

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/969/2014

Date of Reserve:26.02.2019

Date of Order: 29.03.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Smt.Sabita Mahakud, aged about 25 years, W/o. Sri Kshetra Mohan Mahakud
residing Vill/PO-Sasan, Via-Champua, Dist-Keonjhar, PIN-758 041.

...Applicant

By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Telecommunication,
Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Khurda.
3. Superintendent of Post Offices, Keonjhar Division, Keonjhar Garh.
4. Inspector of Posts, Champua Sub Division, Champua, Keonjhar.
5. Rama Chandra Pradha, aged about 43 years, S/o,. Nrusingha Charan
Pradhan, At-Kanchanpur, PO-Sasang BO in account with Champua S.O.

...Respondents

By the Advocate(s)-Mr.L.Jena

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

The Department of Posts issued a notification dated 20.04.2011
inviting applications from the open market for filling up the post of GDSBPM,
Sasang BO in account with Champua S.O. As per the stipulations made in the
notification, the post is offered to the candidates belonging to OBC community
and in case the minimum required number of three eligible candidates
belonging to the said community were not available, the vacancy will be
offered to the communities in the following order:

- i) SC
- ii) ST
- iii) UR

2. The applicant belongs to the OBC category and had submitted her application in response to the aforesaid notification. In the process of selection, one Sachin Kumar Giri stood first. However, since he declined to accept the offer of appointment, the Respondent No. 3 issued a letter dated 27.8.2014(A/3) to Shri Rama Chandra Pradhan (Private Respondent No.5) stating that he has been provisionally selected for the post in question which, however, shall be subject to satisfactory verification of the prescribed conditions. Again Respondent No.3 sent a letter dated 17.9.2014(A/5) to Respondent No.5 asking him to submit OBC certificate along with other original certificate before the Respondent No.4. In the above backdrop, applicant sought for information under RTI Act to provide her the list of candidates who had applied for the post in of GDSBPM, Sasang B.O. in response to the notification dated 20.04.2011 and on receipt of information, the applicant could come to know that her name finds place at Sl.No.3. The applicant therefore, submitted a representation dated 13.11.2014(A/7) to Respondent No.3 for consideration of her case on the ground that as the Respondent No.5 had not submitted the OBC certificate at the time of submission of application, his application ought not to have been accepted. Respondent No.4 without considering the same, issued offer of appointment dated 19.11.2014(A/8) in favour of Respondent No.5. Aggrieved with this, the applicant has approached this Tribunal praying for the following reliefs:

- i) To quash the letter dated 27.08.2014 under Annexure-A/3, letter dated 17.09.2014 under Annexure-A/5 and dated 19.11.2014 under Annexure-A/8.
- ii) To declare that the Respondent No.5 is not the OBC community when the application was received.
- iii) To direct the Respondent No.3 to issue the provisional appointment select as she is next to Respondent No.5 (Sr.

No.3) in OBC category and call for verification of documents and consequentially after verification of documents appoint in the post of GDSBPM, Sasang BO in account with Champua SO forthwith.

iv) To pass any other order/orders as deemed fit and proper.

3. The main ground on which the applicant has based his claim is that Condition No.6 of the notification 20.04.2011 provides that the candidates will have to submit attested copies of the under mentioned documents along with their applications:

1. xxx
2. xxx
3. xxx
4. Caste certificate issued by the competent authority (in case of SC/ST/OBC applicants).

4. Therefore, it is the contention of the applicant that Respondent No.5 having not submitted OBC certificate along with his application, his candidature ought to have been rejected at the threshold. Further, the applicant has submitted that by selecting Respondent No.5 provisionally for the post in question and further, by giving him an opportunity to submit OBC certificate, the official respondents have displayed an act of nepotism, which, per se is illegal and does not stand the judicial scrutiny.

