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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.86 OF 1986.

Date of decision : October 30, 1987.

Madhaba Prusty, S/o late Gopal Prusty,
At present residing At/P.O.Sampur, Dist.
Puri. ...

Applicant.

Versus

1. Sub-Divisional Inspector, Department of Posts
India, Nayagarh East Sub-Division, At/P.O./
Munsifi-Nayagarh, Dist. Puri.
2. Post Master General, Orissa, Office of the
P.M.G., At/P.O./Munsifi-Bhubaneswar, Dist.
Puri.
3. Union of India, represented through Secretary,
Ministry of Communication, New Delhi.

... Respondents.

For the applicant ... M/s.R.K.Rath,&
B.R.Sarangi, Advocates.

For the Respondents ... Mr.A.B.Mishra, Senior Standing
Counsel (Central).

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).

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *NO*.
3. Whether Their Lordships wish to see the fair-copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, Annexure-2 containing the termination of service of the applicant under Rule 6 of the Posts & Telegraphs Extradepartmental Agents (Conduct and Service) Rules, 1964 is under challenge.

2. Shortly stated, the case of the applicant is that he was appointed as an Extra-departmental Delivery Agent in Sampur Branch Post Office with effect from 28th August, 1984 vide Annexure-1 and he worked as such till 17th April, 1986 when his services were terminated under Rule 6 of the P & T Extradepartmental Agents (Conduct and Service) Rules, 1964. Hence the applicant prays to quash Annexure-2 and direct his reinstatement to the post in question.

3. In their counter the respondents maintained that in response to the notification inviting applications to fill up the post of Extradepartmental Delivery Agent, Sampur six candidates had filed their applications including the present applicant and one Shri P.K.Choudhury. According to the respondents, Shri P.K.Choudhury was a Matriculate and the Sub-Divisional Inspector (), Nayagarh East Sub-Division committed an irregularity by appointing the applicant (who was a pluck Matriculate in preference to Shri P.K.Choudhury, a candidate who was a Matriculate. In such circumstances the higher authorities had rightly terminated the services of the applicant and have appointed Shri P.K.Choudhury. In the impugned order no stigma having been cast on the applicant, the application filed before this Bench deserves no merit and is liable to be dismissed.

4. We have heard Mr. Rajat Kumar Rath, learned counsel for the applicant and Mr. A.B. Mishra, learned Senior Standing Counsel (Central) at some length. No doubt the higher authorities have a right to terminate the services of a particular incumbent under Rule 6 of the P & T Extradepartmental Agents (Conduct and Service) Rules, 1964 but such termination should not be made without considering all aspects. The appointing authority has to exercise some amount of discretion vested in him under the law. No doubt, a Matriculate has to be preferred to a plucked Matriculate but this cannot be of a general application. Many things are to be taken into consideration while appointing a particular person to a particular post and those things must have been taken into consideration by the appointing authority. So long as there is no evidence that such discretion was exercised by the appointing authority in an arbitrary or capricious manner or with a motive/feel that the discretion exercised by the appointing authority should not be interfered with. In the present case there is absolutely no iota of allegation against the appointing authority that he had exercised his discretion in a capricious manner or with certain motives. Had it been so we would have been least reluctant to uphold the order of appointment issued in favour of the applicant. That apart, the applicant was appointed since 20.8.1984 and he served as such for about two years and there appears no adverse report against the applicant. Such being the position, we feel that there was no justification on the part of the higher authorities to terminate the services of the applicant.

5. It was urged by learned Senior Standing Counsel (Central) that Shri P.K. Choudhury not having been made a party in this application, the petitioner is liable to be dismissed on account of non-joinder of proper parties. This contention of learned Senior Standing Counsel (Central) has no force because the grievance of the applicant is against the competent authority terminating his services. Therefore, there was no necessity on the part of the applicant to array Shri P.K. Choudhury as one of the respondents.

In the circumstances stated above, the termination of service of the applicant contained in Annexure-2 is hereby quashed and it is directed that the applicant be reinstated into service forthwith

6. Thus, this application stands allowed leaving the parties to bear their own costs.

kg. dec. 30/10/87

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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

g agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 30, 1987./S. Sarangi.

B.R.Patel
30.10.87
"Vice-Chairman"