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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.130 of 1988.

Date of decision : December 22, 1989.

Sri Narayan Rath, aged about 35 years,
son of Lingaraj Rath, At.Raghunathpur,
P.O.Kahala, District-Puri.

... Applicant.

Versus

1. Union of India, represented by Secretary,
Department of Communication, New Delhi.

2. Post MasterGeneral,Orissa.
Bhubaneswar,At/P.O.Bhubaneswar,
Dist.Puri.

3. SeniorSuperintendent of Post Offices,
Bhubaneswar Circle,At/P.O.Bhubaneswar,
Dist.Puri.

4. Inspector of Post Offices,Nimapara
Sub-Division,At/P.O./P.S.Nimapara,
Dist.Puri.

5. Sri Abadut Mallick,aged about 26 years,
son of Sri Bharat Mallick,At/P.O.Kahala,
P.S.Kakatpur, Dist.Puri.

... Respondents.

For the applicant ... M/s.S.K.Patnaik,
B.N.Nayak,Advocates.

For the respondents ... Mr.Aswini Kumar Misra,
Sr.Standing Counsel (CAT)

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.

JUDGMENT

N.SENGUPTA, MEMBER (J) The facts material for this application, stated in brief, are that the present applicant had been working as an Extra-Departmental Delivery Agent, for short EDDA, under Bhubaneswar Division from 23.2.1982 till 21.1.1984 when his services as such EDDA were terminated. Against this order of termination, the applicant moved the High Court of Orissa in original jurisdiction which stood transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985 and was registered as T.A.81 of 1987. While refusing the relief prayed for by the applicant in that case this Tribunal observed that if the applicant subsequently applies for a post, his past experience should be taken into consideration. It is alleged that subsequent to the passing of the judgment in the earlier case i.e. T.A.81 of 1987, a post of EDDA at Kahala Post Office under Kakatpur Sub Office fell vacant. Applications in due course were invited and the present applicant was one of the aspirants for that post. The Department appointed Respondent No.5 to the post. Against this appointment of Respondent No.5 as EDDA, the present application has been filed claiming the relief of quashing the selection of Respondent No.5 and directing the respondents to fill up the post treating the same as unreserved one. It has further been averred in the petition that the Respondents i.e. the Departmental authorities did not take into consideration the fact of pendency of a criminal case against Respondent No.5, that was a case of assault and outraging the modesty of a woman.

*M. Sengupta
Expt. No. 12/81.*

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3. The respondents 1 to 4 have filed a counter wherein they have maintained that the case of the present applicant was considered but, however, as Respondent No.5 is a person belonging to the Scheduled Caste, under the Rules he was entitled to get preference. They have further stated that they do not deny the allegations about the filing of a criminal case against Respondent No.5 but mere making a first information report or placing a charge sheet against the person does not tantamount to finding him ~~the real~~ guilt of the ^{alleged} offence against him. So, according to them, the chargesheet was meaning-less in the face of the certificates of the two gazetted officers which certified ^{of} Respondent No.5 being of good moral character.

4. We have heard Mr. B. N. Nayak, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for Respondents 1 to 4. Mr. Nayak contended that the application submitted by Respondent No.5 was not in order and in this connection he has drawn our attention to Annexure-A/4. As may be found from Annexure-A/4 it is simply a proforma and nothing is there as to how this was filled in. Therefore, it is of no avail to the applicant. On going through the application it can be found that no allegation of any wrong information having been supplied by Respondent No.5 has been made. Therefore, the contentions of Mr. Nayak that Respondent No.5 misled the Department is unacceptable. Moreso, in view of the averments made in their counter where they have taken the specific stand that mere filing of a charge sheet does not amount to finding of the guilt of the person so charged.

*Mr. B. N. Nayak
22/11/19*

5. Mr. Nayak has very strenuously contended that in view of the counter of the Respondents 1 to 4 it may be found that they treated the post of Extra-Departmental Delivery Agent as reserved one. We are unable to countenance this contention. No doubt they gave preference to Respondent No. 5 as he belonged to Scheduled Caste but there is an essential difference between reservation and preference, in the first case, that is reserved for a particular category to which no person of any other category could be appointed unless certain contingencies happen whereas in the latter, a person is not debarred from being appointed, as between the two persons almost similarly circumstances one has to be preferred to the other. In this view of the matter, we are unable to grant the second relief that the applicant has prayed for in this application i.e. to treat the post as unreserved as infact it is not.

6. Mr. Nayak has next contended that the past experience of the applicant was not taken into consideration. In paragraph 6 of the counter we find that infact the Department took into account the previous experience of the candidates who applied for that post and there is specific mention of one Bibhuti Phusan Panda having had a longer period of service than the present applicant. That Bibhuti Phusan Panda had filed another application before this Tribunal where this Tribunal observed that the previous experience of Shri Panda should be taken into consideration as and when subsequently he would apply for the post. It appears that the Department took into consideration the past experience of Bibhuti Phusan Panda as well as that of the applicant, being faced with this situation,

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22/12/89.

Mr. Nayak has contended that as Bibhuti Bhusan Panda was not a Matriculate he could not be selected. Therefore, the consideration of the length of service of the said Bibhuti Bhusan Panda was beside the point. Previously there was no provision for giving preference to Matriculates while appointing as Extra-Departmental Delivery Agents but subsequently a general provision for preferring Matriculates for appointment to all the posts of ED Agents was made. Therefore, it may be said that in appointing persons as ED Agents, Matriculates may be preferred. It is found that Respondent No.5 is really a Matriculate, therefore, even if it is accepted that a Matriculate is to be preferred over lesser qualified ones, Respondent No.5 came within the preferential category so far as the educational qualification is concerned.

7. The last of the contentions which has been very vehemently urged by Mr. Nayak is with regard to F.I.R. and chargesheet filed against Respondent No.5. On a perusal of the F.I.R. it would be found that some others were accused of outraging the modesty of a woman but not Respondent No.5 though the police filed an omnibus chargesheet stating everybody to be accused of offence punishable under sections 341/323/294/354 read with section 34, I.P.C. True it is that if a person is accused of an offence which amounts to moral turpitude that may be a disqualification but where the allegations themselves do not make out such an offence it will be difficult to say that the person will be debarred from being appointed. That apart, we would accept the contention of Mr. Misra, learned Sr. Standing Counsel for the

Mr. Nayak

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Respondents that mere filing of a chargesheet does not prove the commission of the offence.

8. Since none of the contentions raised by Mr. Nayak is sustainable, we would dismiss the application but all the same we would observe that in an appropriate case if and when vacancy would arise, and there is scope for appointment, the applicant's case may be considered, taking into account his past experience. There would be no order as to costs.

Meenakshi
22/12/89
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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

Ramachandran
22.12.89
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 22, 1989/Sarangi.

