

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 191 of 1998

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Nirmala Dei (Dash), aged bout 30 years, W/o Saroj Kumar Dash,
Vill./PO – Atta, PS – Sukimda, Dist. – Jajpur.

.....Applicant

VERSUS

1. Union of India represented through the Director General, Department of Posts, New Delhi – 110001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. – Khurda.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack, At/PO/Dist. – Cuttack.
4. Ashok Kumar Mallik, aged about 39 years, S/o Kadambadhar Mallik, At/PO- Atta, PS – Sukinda, Dist. – Jajpur.

.....Respondents.

For the applicant : Mr.G.P.Jena, counsel

For the respondents: Mr.L.Jena, counsel
Mr.S.Mallick, counsel

Heard & reserved on : 10.7.2019

Order on : 16.7.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicant claims that her name was sponsored by the Employment Exchange for the post of EDBPM, Atta BO in response to the notice dated 21.4.1997 (Annexure R/1 to the counter filed by the respondents No. 1-3) issued by the respondents to fill up that post. The applicant is aggrieved by the fact that instead of finalising the selection process after receipt of the names of candidates duly sponsored by the Employment Exchange, the respondents issued a fresh notice dated 10.2.1998 (Annexure A/2) inviting applications from the candidates from open market. The applicant's case is that filling up of posts should have been done on by selecting one of the candidate from among the candidates whose names were received from Employment Exchange and not through subsequent notice dated 10.2.1998 issued by the respondents to fill up the post of EDBPM, Atta.

2. The reliefs sought for by the applicant as stated in para 8 of the OA are as under:

“In view of the aforesaid facts and circumstances of the case the selection in pursuance to Annexure A/2 may be quashed and Respondent No.3 may be directed to declare the result of the selection in pursuance to Annexure A/1.

And may pass any other appropriate order/cost of proceeding etc. as deemed fit and proper.”

3. The grounds pleaded by the applicant in support of the OA are that respondent No.3 is required to complete the recruitment process on the basis of names received in pursuance to the notice dated 21.4.1997, which was left incomplete by his predecessor and in case there was any difficulty, he could have informed the higher authorities. It was also urged that the advertisement dated 21.4.1997 (Annexure R/1) was for general candidates and in the subsequent notification at Annexure A/2, the post was advertised as reserved for OBC. This action on the part of the respondents is illegal and arbitrary. It was further stated that fresh notification issued by the authorities dated 10.2.1998 does not mention anything about the previous notification dated 21.4.1997 to the Employment Exchange for the same purpose and hence, it is not sustainable and in addition, there was no reason furnished by the respondents for cancelling the earlier recruitment process.

4. This OA was heard and order dated 26.7.1999 was passed by the Tribunal by which the OA was allowed, quashing the notification at Annexure A/2 including the selection and appointment made in pursuance to the notification and the respondents were directed to make the selection from among the candidates who applied in response to notification dated 21.4.1997 (Annexure R/1 to the counter of respondents No. 1-3). After passing of this order, the respondent No.4 who was not a party in the OA moved the Hon'ble High Court in OJC 9528/1999 challenging the order dated 26.7.1999. Hon'ble High Court heard the said OJC and by order dated 29.11.2018 allowed the writ petition with the following directions :

"In that view of the matter we set aside the order impugned herein and remit the matter back to the Tribunal for adjudication afresh only on the ground that the petitioner was not a party before the learned Tribunal. Original applicant will array the present petitioner as a party to the Original Application. All the parties will appear before the Tribunal on 17th December, 2018. On their appearance, learned Tribunal will hear the matter afresh on merit and affording reasonable opportunity to the parties and will pass a reasoned order within a period of six months from the date of receipt of a copy of this order.

However, we make it very clear that this Court has not expressed any opinion on the merit of the case, save and except the ground of violation of principles of natural justice which was denied to the present petitioner by not making him a party before the Tribunal."

5. In pursuance to the direction of Hon'ble High Court, the matter was heard on 14.1.2019. The prayer of respondent No.4 to be impleaded was allowed and his name was included as respondent No.4 vide order dated 21.1.2019. Thereafter the respondent No.4 was allowed to file counter which was filed on 2.4.2019 and the applicant filed rejoinder on 10.4.2019 and these pleadings are on record.