5. Official Respondents have filed a detailed counter opposing the prayer of the applicant. They have submitted that the selected candidate one Sachin Kumar Giri could not join the post of GDSBPM, Sasang BO since the villagers protested against his appointment and as such, he requested the respondents to cancel his candidature as he does not belong to the post village and to appoint a candidate from the post village. The applicant had also filed O.A.No.856/2011 before this Tribunal to declare the selection of said Shri Giri as illegal and to consider her case for appointment since she belongs to

Sasanga BO. This O.A. was dismissed vide order dated 21.05.2014. In the meantime, Shri Giri withdrew his candidature vide his application dated 18.05.2013. According to official respondents, after the aforesaid O.A. was dismissed, the next meritorious candidate Sri Rama Chandra Pradhan (Respondent No.5) who had secured 51% of marks and fulfilled all other conditions of the recruitment, was selected for appointment to the post of GDSBPM, Sasang BO and accordingly, he was instructed to produce OBC certificate within one month as he had submitted the SEBC certificate at the time of application failing which his selection to the post of GDSBPM, Sasang will be forfeited. Accordingly, he submitted his OBC certificate before the Inspector of Posts, Champua Sub Division at the time of verification of certificate and before his appointment to the post in question on 17.09.2014. It is stated that the said Respondent No.5 has joined the post on 25.11.2014 after submitting OBC certificate issued by the competent authority. They have pointed out that the community of the Respondent No.5 in both the cast certificates (A/2 & A/4) are the same 'GOPAL'. SEBC certificate is meant for Government of Odisha and OBC is for the Central Government though the community is the same.

6. Private Respondent No.5 although duly noticed by this Tribunal, but has not filed any counter nor entered appearance.

7. Applicant has filed a rejoinder to the counter in which he has reiterated the same points as in the O.A.

8. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission/citations filed by the applicant.

9. Respondents have produced the Check Sheet at R/2 dated 13.06.2011 in which it is found that the name of the applicant is at Sl.No.6 whereas the name of Respondent No.5 is at Sl. No.5 on the basis of marks secured by each of them. Respondent No.5 has secured 51% marks whereas the applicant has secured 48.8 marks in the HSC Examination. From this, it is quite clear that the selection of Private Respondent No.5 to the post in question on account of he having secured the higher marks than the applicant is in order and the plea of the applicant there has been nepotism in the matter if selection of Respondent No.5 is overruled.

10. The submission of the applicant that since the Respondent No.5 had not submitted OBC Certificate at the time of submission of application, his application should have been rejected at the stage of scrutiny. In this connection, it is to be noted that the SEBC certificate furnished by Respondent No.5 along with the application itself in relation to the notification issued by the Government of India is OBC category, the applicant being of GOPAL community. Therefore, there was nothing wrong in entertaining his application and bringing him within the zone of consideration for the post of GDSBPM, Sasang BO. At the cost of repetition, we would like to note that the community GOPAL in relation to Government of Odisha is recognized as SEBC whereas the said community in relation to Government of India is recognized as OBC. Had the applicant not furnished any of the certificates, the matter would have been different. This apart, at the time of document verification, Respondent No.5 has admittedly submitted the OBC certificate in pursuance of which, offer of appointment was made in his favour. Therefore, there was nothing wrong on the part of the official respondents in accepting the

application of Respondent No.5 for the purpose of selection to the post of GDSBPM, Sesang BO.

11. In support of her case, the applicant has relied on the decision of Hon'ble High Court reported in 2012 (Supplementary) Volume-II (Dipali Chand vs. Chairman, OPSC & 41 Ors.). In that case the petitioner claiming to be a Woman SEBC candidate had submitted her application for the post of Temporary Munsif (Emergency Recruitment) in Class-II of the Orissa Judicial Service, the last date of submission of applications being 05.08.1996 whereas the Gazette Notification showing inclusion of the Caste of the petitioner under SEBC category was published on 30.08.1996 (just after 25 days of date fixed for last of submission of application) and there was no scope for the petitioner to submit her SEBC certificate along with the application form. This being the factual aspect of the matter which is quite distinct and different from the facts of the present O.A., the decision rendered thereon has no application to this case.

12. Further, in support of her submission, applicant has relied on the decision of this Tribunal in O.A.No.138 of 2003 decided on 12.05.2005. In that case before the Tribunal, Respondent No.5 had been selected for the post of Technician 'A' (Welder) under OBC category. However, the fact remained that when he had appeared interview/recruitment his caste had not been enlisted as OBC for the purpose of employment in Central Government. In the instant case, no such contingency arises in so far as Respondent No.5 is concerned. Therefore, the facts of the relied upon decision being distinguishable to the facts of the present O.A. is of no help to the applicant.

13. In the conspectus of facts and circumstances narrated above, we do not find any ground warranting interference by this Tribunal in the matter of

selection and appointment of Private Respondent No.5 to the post of GDSBPM, Sesang BO. Accordingly, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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