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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 162 of 2011

Date of order: 26th September, 2018

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

**Shri Mantu Kumbhakar,
Son of Maga Ram Kumbhakar,
Aged about 22 years,
Residing at Vill. Sunuri, P.O. Sunuri,
Dist. Purulia,
Pin - 723 121.**

.. Applicant

Central Administrative Tribunal
VERSUS
1. Union of India
Through the Secretary,
Ministry of Communication
Department of Post,
Dak Bhawan,
New Delhi - 11
2. The Chief Post Master General
South Bengal Region,
Yogayog Bhawan,
C.R. Avenue,
Kolkata - 12.

**3. The Senior Superintendent of Post Offices,
South Purulia Division,
P.O. & Dist. Purulia.**

.. Respondents

For the Applicant : Mr. B.K. Chatterjee, Counsel

For the Respondents : Mr. M.K. Ghara, Counsel

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

Aggrieved at cancellation of Employment Notice dated 11.1.2010; the applicant has approached the Tribunal seeking the following relief in the instant Original Application:-

“(a) Memo No. MI/Selection/2010 and Memo No. A/Sunuri BO/Part dated 30-12-2010 and dated 6.01.2011 issued by respondent No. 3 cannot be tenable in the eye of law and therefore the same may be quashed.

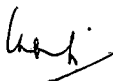
(b) An order do issue directing the respondents to act on the basis of Employment dated 11.1.2011.”

2. Heard both Id. Counsel, perused pleadings and documents on record.

It is noted here that no rejoinder, in response to the reply dated 25.5.2018, is found on record.

3. The applicant's case, as submitted by his Id. Counsel, is that the applicant is an unemployed youth belonging to OBC category and he possesses a certificate to the said effect. The applicant has also been registered with the Employment Exchange and that he had obtained 507 marks in the Madhyamik Pariksha (Secondary) Examination. The applicant had applied for the post of GDSBPM, Sunuri B.O., pursuant to an Employment Notice dated 11.1.2010 and was subsequently called for bio-data verification on 13.3.2001 and he had participated therein.

That, the respondent No. 3, however, in pursuance to the directions of the Post Master General, South Bengal Region, Kolkata, vide his letter dated 5.4.2010, had cancelled the earlier notification dated 11.1.2010 and subsequently issued a notice on 6.1.2011 inviting applications from intending eligible candidates for appointment to the post of GDSBPM, Sunuri. Unlike the earlier notice dated 11.1.2010, however, which had declared the post as reserved for OBC, the notice dated 6.1.2011 declared that the said post was reserved for SC and that, the notice dated 30.12.2010 whereby the cancellation



was notified, did not advance any reasons for cancellation of the said notification dated 11.1.2010. Hence being aggrieved, the applicant has approached the Tribunal with the instant Original Application.

The grounds advanced by the applicant in his support are that:

- (a) no reasons were advanced for cancellation of the earlier notification dated 11.1.2010 and that,
- (b) when the earlier Employment Notice was issued following the reservation roster, the said roster could not be altered without any reasons thereto.

4. The respondents, per contra, have argued that although the post of GDSBPM, Sunuri B.O. under Adra S.O. in Purulia, had fallen vacant on account of superannuation of the regular incumbent and a notice for recruitment was issued on 11.1.2010 reserving the post for OBC candidate, the Office of the Post Master General, South Bengal Region, having noted certain irregularities, ordered cancellation of the said notification. The main reason for such cancellation was that the percentage shortfall in SC/ST community was examined and after having ascertaining the community-wise break up calculated by the concerned Division, it was discovered that as per roster prepared by Superintendent of Post Office, Purulia, the post should have been earmarked for SC instead of OBC as percentage of shortfall in SC was higher than that of OBC. This irregularity having been detected, the respondents did not proceed any further with the Employment Notification dated 11.1.2010 and had, accordingly, issued a revised notification dated 6.1.2011 where the post of GDSBPM was shown as reserved for SC.