6. Respondents No. 1 to 3 had filed their counter earlier stating that in response to the letter dated 21.4.1997, the Special Employment Exchange Jajpur Road sponsored the names of 5 candidates vide letter dated 22/23.9.1997 (Annexure R/1 & R/2). Thereafter respondent No.3 vide letter dated 11.6.1997 (Annexure A/1), called for the applications in the proforma from the sponsored candidates to apply and furnish the required documents on or before 2.7.1997. In response to that, 4 candidates (out of 5 sponsored candidates) including the applicant had applied. It was subsequently observed by the respondent No.3 that the Employment Exchange did not sponsor the list of candidates within the due date as indicated in the letter dated 21.4.1997 (Annexure R/1) and he was of the view that considering the list of candidates was in violation of instruction of the DG Posts. It was stated that as per the instruction of DG Posts if the list from Employment Exchange is not received within the stipulated period, then it will be open to the authorities to select candidates from open market. Accordingly the notification was issued by the respondent No.3 inviting applications from the intending candidates on 10.2.1998 (Annexure A/2 to the OA). It is stated that 7 candidates applied in pursuance to the said notification. 2 out of the 4 candidates sponsored by

Employment Exchange were considered along with 7 candidates as other 2 candidates sponsored by the Employment Exchange had directly applied to the notification. Accordingly the selection process was taken up and the respondent No.4 was selected, since he secured highest percentage of marks among 9 candidates considered for the post and the selected candidate i.e. respondent No.4 was duly informed. It is stated that the notification at Annexure A/2 dated 10.2.1998 was justified in the counter in view of the existing rules.

7. The applicant has filed rejoinder stating that the subsequent notification at Annexure A/2 was issued only for the OBC candidates, where as the initial requisition was for general candidates. It is stated in the rejoinder that the respondents should have restricted the selection process from amongst the candidates sponsored by the Employment Exchange. It was further stated that reserving the vacancy for OBC was not permissible since this was a single vacancy and hence, the reservation does not apply. It was stated that the averment that the name from Employment Exchange was not received within 30 days was incorrect since in response to the letter dated 21.4.1997, the names were sponsored by the Employment Exchange vide letter dated 22/23.5.1997, which shows that the names were sponsored by the Employment Exchange within 30 days.

8. Learned counsel for the applicant and official respondents reiterated their respective pleadings. Learned counsel for the respondent No.4 submitted that the respondent No.4 was selected in pursuance to the selection made after issue of the public notification dated 10.2.1998. In view of the shortfall in the OBC category, the notification was issued for calling for candidates from OBC community and in response to the public notification, 7 candidates had applied including the applicant. The respondent No.4 was selected on merit, since he secured the highest marks. It is further submitted that the applicant had participated in the selection process in pursuance to Annexure A/2 and that after participating in the selection process and having failed, it is not open for

the applicant to challenge the selection process. In support of the contention, learned counsel for the respondent No.4 cited the following judgments (Annexure R/4) :

- i) Madan Lal & Others –vs- State of J&K & Others - (1995) 3 SCC 486
- ii) Union of India & Others –vs- N. Hargopal & Others. - AIR 1987 SC 1227
- iii) Excise Superintendent, Malkapatnam, Krishna District, A.P. –vs- K.B.N.Visweshwara Rao & Others.. - (1996) 6 SCC 216

Learned counsel for the applicant has also relied on the judgment of Hon'ble Supreme Court in N.T.Bevin Kath Etc. –vs- Karnataka Public Service [1990 AIR 1233].

9. We have considered the submissions made by the parties and also gone through the pleadings as well as the judgments cited in this case.

10. The contention of the respondent No.4 that the applicant had participated in the selection process finalised after notice dated 10.2.1998 and she could not qualify, has not been specifically contradicted by the applicant in the rejoinder in reply to the counter filed by the respondents. The applicant's case is that the authority should have completed the selection process initiated by the notification dated 21.4.1997 by which the Employment Exchange was requested to sponsor the names of the candidates for EDBPM, Atta. The Employment Exchange sponsored the name of 5 candidates including the applicant. Subsequently the respondents issued another notice dated 10.2.1998 (Annexure A/2) by which the applications from other OBC candidates were invited. The applicant had also applied in pursuance to the said notification as stated in the counter filed by the respondents No. 1 & 2 as well as the respondent No.4. 9 candidates including 2 sponsored by the Employment Exchange were considered for the appointment and the respondent No.4 was selected having secured the highest marks.

