

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

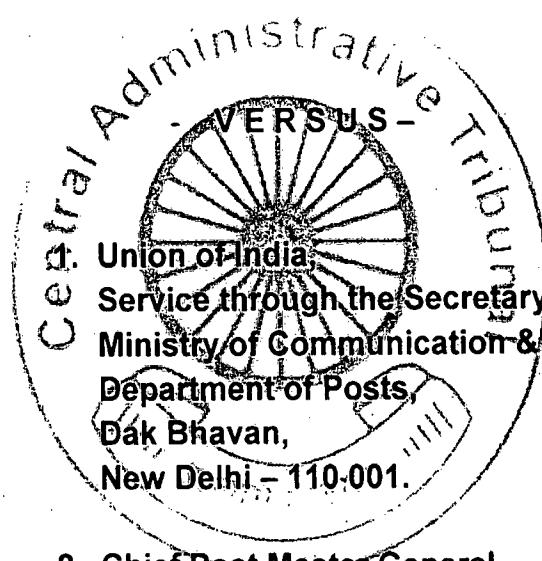
No. O.A. 1462 of 2015

Date of order: 5.8.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Majumdar Dhaibhai,  
 Son of Sri Subal Dhaibhai,  
 Aged about 22 years,  
 By Profession – Unemployed,  
 Residing at Vill. & P.O. – Mondalkuli,  
 P.S. – Raipur, District : Bankura,  
 Pin : 722 134.

..Applicant



2. Chief Post Master General, West Bengal Circle, Yogayog Bhavan, C.R. Avenue, Kolkata – 700 012.
3. Sr. Superintendent of Post Offices, Bankura Division, Bankura, Pin : 722 101.
4. Sri Joydeb Dule, Son of Sri Pabitra Dule, Vill. & P.O. – Amchuryān, P.S. Raipur, District : Bankura, Pin – 722 134.

..Respondents

*[Signature]*

For the Applicant : Mr. J.R. Das, Counsel

For the Respondents : Mr. T.K. Biswas, Counsel

**ORDER**

**Per Dr. Nandita Chatterjee, Administrative Member:**

An original application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- "(i) An order directing the respondents to select/appoint the applicant herein to the said post of GDSBPM at Satpatta Branch Post Office in order of merit.
- (ii) An order directing the respondents to cancel any appointment if already made to the aforesaid post of GDSBPM, Satpatta Branch office without following the due procedure of recruitment.
- (iii) An order directing the respondents to publish a detail merit list for recruitment/selection to the said post of GDSBPM/Satpatta Branch Office to provide a transparent process of selection.
- (iv) An order directing the respondents to place all the records of selection before the Hon'ble Bench for conceivable justice.
- (v) Any other order/orders, further order/orders, as to this Hon'ble Court seems fit and proper."

2. Heard Ld. Counsel for the parties, examined pleadings and documents on record.
3. The case of the applicant, as submitted by his Ld. Counsel, is that the applicant had passed his Madhyamik examination in 2009 scoring 575 marks in total excluding the optional subject.

That, on 24.11.2014 an engagement notice was published from the Office of the Senior Superintendent of Post, Bankura Division, Bankura for the post of Gramin Dak Sevak Branch Post Master, Satpatta Branch Post Office in the TRCA Scale of Rs. 3660-70-5760/- and due allowances. The applicant applied in response to the same. The applicant had also, in the meanwhile submitted an application to the competent authority for issuance of his caste certificate in his favour as he belonged to the 'Lohar' caste. The applicant participated in the process of document verification.

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That, although the applicant had submitted his application with all the requisite documents along with his mark sheet of Madhyamik examination showing a total of 575 marks (without optional paper), he came to know that respondent No. 4 had been selected for the aforesaid post and had been sent on training at Khatra Training Centre without considering the claim of the applicant to the said post.

As soon as the applicant came to know about the fact that his legitimate claim for selection /appointment to the aforesaid post of GDSBPM, Satpatta Post Office was not being considered, he made a detailed representation to the Sr. Superintendent of Post Offices, Bankura Division for re-consideration of his case on the ground that the applicant possessed higher marks/score than the selected candidate. As the applicant did not receive any response to his said representation, being aggrieved, he approached the Tribunal with the instant Original Application.

The grounds on the basis of which the instant Original Application has been filed are as follows:

- (i) That, the applicant had admittedly scored higher marks than the private respondent.
- (ii) That, the applicant had complied with all the legal requirements and conditions for recruitment to the said post of GDSBPM.
- (iii) That, the respondent authorities did not publish any merit list and, hence, was guilty of nepotism.
- (iv) The applicant, being higher in merit and having fulfilled all conditions, had been subject to gross injustice in not being selected for the aforesaid post.