ISSUE

5. The issue to be resolved in this case is whether the cancellation of the Employment notice dated 11.1.210 vide notice dated 30.12.2010 as well as the issue of Employment Notice dated 6.1.2011 were in accordance with law.

FINDINGS

6.(a) During hearing, the respondents have furnished before us the Post Based Reservation Roster of GDSBPM under administrative control of Superintendent of Post Offices, Purulia Division, which is titled as:

“(NEW MODEL ROSTER ON THE BASIS OF CENSUS – 2001 VIDE DTE’S NOTIFICATION NO. 14-01/06-SCT STS.17/19.06.2006, CIRCULATED BY CIRCLE OFFICE, KOLKATA NO. SFB/R-109/Rlg/XII/Pt-III DTD. 06.11.2006)”

According to the said roster prepared on the basis of Census 2001, the post of GDSBPM at Sunuri was reserved for Schedule Caste. What is not clear from the said roster however, is the distinction between the columns B and E which are titled as “Quota/Category” and “Present Category” respectively.

(b) It is also seen that, one Shri Bishnupada Das Gupta, who had retired from the said post did not belong to SC category, implying therefore that the roster must have been prepared afresh on the basis of incidence of community representation thereafter namely, after the appointment of Shri Bishnupada Das Gupta (since superannuated).

(c) It is axiomatic that community representation is a dynamic concept on account of migration to and fro with respect to a particular postal area and hence, what is required to be established in this matter is whether the incidence of community based shortfall that led to categorisation of the said post as OBC in the notice dated 11.1.2010 had significantly changed so that the SC community was found to be predominantly contributing to percentage shortfall calling for a revision in November, 2011.

Another reason could be that this post was all the time meant for the SC community which was the predominant community but under-represented contributing to highest shortfall. Such interpretation, however, is disputed by the fact that, Shri Bishnupada Das Gupta the earlier incumbent was not a SC candidate.

Further anomaly is that while "quota / category" in column (B) of the roster earmarks the post as for SC, the present category marks it as "Other Category".

Hence, there can be three interpretations of the above analysis:-

- (i) When Shri Bishnupada Das Gupta was occupying the post at Sunuri Post Office, the predominant shortfall was in "Other Categories" as a result of which he was engaged from "Other Community";
- (ii) That, while the vacancy was decided to be filled up, the predominant shortfall was detected as from the SC community and that OBC was wrongly noted in the Employment Notice dated 11.1.2010 which was subsequently revised to SC category in the revised Employment Notice dated 6.1.2011;
- (iii) It was actually the OBC community which reported the predominant shortfall as borne out by Employment Notice dated 11.1.2010 and that the revision of the Employment Notification on 6.1.2011 was based on incorrect data.

The respondents have not furnished before us any data to substantiate their claim that it was the SC community which had reported predominant shortfall in the material point of time. Consequently, it is difficult to conclude with any finality in this regard.

7. Accordingly, we direct the respondents as follows:-

- (1) The respondents will scrutinize the census data at the material point of time diligently and arrive at a conclusive finding as to which was the community that reported the predominant shortfall at the time of the issue of the Employment Notice dated 11.1.2010.
- (2) Once such finding is arrived at conclusively, the respondents will thereafter issue a fresh notification declaring the category for whom the said post is reserved.

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In case, the respondents arrive at the finding that the post was indeed reserved for OBC category, the applicant should be considered on merit as per the Employment Notification that states that selection will be made on the basis of merit. If, however, it is found that it was indeed the SC community which was under represented and that the shortfall with respect to SC community was predominant, the Employment Notice dated 6.1.2011 shall continue to prevail for the material point of time for when the vacancy was announced and the respondents are at liberty to fill up the same as per law.

Till actions are taken in compliance to para 7 of this order, the respondents will not give effect to the Employment Notice dated 6.1.2011.

With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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