

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 394 of 1998

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

Ashok Kumar Parida, aged 21 years, S/o Laxman parida, Vill/PO – Tumandi, Via – Daspalia, Dist. – Nayagarh.

.....Applicant

VERSUS

1. Union of India represented through its Chief Postmaster General (Orissa Circle), At/PO – Bhubaneswar, Dist – Khurda – 751001.
2. Sr. Superintendent of Post Offices, Puri Postal Division, At/PO/Dist. – Puri – 752001.
3. Sudhansu Sekhar Dalbehera, S/o Dibakar Dalbehera, Vill/PO – Tumandi, Via – Dalpalia, Dist. – Nayagarh.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.P.R.J.Das, counsel

Heard & reserved on : 10.7.2019 Order on : 16.7.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

We have heard learned counsel for the applicant who took us through the relevant facts in this OA. The applicant had applied for the post of EDBPM (now GDSBPM), Tumandi on 13.3.1998 by registered post in pursuance to the public notification for the said post which was issued on 19.2.1998 fixing the last date as on or before 16.3.1998. The copy of the notification is available in Annexure R/1 to the Counter filed by the respondents which states at Point No.1 of the eligibility criteria as under :

“Preference will be given to the ST/SC/OBC community in descending order subject to fulfillment of other basic conditions for the post.”

2. Learned counsel for the applicant submitted that the above preference as indicated in the vacancy notification does not mean that the post is reserved. He submitted that the respondents have not selected the applicant although he had secured the highest marks in the HSC examination and selected the

respondent No.3 who was appointed against the post after rejecting the applicant's case since he did not belong to OBC category. Subsequently service of the respondent No.3 was terminated for misconduct for which the post is lying vacant. It is further stated by the learned counsel for the applicant that as per the check sheet enclosed to the counter by the respondents (at Annexure R/2) the name of the applicant appears in Sl. No.3 and clearly the percentage of marks secured by the applicant was the highest. It was further submitted that any reason for which the applicant was not selected for the said post was that he does not belong to ST/SC/OBC category of candidates. Hence the OA has been filed challenging the appointment of respondent No.3 seeking the following reliefs:

"It is therefore humbly prayed that the Hon'ble Tribunal may kindly be pleased to quash the appointment of Respondent No.3.

AND

Direct to make fresh selection amongst the existing candidates.

AND

To direct the respondents to appoint the applicant as ED Branch Post master of Tumandi Branch Post Office."

3. Learned counsel for the respondents did not dispute the fact that the applicant had secured the higher percentage of marks than the selected candidate respondent No.3. He submitted that the candidature of the applicant was rejected because he was not an eligible OBC candidate and since the valid application of respondent No.3 belonging to OBC category was available and he was found to be suitable, fulfilling the eligibility criteria, he was given preference as per the terms of notification at Annexure R/1. It is the case of the respondents that as per the conditions of the advertisement preference was given to the respondent No.3.

4. This Tribunal had considered the matter on 4.8.1998 and it was ordered that the appointment of respondent No.3 to the post of EDBPM, Tumandi shall be subject to the result of the OA and this condition should be specifically mentioned in the appointment letter issued to the respondent No.3. The only point to be decided in this OA is whether the terms and conditions stipulated

in the vacancy notification that preference is to be given to the ST/SC/OBC candidates (vide copy of the notification at Annexure R/1 of the counter) would imply exclusion of general category candidates if any of the preferential category candidate fulfilling the eligibility criteria was available within the zone of consideration. The respondents have enclosed the circular of the Directorate of Posts dated 27.11.1997 (Annexure R/6) in support of their decision. In this circular, it is stated as under :

"3. The matter regarding reservation SC/ST/OBC in the matter of appointment to ED Post has been examined in its entirety. Accordingly, the office letter dated 3.3.78 referred to above has been amended to read as follows:

'It is hereby clarified that candidates belonging to SC/ST/OBC/Physically Handicapped with the minimum educational qualification. Prescribed on this office letter No. 17-366/1 ED & TRG dated 12.3.90 viz. Matriculation or equivalent standard for ED Branch Postmasters/ED Sub Postmasters and VIII standard for EDDAs, EDSP and other categories of ED Agents (Preference to be given to those who possess matriculation qualification) who satisfy the other conditions of eligibility as laid down in this circular letter No. 43-34/90 Pan dated 30.1.81 should be given preference over the candidates belonging to other community to the extent of scale of reservation fixed by the Government of India in respect of Group 'C' and 'D' Departmental employees recruited in that state/Union territory on local basis even if the candidates belonging to other community are superior in merit to the reserved community candidates.

Provided that the candidates belonging to SC/ST/OBC/ Physically Handicapped categories are otherwise eligible for the post.

....."

5. Generally for implementing the reservation in any cadre in recruitment process, the roster point procedure is adopted as per the ratio of reservation fixed for different category of candidates and the number of vacancies earmarked for different category is specified in the notification. The procedure adopted by the respondents in this case was that preference would be given to the reserve category candidate if suitable candidates are there to the extent of scale of reservation applicable to Group 'C' and 'D' posts of the department, as cited by the respondents at Annexure R/6 which was also referred to by the counsel for the respondents at the time of hearing, specifies that if more meritorious candidate of unreserved category is available, then his case can be rejected to the extent of scale of reservation applicable for Group 'C' and 'D' posts. From above, it is provided that preference to reserved category candidates over other category candidate is subject to the extent of scales of

reservation fixed by the Government of India in respect of Group 'C' and 'D' departmental employees. The wordings in the circular imply that preference to the reserved category candidates would be given vis-a-vis more meritorious candidates to the extent of scales of reservation fixed by the Government of India for Group 'C' & 'D' posts. But in this case, whether the preference given after rejecting the applicant was in accordance with the scale of reservation applicable has not been clarified by the respondents in their pleadings. If the procedure followed by the respondents in this case is adopted, then preference for reserved category candidates can be given even beyond the scale of reservation for Group 'C' and 'D' posts, which will violate the provisions in the circular of DG Posts at Annexure R/6 of the counter.

6. Since nowhere in the notification dated 19.2.1998 (Annexure R/1) it is mentioned that for the post advertised the candidature of general category candidates will be rejected even if they are more meritorious, if an eligible reserved category candidate is available for consideration.

7. In view of the above facts and circumstances, the OA is disposed of with a direction to the respondents/competent authority to reconsider the case of the applicant against the post of EDBPM/GDSBPM Tumandi in accordance with the notification dated 19.2.1998 as per the extant rules and instructions of DG, Posts and communicate their decision to the applicant through a speaking order within a period of three months from the date of receipt of the copy of this order. If the applicant is selected for being engaged as EDBPM, Tumandi, then the appointment of respondent No.3 is to be cancelled if he is still continuing as EDBPM, Tumandi and the applicant will be engaged in his place.

8. The OA is accordingly disposed of. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath