 7th day of December, 1998

Dictated to steno in the Open Court

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DSN

  
D.R.

OA.1291/96

Copy to:-

1. The Superintendent of Post Offices, Rajahmundry Division, Rajahmundry.
2. ~~Shanmukhan~~, One copy to Mr. S.Ramakrishna Rao, Advocate, CAT., Hyd.
3. One copy to Mr. N.R.Devaraj, Sr. GSC., CAT., Hyd.
4. One copy to Mr. C.Dhananjaya, Advocate, CAT., Hyd.
5. One copy to O.R.(A), CAT., Hyd.
6. One duplicate copy.

SRI

✓ 23/12/98

II COURT

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESWAR :  
M(J)

DATED: 7/12/98

ORDER/JUDGMENT

MAVR.A/C.P.No.

in  
DA.NO. 1291/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

