

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00499/2016

Date of Reserve:01.05.2019

Date of Order:29.07.2019

CORAM:

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

Laxman Dehury, aged about 22 years, S/o. Kabindra Dehury, resident of At/Vill – New Padmapur, PO-Padmapur, Via-Anandapur, PS-Anandapur, Dist-Keonjhar, Odisha, PIN-758 021.

...Applicant

By the Advocate(s)-M/s.C.P.Sahani

P.K.Samal

D.P.Mohapatra

-VERSUS-

Union of India represented through:

1. The Secretary – cum- Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhuabneswar, Dist-Khurda, Odisha-751 001.
3. Postmaster General, Sambalpur Region, Sambalpur-768 001.
4. The Supdt. Of Post Offices, Keonjhar Division, Keonjhargarh-758 001.
5. Jasabanta Tudu, S/o. Late Raghunath Tudu, Vill-Nandipada, PO-Mareigaon, Dist-Keonjhar, PIN-758 080.
6. Basudev Naik, S/o.Mayadhar Naik, At-Betiran, PO-Mareigaon, Via-Hatadihi, Dist-Keonjhar, PIN-758 083.
7. Kalakar Tudu, S/o.Jitu Tudu, At/PO-Mareigaon, Via-Hatadihi, Dist-Keonjhar, PIN-758 083.

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) Admit the Original Application.

- ii) After hearing the counsels for the parties be further pleased to quash the order at Annexure-A/13 & Annexure-A/7 and declare the appointment of the Respondent No.5 as illegal and void.
- iii) And consequently, orders may kindly be passed directing the Respondent(s) to give appointment to the applicant in the post of GDSBPM, Mareigaon BO from the date of appointment of Respondent No.5 with consequential benefit as he is the only eligible candidate as per the merit list at Annexure-A/4; and/or
- iv) Pass any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice considering the facts and circumstances of the case and allow the O.A. with costs.

2. It reveals from the record that earlier, the applicant had approached this Tribunal in O.A.No.260/00200/2016 for direction to be issued to Official Respondents to give him appointment in the post of GDSBPM, Mareigaon BO as per the merit list at Annexure-A/4 from the date of appointment of Respondent No.5 with consequential benefits. This Tribunal vide order dated 18.04.2016 disposed of the said O.A. as follows:

- "6. Accordingly, this O.A. is disposed of by giving liberty to the applicant to make a comprehensive representation, annexing the documents as he feels proper to Respondent No.2 within a period of two weeks from today, i.e., by 02.05.2016 and if any such representation is preferred within two weeks from today, then the said Respondent No.2 is directed to consider and dispose of the said representation and pass a reasoned and speaking order within a period of two months from the date of receipt of the representation as per the rules and regulations in force keeping in mind the applicability of the documents, which the applicant would annex to his representation. Although, I have not expressed any opinion on the merit of the case, I make it clear that if after such consideration the applicant is found to be entitled to the relief claimed by him then expeditious steps be taken within a further period of three months from the date of receipt of such consideration to extend the same benefits to him".

2. Complying with the aforesaid direction, the applicant submitted a representation dated 25.4.2016 (A/12) to the Chief Post Master General,

Odisha Circle (Respondent No.2), alleging corrupt practice and irregularity adopted by the SPOs, Keonjhar Division in selecting Jasabanta Tudu as GDSBPM, Mareigaon BO in account with Hatadihi SO who had submitted a fake/forged caste certificate thereby depriving his legitimate claim for appointment to the post in question. In consideration of this, the CPMG (Respondent No.2) vide order dated 29.06.2016 (A/13) rejected the representation of the applicant. Hence, this Original Application with the aforesaid reliefs.

3. Brief background leading to filing of this O.A. is that in pursuance of a notification No.A-508 dated 30.12.2013 issued by the Superintendent of Post Offices, Keonjhar Division, the applicant, who belongs to ST category, had submitted an application for consideration of his candidature to the post of GDSBPM, Mareigaon BO in account with Hatadihi SO. As per his information received through the RTI Act, he could come to know that one Jasabanta Tudu (Private Respondent No.5) who belongs to ST category and had submitted a fake Caste Certificate along with his application, the same was accepted by the Respondent No.4 and ultimately, he was selected for the post in question. This being the situation, the applicant lodged a complaint to the CPMG, Odisha Circle and PMG, Sambalpur regarding illegal and irregular appointment of Respondent No.5 with a request to conduct an inquiry and to take follow up action. Thereafter, the applicant was communicated a letter dated 29.07.2015 by the PMG, Sambalpur in which he was informed that the case of Private Respondent No.5 was reviewed and he was found to be the most eligible and meritorious candidates and hence, the complaint petition of the applicant was turned down. However, on receipt of further information through RTI Act from the Tahasildar, Hatadihi to the effect that the certificate

produced by Private Respondent No.5 is fake, the applicant approached this Tribunal in O.A.No.260/00200/2016 and as already mentioned above, this Tribunal disposed of the said O.A. vide order dated 18.04.2016.