Ld. Counsel for the applicant has relied on the decision in *Bodh Raj Sabharwal v. Union of India (Del) (1992) 19 ATC 827* as well as *Ram Kumar Gijroya v. Delhi Subordinate Services*

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**Section Board and Another (2016) 1 SCC (L&S) 742 in support of his claim.**

4. The respondents, have filed their written statement of defence, in which their contentions are as follows:-

That, the notification for filling up the post of Gramin Dak Sevak Branch Post Master, Satpatta Branch Office was issued by the Senior Superintendent of Post offices on 24.11.2014. The last date for receipt of applications was 23.12.2014. The post was reserved for Scheduled Caste community.

That, in column No. 6(d) of the notification, it had clearly been mentioned that the candidates are required to enclose caste certificate granted by the competent authority and in column 6(g), it was also instructed that if prescribed/required documents are not submitted along with the application, the application is liable to be rejected and no request for revival will be considered.

That, further in column No. 6(d) of the notification, it was mentioned that the authority has the right to reject any application with incomplete information/wrong information/misrepresentation of facts. Besides this, in the format of application in Column 8, it was clearly mentioned that copy of SC/ST/OBC certificate was to be submitted to justify the declaration of the candidates towards the same.

That, on 15.1.2015 and 16.1.2015, the selection committee scrutinized the relevant records and papers of sixteen recruitment applications including that of the applicant and finalized the name of Sri Joydev Duley for the post of Gramin Dak Sevak Branch Post Master, Satpatta Branch Office on the basis of marks obtained in the Madhyamik or Equivalent examination. Sri Duley secured 646 of marks out of 800 i.e. 80.75% of marks (excluding the marks of additional subject) in Madhyamik Examination and was placed first in the merit list of five candidates.

That, Sri Majumdar Dhaibhai had also applied for the post of Gramin Dak Sevak Branch Post Master, Satpatta Post Office but on scrutiny it was noted by

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the selection committee that Shri Dhaibhai did not attach any caste certificate from competent authority in support of his claim.

That, in the above scenario, the application of Sri Majumdar Dhaibhai for the post of Gramin Dak Sevak Branch Post Master, Satpatta Branch Office was not considered by the recruiting authority and subsequently rejected.

### ISSUES

5. The issues before us in order to adjudicate on the claim made by the applicant are:-

(a) Whether the selection to the post of GDSBPM as conducted by the respondent authorities with reference to appointment of GDSBPM, Satpatta Branch Office is liable to be set aside.

(b) Whether the applicant's claim to selection to the said post is justified.

6. At the outset, we refer to the engagement notice dated 24.11.2014 (Annexure A-1 to the O.A.), which is germane to the lis. The specific extracts as relevant for the purpose of the instant application, are reproduced below:-

GOVERNMENT OF INDIA  
MINISTRY OF COMMUNICATION & I.T  
DEPARTMENT OF POSTS  
OFFICE OF THE SENIOR SUPERINTENDENT OF POST OFFICES  
BANKURA DIVISION, BANKURA - 722 101

No. A/GDSBPM/Rectt./Satpatta B.O. Dated at Bankura the 24.11.2014

### ENGAGEMENT NOTICE

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2. The eligibility conditions required to be fulfilled by the candidate for engagement, are as under:-

(I) AGE: Candidate should be minimum 18 years and below 65 years of age on the last date of receipt of applications.

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(II) Educational qualification: Matriculation or equivalent examination passed. No weightage will be given for higher qualification. However, this does not bar the candidate with higher qualification from applying for the post.

(III) Residence: Candidates belonging to a place other than Post village can also apply for the post and such candidate should take up his/her residence to the post village where the Post Office is located and he/she must reside there in the event of his/her selection. The selected candidates should produce a proof to that effect within the date as to be fixed by the undersigned after selection.

(IV) Accommodation: Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises. Rent of the Post Office accommodation shall not be born by the Department.

(V) Income: A Gramin Dak Sevak shall have to give an undertaking that he has the other source/s of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family.

(VI) Category: SC.

5. Any kind of influence brought by the candidate regarding selection/engagement will be considered as disqualification. Selection will be made on merit basis subject to fulfilment of eligibility criteria. No correspondence, attempting to influence the selection process will be entertained.

6. The candidates are required to enclose the following documents with application.

- (a) Two character Certificates issued by prominent persons of the locality. One of which must be issued by Gazetted Officer.
- (b) Admit Card of Madhyamik or equivalent examination issued by a competent authority or any standard age proof certificate issued by Competent Authority.
- (c) Mark Sheet of Matriculation or equivalent examination from Board of Education recognized by the competent authority and valid for employment under Central Government.
- (d) Caste Certificate (in case of candidates belonging to SC/ST/OBC) granted by the competent authority.

(emphasis supplied)

Hence, it is inferred from the above that,

- (i) The selection was to be made based on merit, subject to fulfilment of eligibility criteria.
- (ii) The eligibility criteria was based on age, educational qualification (matriculation or equivalent) as well as the residential status/requirement of the candidates.
- (iii) It was also amply made clear in the advertisement that all certificates including the caste certificate have to be submitted during the application.

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(iv) And that, the respondents reserve the right to reject application, or if, submitted with incomplete information or if not accompanied by attested copies of required certificates.

