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O.A. 405/97

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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. Krishna Devan, Learned Counsel for the applicant and Mr. B. Narasimha Sharma, Learned Standing Counsel for the Respondents No.1 & 2, and Mr. Y. Appala Raju, Learned Counsel for the Respondents No.3.
2. At the time of hearing Mr. J. Chandramouli Raju, Asstt. Superintendent of Posts, Hindupur Sub-Division, Hindupur was present with the selection proceedings. We perused the selection proceedings.
3. The post of BPMD Manesamudram, account with H.S. Mandir reported that the regular EDMC/DA of the said Branch Office was absent from duty from 4.6.96 and that he was securing the services of the applicant in that place of regular EDMC/DA. Accordingly, the applicant was appointed as EDMC/DA on provisional basis on and from 21.7.96. Later the regular incumbent tendered his resignation to the post and it was accepted.
4. The respondents in order to fill up the post on regular basis requested the Employment Exchange, Anantapur to sponsor eligible candidates for filling up the post by their letter No.EDMC/DA/M.S/ dated 19.10.96. In that letter they had specifically informed the Employment Exchange that preference will be given to the candidates belonging to ST community and if no ST community candidate is available then preference will be given to the candidate belonging to SC community. There was no response from the Employment Exchange, Anantapur.
5. Hence, the respondents issued an open notification dt. 2.12.96 inviting applications from the local candidates to fill up the said post on a regular basis. In the said notification also the respondents indicated that preference



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will be given to/candidates belonging to SC/ST community.

6. In response to the said notification dt. 2.12.97 seven candidates submitted their candidature. It is to be noted that no candidate belonging to the reserved community had responded to the said notification. Among the 7 candidates, responded 5 belonged to OC community and the remaining two belonged to OBC community. Among the 7 candidates, applicant was one of the candidates. He belonged to OBC community.

7. The respondents started scrutiny of the applications received in response to the said notification.

8. However, M/s. Harijana Sevasangam, submitted an anonymous petition to the Assistant Superintendent of Post Offices making certain allegations to the effect that the notification dt. 2.12.96 was not given wide publicity and that the incumbent of the BPM, Manesamudram was obstructing eligible reserved community candidates to respond to the notification dt. 2.12.96.

9. On receipt of this complaint on 2.2.97 the Assistant Superintendent of Post Offices observed that there were serious allegations against the applicant and that the remaining 6 applicants belonged to OBC and O.C. community and one among them was a minor. Considering all these draw backs in the candidates who responded to the notification and also considering the same veracity in the complaint made by M/s. Harijana Sevasangham, the Assistant Superintendent of Post Offices decided it proper to renotify the post.

10. Accordingly, the respondents issued renotification dt. 21.3.97. The terms and conditions remaining the same. That means the respondents were inclined to fill up the post only from amongst the reserved community candidates.



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11. The applicant has filed this O.A. challenging the second renotification dt. 21.3.97.

12. On 4.4.97 this Tribunal directed the applicant if so advised to respond to the re-notification dt. 21.3.97 without prejudice to his contentions raised in the O.A. and further directed the respondents to consider the candidature of the applicant also for the post. Further on 15.5.97, this Tribunal directed the respondents to depute the Assistant Superintendent of Post Offices, Hindupur Division, Hindupur to be present with the selection proceedings. This was to ascertain the truth behind the respondents notifying the post by their ^{re-}notification dt. 21.3.97.

13. The respondents scrutinised the applications received in response to the renotification dt. 21.3.97/^{selected} and appointed the respondent No.3 to the post on regular basis.

14. The main contention of the applicant in challenging the action of the respondents in issuing the renotification dt. 21.3.97 is that even though in the earlier notification the respondents had specifically indicated to the effect that preference would be given to a candidate belonging to ST/SC community; that when 7 applications were received in response to the said notification and the selection process had commenced, that he was the only meritorious candidate among the candidates; that in such circumstances, the respondent No.3 ^{was} not justified in issuing the renotification dt. 21.3.97; that the respondents were duty bound to follow the DGP&T letter bearing No.19-11-97-ED and TRG dt. 27.11.97. Thus he relied upon the paras 5 and 8 of the said letter which reads as under :

[Signature]

5. "5. Firm decision should be taken before hand. Whether the post falling vacant is to be filled up by a reserved candidate and if so, a specific mention to this effect and the particulars of the community should be made in the notification while notifying the vacancy to the Employment Exchange or calling for applications from the open market in case the Employment Exchange fails to nominate the required number of suitable candidates within the stipulated period. In the Notification it should be specifically mentioned that ~~xxxxxxx~~ in case the minimum number of 3 eligible candidates belonging to the particular reserved community are not nominated or do not offer their candidature, the vacancy in question will be treated as unreserved and offered to candidates belonging to to other reserved category to be specified for which the representation may happen to be deficient or other community candidates, as the case may be. This will further enable the Employment Exchange nominate candidates belonging to other reserved reserved category or OC community, as the case may be in the order indicated in the Notification. The Employment Exchange should be asked to give a certificate to the effect that suitable candidates belonging to reserved communities specified in the Notification are not available while nominating other community candidates. Case should be taken to reserve a vacant post for the reserved community for which the extent representation is comparatively less compared to the other other reserved community in the descending order.

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8. In case the Employment Exchange fails to sponsor the minimum number of 3 eligible candidates, an open advertisement should be issued calling for nominations. Even here if the number of 3 eligible candidates do not offer their candidature, then the approval of the next higher authority to the proposed appointment should be obtained before selection is made from among such candidates. In case the Employment Exchange nominates lesser number of eligible candidates than 3 and it becomes necessary to call for applications from the open market also, the candidatures of nominees of the Employment Exchange should also be considered along with those offering their candidatures in response to open advertisement.

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15. Had the respondents followed the instructions contained in the said letter, there was absolutely no need or necessity to issue the remotification dt. 21.3.97 and that he had cent per cent chances of being ^{selected and} appointed to the post. Thus he submits that his chance of getting an employment has been unjustifiably denied.

16. The learned counsel for the applicant in support of his contention relied upon the decision by this Tribunal in O.A.1200/97.

17. The respondents have filed a reply narrating the circumstances under which they were compelled to issued a remotification dt. 21.3.97. They contend that the representation of reserved community candidates in the ^{division} ~~xx~~ division is not sufficient and the present post of EDMC/DA was required to be filled up from a reserved community candidate; that on receipt of a complaint though anonymous, the Assistant Superintendent of Post Offices, felt that there was some justification, in that the applicant himself was responsible for not allowing any reserved community candidate to respond to the Notification dt. 2.12.96; they felt it necessary to renotify. They submit that the departmental authorities had not at all committed any irregularity or illegality in going for remotification dt. 21.3.97. They further submit that they were required to discharge the constitutional obligations thrust upon them as there was short ^{fall} in representation of the reserved community candidates in the EDBPM cadre in the division.

18. The learned counsel for the applicant contends that the best course in such an event was to cancel the earlier notification dt. 2.12.96. Thus he also relied upon the observations made in O.A.1200/96.

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19. In O.A. 1200/96, the facts and circumstances therein and the facts and circumstances in this O.A. are altogether different. In the first instance in O.A.1200/96, it was notified without making any specification as to reserving the post for a particular community. Further, the renotification was issued reserving the post for SC/ST community candidate. It is in those circumstances, we felt that reservation of the post for the reserved community candidate in the 2nd notification deprived an opportunity of employment to a person belonging to other community and observed that if they had felt that the post should have been filled by a reserved community candidate, then the proper course should have been to cancel the earlier notification.

20. In the instant case, right from the stage of approaching the Employment Exchange, Anantapur, the respondents are determined to fill up the post of EDMC/DA of Manyasamudram, by a reserved community candidate.

20. In this case, in response to the notification dt. 21.3.97, 3 candidates belonging to SC community had responded. This fact itself justifies the stand taken by the respondents in issuing the renotification. Had they completed the selection process in response to the first notification dt. 21.12.96, we feel that a deserved candidate from ST or SC community would have lost this chance.

22. Having regard to overall facts and circumstances of the case, we do not wish to interfere with the selection of the respondent No.3. The respondents Nos.1 & 2 were justified in renotifying the post on 21.3.97.

22. The contention of the applicant that there was absolutely no need or reason for the respondent No.1 and 2 to renotify the notification dt. 21.3.97 has no substance. The circumstances themselves establish the justification of issuing the renotification dt. 21.3.97. On account of this, a deserved

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candidate from reserved community has been suitably selected and posted. In that view of the matter, we find no reasons to interfere with the selection of the respondent No.3.

23. The other contentions raised by the applicant cannot be accepted and they are accordingly rejected.


24. In this view of the matter, we find no reasons to accept the O.A. and the O.A. is liable to be dismissed.

25. The O.A. is accordingly dismissed. No costs.

26. The selection proceedings produced by the Assistant Superintendent of Post Offices, Hindupur Division, Hindupur are perused and returned to the respondents.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)

6.4.99


(R. RANGARAJAN)
MEMBER (ADMIN)

Dated, the 6th April, '99.


True.

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Copy to:

1. HDHND
2. HARP M(A)
3. HBSOP M(J) ✓
4. D.R. (A) ✓
5. SPARE ✓

15/4/99
IST AND IIND COURT

TYPED BY
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APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE-CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD:
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN:
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARAMESWAR:
MEMBER (J)

DATED: 6-4-99.

ORDER/JUDGEMENT

MA./RA./CP.No.

IN

O.A. NO. 405/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED ✓

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

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