4. The grounds urged by the applicant in support of his case is that the selected candidate (Private Respondent No.5) had submitted a fake caste certificate which was found to be not genuine after verification of the same from Tahasildar. Therefore, it is the contention of the applicant that as per the stipulation made in the notification at A/1, the intending candidate has to submit along with his/her application the caste certificate issued by the competent authority. It has been pointed out that as per A/1, application received after the prescribed date, applications not accompanied by the required documents and applications which are incomplete will be rejected. According to applicant, since Private Respondent No.5 had submitted a fake certificate along with his application, the same should have been rejected since it did not accompany with the required document. According applicant, the caste certificate submitted by the Private Respondent no.5 had not been issued by the competent authority and subsequently a fresh and genuine caste certificate was submitted/obtained. The main thrust of the O.A. is that the Private Respondent No.5 having submitted a fake caste certificate or a certificate not issued by the competent authority, as the case may be, his application for the post of GDSBPM, Mareigaon should have been rejected at the threshold as per the stipulations made in the notification at A/1 and in such a situation, the applicant having submitted the genuine certificates should have been considered for appointment to the post in question.

Private Respondents including the selected candidate (Res.No.5) though duly noticed have neither entered appearance nor filed counter.

Per contra, the official respondents have filed their counter in which it has been submitted that Shri Josabanta Tudu (Private Respondent No.5) having secured the highest marks was selected for the post of GDSBPM, Mareigaon BO subject to satisfactory verification of records. According to them, during inquiry it was found that the caste certificate produced by him is fake. On examination of records, it revealed that the Private Respondent No.5 has mentioned as ST category candidate in his application form and he being the most meritorious candidate was given an opportunity and therefore, he was directed to produce a fresh caste certificate. After satisfactory verification of genuineness of the caste certificate, Private Respondent No.5 was posted as GDSBPM, Mareigaon BO. Hence, the official respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of arguments along with the case law cited. In the written notes of submission, the applicant has pointed out that four candidates, i.e., Private Respondent Nos. 5, 6, & 7 including him belonging to ST category had submitted their applications for the post of GDSBPM, Mareigaon BO in pursuance of notification at A/1. According to applicant, except him, the other three candidates including the Private Respondent No.5 had submitted false/fake caste certificates along with their applications. It is stated that the Official Respondent No.4 after lapse of about 7 months from the date of declaration of the merit list, collected a fresh caste certificate from Private Respondent No.5 thus, showing favouritism and nepotism. Applicant has cited a number of decisions of the Hon'ble Supreme Court. Amongst other things, he has laid emphasis on the decision in Additional General Manager, Human Resource, BHEL Ltd. Vs.

Suresh Ramkrishna Burde (AIR 2007 SC 2040) in which it has been held by the Hon'ble Supreme Court that "the principle, which seems to have been followed by this Court is, that, where a person secures an appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated".

At this juncture, we would like to note that it is not a case of obtaining an appointment by perpetrating fraud. Admittedly, the Private Respondent No.5 had submitted a fake caste certificate along with his application. It is the case of the applicant that Private Respondent No.5's application should have been rejected at the threshold on the ground of he having submitted a fake caste certificate. On the other hand, the official respondents have pointed out that Private Respondent No.5 having secured the highest marks was selected for the post of GDSBPM, Mareigaon BO subject to satisfactory verification of records. They have also disclosed that during inquiry, the caste certificate submitted by Private Respondent No.5 was found to be fake. He being the most meritorious candidate in the selection panel was given an opportunity and accordingly, he was directed to produce fresh caste certificate. However, after satisfactory verification of genuineness of the caste certificate as produced, Private Respondent No.5 was posted as GDSBPM, Mareigaon B.O. From this, it is quite clear that the fact which weighed with the official respondents to provide an opportunity to Private Respondent No.5 for submitting a fresh caste certificate is the highest marks secured by him which is the basic criterion for selection of GDSs. Since the official respondents have consciously used their discretion which apparently is bona fide, we are not inclined to interfere with the order as passed by the CPMG, Bhubaneswar in pursuance of the direction of this Tribunal in the earlier round of litigation. At

the cost of repetition, we would like to note that it is not a case where Private Respondent No.5 has secured appointment consequent upon submission of any false or fake caste certificate, the offer of appointment being subject to satisfactory verification of documents/testimonials. The other decisions cited by the applicant in support of his case are of no assistance, the facts therein being different and distinct from the present case.

In the result, the O.A. is dismissed, being devoid of merit. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)