The applicant had advanced, *inter alia*, three main grounds in his support:

(i) That, he was higher up on merit and that no merit list was published indicating nepotism on the part of the respondents which ultimately lead to his non-selection although he was higher up in merit than the selected candidate.

(ii) That, the candidate fulfilled all requisite qualification of the engagement notice.

(i) Admittedly, the candidate had obtained 575 out of 800 marks in his Madhyamik examination. The respondents have averred in their reply that the respondent No. 4 had however obtained 646 marks out of 800 marks. Although the reply of the respondents was made available to the applicant disclosing the marks of respondent No. 4, the applicant has nowhere disputed in his rejoinder that respondent No. 4's marks were inaccurate or established that respondent No. 4 have scored in Madhyamik examination less marks than that of the applicant. Accordingly, the primary condition for selection to the post of GDSBPM, Satpatta Branch Office being merit, the applicant has not been able to establish successfully that he was higher up in merit than respondent No. 4. His claim that no such merit list was published is also not substantiated as because the respondents disclosed the marks obtained by respondent No. 4 in their reply to which the applicant had access and which he did not choose to dispute in his rejoinder.

(ii) The condition at para 6(d) categorically stated that the caste certificate granted by the competent authority had to be furnished during the application. It is clear that as the applicant received his caste certificate on 26.8.2015 and as the last date of submission of application was

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23.12.2014, he could not have legitimately submitted his caste certificate with his application and the respondents were well within their right under 6(g) of their engagement notice to reject his application as the requisite certificate was not attached with the application. As the posts advertised was reserved for SC category, the caste certificate was a *prima facie* requirement for applicants. Hence, the grounds that the applicant had fulfilled all conditions as called for in the engagement notice also falls through.

Ld. Counsel for the applicant has produced in his support two decisions of the Central Administrative Tribunal, New Delhi as well as the Hon'ble Apex Court respectively:

Coming to the decision in *Sabharwal (supra)* which was decided on 17<sup>th</sup> September, 1991 by the Central Administrative Tribunal, New Delhi, the ratio arrived was that claim on reservations should be made with retrospective effect subsequent to initial appointment, as status of caste depends on birth in a particular family.

In *Gijroya (supra)* the Hon'ble Apex Court had decided that non-submission by reserved (OBC) category candidate within cut off date mentioned in advertisement would not render him ineligible, if otherwise selected, as that would amount to denial of equality of opportunity under Articles 14, 15, 16 and 39(A) of the Constitution of India.

In the case of the instant Original Application the ratio held in *Gijroya (supra)* is not applicable as because it refer to a candidate who had been short-listed for selection. In the instant Original Application, the applicant was never so considered.

The decision of *Sabharwal (supra)* could have assisted the applicant in obtaining liberty to re-submit his application with the caste certificate, which he had procured at a later date, so as to be eligible for the post of GDSBPM,

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Satpatta Branch Office which was reserved for an SC candidate but for two factors namely,

(a) The selection was merit based and hence, even if the application was allowed to be considered, the applicant could never have been selected on merit as respondent No. 4 has undoubtedly scored more marks than him in the Madhyamik Examination a fact which has not been successfully challenged by the applicant.

(b) Further, the Selection Committee selected the respondent No. 4 prior to the date on which the applicant had procured his caste certificate and we cannot expect respondent authorities to await finalisation of selection, pending the applicant's procurement of his caste certificate by the competent authority as the Office of GDSBPM, Satpatta Branch Office was also required to be manned urgently. The applicant, therefore, at this stage cannot claim cancellation of the entire selection process because he could not procure his caste certificate on time.

Accordingly, we recall the two issues needed for adjudication as follows:-

- (i) As to whether the selection to the post of GDSBPM is liable to be set aside. The answer is clearly in negative as because selection has fairly been on merit and entirely on the basis of such conditions as has been laid down in the engagement notice dated 20.11.2014 of the respondent authorities and at no stage the respondents have violated any of the requisite processes prior to such selection.
- (ii) The second issue, namely, whether the applicant has a justifiable right to selection is also answered in the negative as because he could not qualify on merit.

In this we are guided by the Hon'ble Apex Court's decision in *K.H.Siraj v. High Court of Kerala*, (2006) 6 SCC 395 and also in *Union Public Service Commission v. S. Thiagarajan* (2007) 9 SCC 548 wherein it was held that

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person who are not eligible candidates cannot question the legality or otherwise of selectees.

Further, as held by Hon'ble Apex Court in **S.L. Soni v. State of M.P. 1995 Supp. (3) SCC 156** and in **Subhas Chandra Varma v. State of Bihar JT 1995 (1) SC 331**, in the exercise of powers of the judicial review, the Court will not evaluate the comparative merit or suitability of candidates.

7. We, therefore, refrain from interfering in the selection made by the respondent authorities and dismiss the O.A. on merit.

The O.A. is, hence, dismissed. There will be no orders on costs.