11. Applicant's counsel has cited judgment in the case of N.T.Bevin Kath (supra). In that case, the State of Karnataka had sent a requisition to the PSC

for recruitment of Tehsildars and an advertisement dated 23.5.1975 was issued. Subsequently, Government vide order dated 9.7.1975 changed the method of preparation of select list after applying reservations in different categories of candidates. This order dated 9.7.1975 was challenged. It was held that during pendency of the selection, revising the selection procedure through a Government order was not sustainable and accordingly the Government was directed to appoint the applicant in the post of Tehsildar with retrospective effect, while not cancelling the appointment of persons who had been selected as per the revised rules. Applicant's counsel submitted that this judgment is applicable to the present OA, because when the selection process in pursuance to the notification dated 21.4.1997 was on, the respondents issued a fresh notice dated 10.2.1998, reserving the post for OBC candidates. The respondents have stated that the fresh notification was issued as per the guidelines of the DG Posts, since the Employment Exchange did not sponsor the names of the candidates within the time stipulated in the notice dated 21.4.1997.

12. Learned counsel for the respondent no.4 has cited the judgments of Hon'ble Apex Court in the case of Madan Lal (supra). In this case the petitioners had challenged their non-selection for the post of Munsiffs in the state of Jammu & Kashmir. It was held in that case as under :

"10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

11. In the light of the aforesaid settled legal position let us see whether there is any substance in the contentions canvassed before us by the learned senior counsel for unsuccessful candidates at the oral interview."

With the above observations, the writ petition was dismissed by the Hon'ble Apex Court. In this OA, the applicant had participated in the selection process vide notice dated 10.2.1998 (Annexure A/2). Hence, applying the ratio of this judgment, after failure to be selected, the applicant cannot challenge the selection.

13. Learned counsel for respondent No.4 has also cited the judgment in the case of N. Hargopal (supra). The question in that case was whether a candidate who was not sponsored by the Employment Exchange could be appointed in a public sector establishment. It was held that the main object of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 was that the employer is required to notify the vacancies that may occur in their establishment before filling up the vacancies. It was held as under :

"6. It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the employment exchanges."

The other finding was that restricting the recruitment process to the candidates sponsored by the Employment Exchange as per the instruction of that Government does not offend the Article 14 & 16 of the Constitution of India.

14. In the case of K.B.N.Visweshwara Rao (supra), the candidates who were not sponsored through Employment Exchange and who had independently applied for consideration were not considered for which, they approached the Tribunal. In this judgment it was held as under :

"6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the state. Better view appears to be that it should be mandatory for the requisitioning Departments for selection strictly according to seniority and reservation as per requisition. In addition the appropriate Department or

undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins: and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

It was held that in addition to the sponsored candidates of the Employment Exchange the Government department can also call for the candidates by publication in the newspapers having wider circulation. Hence, it was argued by the counsel for respondent No.4 that the notification dated 10.2.1998 calling for more names for the post was not bad in law.

15. Undisputedly, the applicant had participated in the recruitment process vide notification dated 10.2.1998 (Annexure A/2) subsequent to sponsoring of her name by the Employment Exchange. The contentions of the respondent No.4 in this regard in his counter in para 8, has not been contradicted by the applicant who is aggrieved only because of the fact that the respondents did not restrict the selection process to 4 candidates who had applied out of the list of sponsored candidates. From the counter of the respondents No. 1 to 3, it is clear that the all 4 candidates whose names have been sponsored by the Employment Exchange had been considered in the selection process along with the other candidates who had applied in pursuance to the notification at Annexure A/2 and the candidates considered for selection included the name of the applicant. The fact that the respondent No.4 was more meritorious compared to the applicant securing higher marks has not been contradicted by the applicant. Since, the applicant had applied for the selection as per notice dated 10.2.1998, it is not open to her to challenge the selection process as per the law laid down in the judgment in the case of Madan Lal (supra). It is not the case of the applicant that the applicant was more meritorious than the respondent No.4 for the purpose of selection for the post of EDBPM, Atta. No rule or guidelines of the Government or any judgment has been furnished by the applicant in support of the contention in the OA that the selection process in this case should have been restricted to only the candidates sponsored by the Employment Exchange. Hence, we are of the view that the respondents have

not acted arbitrarily while issuing the notification at Annexure A/2 before completing the selection process and the respondents have justified their action in the light of the instructions of the DG Posts in the letter dated 4.9.1982 (Annexure R/3) to the counter of the respondents No. 1 to 3.

16. In view of the above discussion, we are of the view that the OA is devoid of merit and it is accordingly dismissed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

