

4

111

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.320 of 1987.

Date of decision : August 10,1989.

Sri Sudam Charan Behera, aged about 37 years,
son of late Purna Chandra Behera, At/P.O.Padmapur,
Via-Anandapur, District-Keonjhar.

... Applicant.

Versus

1. Union of India, represented by the
Postmaster General, Orissa Circle,
Bhubaneswar-751001. Dist-Puri.
2. Superintendent of Post Offices,
Keonjhar Division,Keonjhargarh-758001.
District-Keonjhar.
3. Sub-Divisional Inspector (Postal),
Ghatagaon Sub-Division,
Ghatagaon-758027.Dist-Keonjhar.
4. Sri Kirtan Behari Naik,
E.D.M.C.,Salabani Branch Post Office,
At/P.O.Salabani,Via-Anandapur,
Dist.Keonjhar.

... Respondents.

For the applicant ... M/s.P.V.Ramdas,
B.K.Panda, Advocates.

For the respondents 1 to 3 ..Mr.Ganeswar Rath,
Senior Standing Counsel (Central)

For the respondent No.4 ... M/s.B.K.Beura,K.K.Panigrahi,
S.Sethi, Advocates.

C O R A M :

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

A N D

THE HON'BLE MR.N.SENGUPTA, 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.
-

J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, The applicant was one of the 15 (fifteen) applicants who applied for the post of Extra-Departmental Mail Carrier (EDMC), of Anandapur (O) to Salabani Branch Post Office under Kananjargarh Head Office in pursuance to the advertisement published by the Notification No. BE/65-1 dated 31.1.1986, copy of which is at Annexure-1. He was selected and appointed temporarily and provisionally as EDMC, Salabani vide order dated 15.5.1985, copy of which is at Annexure-2. His appointment was however cancelled on 13.7.1987 (Annexure-3). His representation dated 31.7.1987 got no reply from the authorities. The applicant has prayed for quashing the order dated 13.7.1987 cancelling his appointment as EDMC, Salabani.

2. The respondents have maintained in their counter that due to some grave irregularities committed in the process of selection by the Sub-Divisional Inspector (Postal), the Post Master General, Orissa Circle, who is the head of the department after preliminary enquiry ordered cancellation of the appointment.

4. We have heard Mr. P.V. Ramdas, learned counsel for the applicant and Mr. Ganeswar Rath, learned Senior Standing Counsel (Central) for the respondents 1 to 3, and perused the papers. The facts are admitted. Mr. Ramdas has brought to our notice a judgment of the Punjab & Haryana High Court in the case of Subhashni Mahajan v. The State of Punjab and others reported in 1984 (1) SLR 441. In the case before the Punjab & Haryana High Court the petitioner was a J.B.T. teacher, who challenged the order of the Deputy District Primary Education Officer, Gurdaspur dated June 16, 1978 cancelling her promotion to the

Ambedkar

selection grade on the ground that the cancellation was violative of the principles of natural justice inasmuch as no notice or hearing was afforded to the petitioner before cancellation of the earlier order in her favour. The High Court have observed as follows :

" By now it is well laid down that before an order to the prejudice of a civil servant can be passed, he/she has to be afforded a due opportunity of hearing to contest the same. That not having been done, I see no option but to quash the order Annexure P.4 so far as it relates to the petitioner. ".

Mr.Ramdas has also brought to our notice a judgment of this Bench in the case of Jiten Kumar Swain v. Union of India and others reported in ATR 1987 (1)CAT 306. Mr.Ramdas made pointed reference to the following observations of the Bench in the aforesaid case.

" A right once endowed in a particular person cannot be divested from him merely because a mistake had been committed by the departmental authority.

On the basis of this judgment Mr.Ramdas contended that if at all irregularities were committed by the Department, the applicant should not be made to suffer its consequences.

5. Mr.Ganeswar Rath, on the other hand, has drawn our attention to paragraph 3 of the counter and argued that the irregularities were of very serious nature inasmuch as the cases of some of the applicants for the post were not properly considered and further that the case of a particular applicant who was the son of one of the deceased employees of the Department was given no consideration before selecting the applicant as EDMC. Non-consideration of the case of the son of the deceased employee was violative of the instructions issued by the Director General (Posts) and the improper rejection of the candidature of other

Amul

7 (VI)

applicants has resulted in miscarriage of justice. In view of this, according to Mr. Rath, the Head of the department, Post Master General, Orissa Circle, after making enquiry into these allegations ^{had} ~~have~~ come to the conclusion that justice had not been rendered and proper selection should be made and on his having come the conclusion he ordered, cancellation of the appointment of the present applicant to the post of EDMC. Therefore, the Sub-Divisional Inspector (Postal) vide his order dated 13.7.1987 (impugned order) cancelled the selection and appointment of the applicant (vide Annexure-3). According to the judgment cited by Mr. Ramdas opportunity should usually be afforded to the persons in whose favour some right has accrued either through the order of promotion or order of fresh appointment to a post or service. This is, according to us, the ordinary proposition of law in normal circumstances. In this case, however there are certain peculiarities which, we think should be taken into account before coming to a conclusion. We are convinced that the procedure adopted by the Sub-Divisional Inspector (Postal) in the matter of selection of the applicant suffered from serious irregularities inasmuch as in this case the candidature of some of the applicants to the post of EDMC was improperly or without proper consideration were rejected. We are also of the view ^{that} if irregularities have been committed at a lower level by officials, the higher authorities of the Department have every right to correct the irregularities, ofcourse by following the proper procedure. In this case, we have found that the Post Master General who is the Head of the Department has

Amul

caused enquiry into the complaints which were received by him in the matter of improper selection and appointment of the applicant and it was on his order that the selection and appointment of the applicant was cancelled by the Sub-Divisional Inspector (Postal). In consideration of these peculiar facts and circumstances, we have come to the conclusion, it will not be proper to quash the order dated 13.7.1987 (Annexure-3) cancelling the selection and appointment of the applicant. It was brought to our notice that the son of the deceased employee has since been appointed on sympathetic ground as EDMC, Salabani Branch Office. However, we are aware of the hardship that has been caused to the applicant because of the procedure followed by the departmental authorities. The applicant will in no way be held responsible for the action of the Department. It will, therefore, be appropriate, in our view, that the Department adjusts the applicant against any of the ED posts available near about Salabani as soon as possible.

6. The application is accordingly disposed of leaving the parties to bear their own costs.

N. SENGUPTA, MEMBER (J)

I agree.



.....
Vice-Chairman

.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 10, 1989/Saranghi.