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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.67 of 1986.

Date of Decision : October 7, 1986.

Sunamoni Rout	...	Applicant.
M/s.A.K.Mishra,	...	
S.B.Jena,	...	
S.K.Das, Advocates	...	For Applicant.
Versus		
Union of India and others	...	Respondents.
Mr.A.B.Mishra, Standing Counsel		
(Central)	...	For Respondents.

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL).

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA, MEMBER (J)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying therein to direct Respondent No.3 to consider the application of the applicant and to appoint him as Extra Departmental Branch Post Master of Baghilobabanpur Branch Post Office and other consequential benefits.

2. Succinctly stated the case of the applicant is that one Durga Charan Sahoo was relieved from the post of Branch Post Master in the year 1984 on attaining the age of superannuation. On 10th August, 1985 an advertisement was published by Respondent No.3, namely the Superintendent of Post Offices, Northern Division, Cuttack inviting applications to fill up the said post. The last date for submission of application was 16th September, 1985 and the applicant filed an application on 5th September, 1985 before Respondent No.3 in the prescribed form for appointment to the said post. Furthermore, the applicant asserts that Respondent No.3 intimated the applicant that his name had been sponsored by the Employment Exchange, Kendrapara for the said post and the applicant was directed to submit his application in the enclosed proforma before 23rd September, 1985 and in reply thereto the applicant intimated Respondent No.3 that he has already submitted his application for appointment to the said post but as an abundant precautionary measure the applicant again sent an application on 21st September, 1985 ^{by post} and the same was received in the Office on 24th September, 1985. In course of time, though no intimation was sent to the applicant



yet names were called afresh and one of them is being appointed to the said post without considering the case of the applicant for which the applicant apprehends that not only principles of natural justice have been violated but there has been an arbitrary order passed in respect of this matter and therefore the Tribunal should interfere.

3. In their counter, the Respondents maintained that the application of the applicant was received on 24th September, 1985 though the last date was 23rd September, 1985. Due to one day's delay in regard to receipt of the application, the case of the applicant was not considered and therefore according to Respondents no illegality has been committed.

4. The crux of the matter lies fully within the contents of Annexure-2. Admittedly, the applicant had sent his application along with relevant documents on 21st September, 1985 and it reached the Office of the Superintendent of Post Offices on 24th September, 1985. Before we give our findings on the points raised at the Bar it is worthwhile to quote the letter of the Superintendent of Post Offices addressed to the applicant in regard to this matter which runs thus :

" Your name has been sponsored by the employment Exchange Kendrapara for the post of EDBPM, B.B.Pur B.O. in Account with Chandol. Please send your application (proforma enclosed) along with the undermentioned documents to the undersigned before 23.9.85 positively otherwise your candidature is liable to be for-feited. "



From the above, it is crystal clear that the authorities want the applicant to send the application before 23rd September, 1985. Had the authorities intended to fix the last date of receiving application to be 23rd September, 1985 then ordinarily one would have said that the application along with the documents should be sent to the undersigned on such date so as to enable the authorities to receive the same on or before 23rd September, 1985 or in other words specifically it could have been said fixing the last date of filing the application to be 23rd September, 1985. In the absence of last date having been fixed for receiving the application in the manner stated above, we think there is substantial force in the contention of the learned counsel appearing for the applicant that the applicant could have entertained a bonafide belief that the applicant has been directed to send the application before 23rd September, 1985 and having done so, the duty cast on him has been complied. From the nature of the language employed in the said letter, this sort of interpretation cannot be wholly rejected. Therefore, we find no merit in the contention advanced by the learned Standing Counsel (Central) with utmost vehemence that the contents of Annexure- 2 sufficiently indicates that the last date has been fixed to 23rd September, 1985 and no part of the language employed in the said letter is open to a controversial interpretation. We are unable to accept the aforesaid contention of the learned Standing Counsel (Central).

5. It was urged by the learned Standing Counsel that the Tribunal under the Constitution is authorised to hear and dispose of matters relating to the condition of services of certain Government employees. It was further

submitted by the learned Standing Counsel that the Tribunal has no jurisdiction to hear the complaints of any person who has not been appointed to a post under the Central Government. In other words, learned Standing Counsel contends that the Tribunal cannot lay its hands for interference in regard to the grievance of a particular person so long he remains in the stage of being recruited and has not been appointed. Reliance was placed by the learned Standing Counsel on the provisions contained under Article 323-A of the Constitution. Before expressing any opinion on the aforesaid contention of the learned Standing Counsel, it is worthwhile to quote the relevant provision which runs thus :-

323-A(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or by any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government".
(Underling is done by us)

From the above quoted provision, it is crystal clear that the Parliament intends that the Administrative Tribunal should adjudicate disputes and complaints not only with regard to condition of service of the persons appointed ~~and~~ and working under the Central Government but the provision quoted above also contemplates that the Administrative Tribunals would hear and adjudicate matters relating to recruitment of persons appointed to public services and posts in connection with the affairs of the Union etc. Learned Standing Counsel contended that the



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word recruitment used in this Article means appointment of a particular person after recruitment and it is needless to repeat that the learned Standing Counsel contended that no grievance of a person in regard to the form or manner of recruitment could be challenged before the Tribunal. We are unable to accede to this proposition of law enunciated by the learned Standing Counsel because the process of recruitment starts from the date of filing of the application till the final results are published and the candidates are appointed and therefore in consonance with the provision contained under Article 323-A of the Constitution, Parliament in its wisdom correctly and rightly adopted the same in the provision contained under section 14 of the Administrative Tribunals Act, 1985. Section 14 of the Act runs thus :

- " (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to -
- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian".

In regard to the aforesaid provision contained under section 14 of the said Act , it was contended by the learned Standing Counsel that 'matters concerning recruitment ' not having mentioned in Article 323-A of the Constitution , the Tribunal has no jurisdiction

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to entertain matters concerning any recruitment. There is no dispute regarding the fact that no subordinate legislation can over-ride the provision contained in the Constitution but the subordinate legislation can supplement or exemplify the provision contained in the Constitution. Therefore, while enacting Administrative Tribunals Act, the Parliament being fully aware of the fact that the words 'matters concerning recruitment' was not mentioned in Article 323-A of the Constitution, supplemented the same in Section 14(a) of the Administrative Tribunals Act for which, in our opinion, no illegality has been committed and therefore, we find no merit in the aforesaid contention of the learned Standing Counsel.

6. Taking into consideration the aforesaid facts and circumstances, we find that the apprehension of the applicant that an arbitrary order has been passed in the present case cannot be completely turned down and therefore, appointment, if any, made to the above mentioned post hereby stands cancelled and after condoning the delay of one day in receipt of the application of the applicant, we would direct that the case of the candidates for the said post including the applicant be considered by the competent authority and after due consideration orders be passed according to Rules for appointment of one such candidate to the said post who would be found suitable and efficient by the competent authority.



XI

14 (15)

7. In the result , this application stands
allowed leaving the parties to bear their own costs .

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Member (Judicial) 0

B.R.PATEL, VICECHAIRMAN.

I agree.

B.R. Patel
.....
Vice Chairman.
7.10.86

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 7, 1986/ S. Sarangi.

