

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O. A. No. 260/750 OF 2012

Cuttack, this the 08th day of December, 2017

CORAM

HON'BLE MR. S. K. PATTNAIK, MEMBER(J)

HON'BLE DR. M. SARANGI, MEMBER (A)

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Smt. Usharani Das @ Padhiary, aged about 35 years, Wife of Sri Golakha Chandra Padhiary, Village-Kalidaspur, PS/Dist-Balasore.

...Applicant

(By the Advocate-M/s. B. S. Tripathy, M. K. Rath, J. Pati, M. Bhagat)

-VERSUS-

Union of India Represented through

1. Chief Post Master General, Odisha, At/Po. Bhubaneswar, Dist- Khurda.
2. The Superintendent of Post Offices, Balsore Division, At/PO/Dist.Balssore.
3. Sri Harish Chandra Behera, Postal Assistant, Jaleshwar Post Office, At/PO Jaleshwar, Dist-Balasore.
4. Sri Sushant Kumar Nath, Postal Assistant, Jaleshwar Post Office, At/PO Jaleshwar, Dist-Balasore.

...Respondents

(By the Advocate- Mr. D. K. Mallick)

ORDER

Dr. MRUTYUNJAY SARANGI, MEMBER (A):

The applicant has challenged the report of the Review Committee dated 09.04.2010 in finalising the select list prepared for the purpose of Postal Assistant. She is aggrieved by her non-selection for the said post. She had applied in response to the advertisement dated 03.08.1999 as per which there were 05 vacancies at Balasore Postal Division. Out of this, 02 posts were reserved for OC, 02 for OBC and 01 for Ex-servicemen. As per the merit list, the applicant was placed at S1 No.6. The five candidates in the merit list above the applicant are as follows:-

Sl. No	Name of the candidate Shri/Smt.	Community	Total marks secured	Position as per merit
1.	Harish Chandra Behera	OBC	67.60	1 st
2.	Susanta Kumar Nath	OBC	66.00	2 nd
3.	Tanuja Prusty	OBC	63.50	3 rd
4.	Pragati Behera	OBC	63.10	4 th
5.	Sanjib Kumar Das	OC	62.42	5 th

6.	Usharani Das(Applicant)	OC	61.65	6 th
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Her grievance is that although she was number 02 in the OC Community, instead of selecting her the Respondents have selected the candidates at Sl. No.3 & 4. In the O.A. She has made Sl. No. 1, 2, 3 & 4 as Respondent Nos.3, 4, 5 & 6 respectively. On her non-selection she had filed the O.A. No.1473/2003, wherein this Tribunal in its order dated 07.04.2005 allowed the O.A. and directed the Respondents- Department to review the selection list which was prepared pursuant to the notification dated 03.08.1999. Since this order was not complied with, the applicant had filed C.P. No.52/2005. The C.P. was disposed of by this Tribunal in the order dated 21.01.2010 directing the Respondents-Department to review the entire select list and to recast it on the basis of the rank list prepared by the Department in each category. In compliance with the order of this Tribunal, the list was reviewed and the Review Committee placed the applicant at Sl. No.6 at the merit list and she was not offered the post of Postal Assistant. Aggrieved by the decision of the Review Committee dated 09.04.2010 the applicant has filed the present O.A. praying for the following relief:-

“(a) To pass appropriate orders quashing the minutes of review committee dtd. 09.04.2010 in annexure-A/5,
 (b) To pass appropriate orders directing the Respondents-Department to consider the case of the applicant for her appointment in the post of Postal Assistant within a stipulated period; and
 (c) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this O.A. with cost.”

2. The applicant has based her prayer on the ground that the Respondent Nos.3, 4, 5 and 6 applied for the post of Postal Assistant as against OBC vacancies as they belong to OC community and she had applied against the OC vacancy. Respondent Nos.5 & 6 having applied against the OBC vacancies should not have been selected against the OBC category. Therefore the proceedings of the Review Committee held on 09.10.2010 is illegal, arbitrary and contradictory to the principles

of law. The Department has prepared two merit lists on the basis of community and the applicant should have been selected under the OC category. The first two candidates in the merit list are under the OBC category and deserve to be selected under OBC category and the applicant deserves to be selected under the OC category.

3. The Respondents in their reply filed on 04.01.2013 have challenged the claim of the applicant and have submitted that the Respondent Nos.5 and 6 had applied against OBC category but since they secured 3rd and 4th position in the merit list they were eligible to be considered under OC category. The Review Committee did not find any irregularity in the earlier selection. The Respondent Nos.3 and 4 were selected under OBC community after giving age relaxation whereas Respondent Nos.5 and 6 were within the age limit as per the requirement of OC vacancy and therefore there is no illegality in their appointment. Hence it is Respondent's contention that the O.A. lacks merit.

4. The matter was argued by the Ld. Counsels for both sides on 31.10.2017 and the Ld. Counsel for the Official Respondents was directed to file the records relating to the selection of the Respondent Nos.3, 4, 5 and 6. The records were filed on 15.11.2017 and the matter was reserved for orders. From the records filed by the Respondents it is found that the candidate at Sl. No. 1 in the select list namely Harish Chandra Behera's, Date of Birth is 20.12.1973, and as on 06.09.1999 he was 25 years 08 months 16 days (Respondent No.3). The candidate at Sl. No.2 Sushant Kumar Nath's, Date of Birth is 18.11.1973, and as on 06.09.1999 he was 25 years 09 months 25 days (Respondent No.4). The candidate at Sl. No. 3 in the select list namely Ms. Tanuja Prusty's, Date of Birth is 21.01.1975 and as on 06.09.1999 she was 24 years 07 months 15 days (Respondent No.5). The candidate at Sl. No. 4 namely Ms. Pragati Behera's, Date of Birth is 14.06.1975, and as on 06.09.1999 she was 24 years 02 months 22 days (Respondent No.6). These four candidates had applied under the OBC category. A copy of the advertisement at Annexure-A/1 shows that under the

eligibility conditions age of the candidates was mentioned as between 18 and 25 years of age as on 06.09.1099 and the upper age limit was relaxable upto 05 years for SC/ST candidates and 03 years in case of OBC candidates.

5. The Respondents have enclosed the Office Memorandum dated 01.07.1998.

Para 2 and 3 of the said O.M read as follows:-

“2. O.M. dated 22, 1989 referred to above and the O.M. No.36012/2/96-ESTT(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 selecting an 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.”

6. Having heard arguments of the Ld. Counsel for both the sides and perused the documents submitted by them, we find that Ms. Tanuja Prusty (Private Respondent No.5) and Ms. Pragati Behera (Private Respondent No.6) have been selected against the OC vacancies on their own merit since they were within the age limit of 25 years as on 06.09.1999. In the merit list they are above the applicant. As per the guidelines laid down in the Office Memorandum dated 01.07.1998 the Respondents were within their rights to select the Private Respondent Nos.5 & 6 against the OC category. We find no illegality in their action.

7. In view of the above, the O.A. is dismissed as devoid of merit. No costs.

(DR. M. SARANGI)
MEMBER (A)

(S. K. PATTNAIK)
MEMBER (J)

