

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO.135 OF 1988.

Date of decision - 6th September, 1989.

Tankadhar Harijan, S/o Birasing Harijan
Extra-Departmental Branch Postmaster,
of Kukudaboi Branch Post office,
P.O. Kukudaboi, P.S. Nawarangpur,
District-Koraput.

... Applicant

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1. Union of India through
Postmaster General, Orissa,
At and P.O. Bhubaneswar, Dist-Puri.
2. Senior Superintendent of Post offices,
Koraput Division, At/P.O. Jeypore,
District-Koraput.
3. Sub-Divisional Postal Inspector,
Nowarangpur Subdivision,
At/P.O. Nawarangpur, Dist-Koraput.
4. Ananta Padhi,
Kukudaboi Sub-Post office,
At/P.O. Kukudaboi, Dist-Koraput.

.... Respondents

Mr. G.N. Misra, Advocate For Applicant

Mr. Tahali Dalai, Additional
Standing Counsel(Central) For Respondents

CORAM :

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SEN GUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers have been permitted 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 is an Extra-Departmental Branch Postmaster (hereinafter referred to as the 'E.D.B.P.M.') of Kukudaboi Branch Post office in the district of Koraput. He was provisionally selected for the post and an intimation was sent to him to this effect by order bearing No. Hk-193 dated 2.2.81 of the Senior Superintendent of Post Offices, Koraput Division, Jeypore (K), a copy of which is at Annexure-1. He was provisionally appointed to the post with effect from 2.3.81 by Memo No.H/K-193 dated 16.4.81 issued by the Senior Superintendent of Post Offices, Koraput Division, Jeypore(K) who was the appointing authority, a copy of which is at Annexure-2. The Senior Superintendent of Post Offices, Koraput Division put the applicant off duty by his Memo No.H/K-193/PF dated 19.10.87 (Annexure-5) in view of pendency of an enquiry against him. The appointing authority thereafter by his Memo No.H/K-193/PF(Sub) dated 17.2.88 (Annexure-6) framed charges against the applicant which was served on him along with the statement of imputations of misconduct in support of the articles of charges. The relief sought by the applicant is to quash the order, a copy of which is at Annexure-5 and to reinstate him in service.

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2. The respondents have maintained in their counter that as the applicant did not have the prescribed educational qualification, a disciplinary proceeding has been started against him and as there is no irregularity in starting a disciplinary proceeding under Rule 8 of the Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964, the proceeding should go on and the order putting the applicant off duty should not be interfered with.

3. We have heard Mr. G.N. Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel for the Central Government and perused the relevant papers. There is only one article of charge which reads as follows :

" Sri Tankadhar Harijan, ED B.P.M. Kukudabai BO in account with Nowrangpur SO did not possess the requisite educational qualification i.e., Class VIII passed at the time of his appointment and as such Sri Harijan got appointment at ED B.P.M., Kukudabai BO with effect from 2-3-81 having less educational qualification inasmuch as he has passed only Class VIII."

Mr. Misra has contended that the applicant did not misrepresent about his educational qualification when he applied for the post. He duly submitted the transfer certificate from the school where he had his schooling to the competent authority. According to this certificate, vide item 10, the applicant had passed VIIth Class and the reason for his leaving the school was 'to read somewhere'. Mr. Misra has also drawn our attention to the following portion of the statement of imputations of misconduct etc :

" Since no other suitable candidate applied for the post, Sri Harijan was appointed provisionally as ED BPM, Kukudabai BO w.e.f. 2.3.81 vide this office

memo No.H/K-193 dt.16.4.81 "

and also to the following few lines occurring in paragraph-5 of the counter of the respondents :

" Though the applicant has passed only class VII against the minimum requisite educational qualification of class VIII as cited in the advertisement, he was appointed provisionally as ED BPM since no other suitable candidate was available at the time of selection."

According to Mr. Misra, the department has made the applicant to work when there was nobody available and to ask him to go ~~was most~~ after nearly seven years ~~for~~ ^{now} ~~most~~ iniquitous and unfair. He has further argued that when a competent authority appointed him as ED B.P.M. knowing fully well that he had passed only Class VII, the implication was that the deficiency in the educational qualification was condoned or the educational qualification was relaxed. In view of this, according to Mr. Misra, there was no justification for initiating any departmental proceedings against the applicant on the ground of deficiency in the educational qualifications. He has therefore prayed that in addition to quashing the order at Annexure-5 the Tribunal should quash the charge in the disciplinary proceedings at Annexure-6 also.

4. Mr. Tahali Dalai on the other hand has argued that no order relaxing the educational qualification has been produced by the applicant and as the applicant did not possess the ^{the} qualification prescribed he has to vacate the post for one who has ~~the~~ requisite qualification. According to Mr. Dalai, there is absolutely no ground for quashing the disciplinary proceedings started against the applicant and for quashing put-off order as at Annexure-5. Mr. Misra has drawn our attention to our judgment in O.A.No.77/87 which

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was delivered on 30th March, 1988. The case in O.A.77/87 was similar to one before us. The difference in O.A.No.77/87 is that the petitioner's appointment as Extra-Departmental Delivery Agent was cancelled whereas in the present case, a departmental proceeding is pending against the applicant. In both the cases, however, the ground taken by the department was lack of requisite qualification. In both the cases the department took action against the applicants after a long lapse of time. In O.A.77/87 we have held as follows :

"4. ... The petitioner has served the Department from the year 1982 to the year 1987. Before appointment when the papers were scrutinised by the concerned authority it should have attracted their attention. The competent authority failed to devote its attention and it is unjustifiable to terminate the services of a particular person against whom there is no adverse report long after five years which cannot but be kept in view. The very same view has been taken by the Calcutta Bench in a case reported in A.T.R.1987(2)C.A.T.587 (Raipada Biswas v. Union of India and others). In the said case the petitioner Raipada Biswas had been appointed as an Extra Departmental Branch Post Master of a particular post office and two years after his appointment it was found that he did not belong to the post village. Therefore, his services were terminated under Rule 6 of the P & T E.D.A. (Conduct and Service) Rules, 1964. The Hon'ble Judges in the said case observed as follows :

' In addition we get Annexure-B which also shows that knowing it full well that the applicant was a resident of village Raipur within Post Office Bhairabchandrapur his selection to the post of Extra-departmental Branch Post-Master of Bhairabchandrapur Branch Post Office had been approved by the Superintendent of Post Offices, Nadia South Division. After that the applicant joined his post on 7.8.1985 and was allowed to work upto 24.4.1987 when suddenly his service was terminated. It is not understandable to us as to why the fact that the applicant was a non-resident of the village where the

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post office is located could escape the notice of the appointing authority. After allowing him to work for about 2 years sudden detection of that matter does not justify the termination of his service as has been done in this case.'

We fully agree with this view taken by the Calcutta Bench and therefore we would say that it was not justified on the part of the appropriate authority to terminate the services of the petitioner after he worked for five years."

5. In the present case, the applicant had served more than six years when he was put off duty and charge was framed nearly four months thereafter. In view of the similarity between the two cases, we find no reason to make any departure from the views held by us in O.A.No.77/87 and as such we quash the Memo No.H/k-193/PF dated 19.10.87(Annexure-5 and Memo No. [redacted] dated 17.2.88 (Annexure-6).

6. In the result, the petition succeeds. There shall be no order as to costs.

Ansah 6.9.89

.....
VICE- CHAIRMAN.

N. SEN GUPTA, MEMBER (JUDICIAL)

I agree



Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Mea Sept 6. 6.9.89
.....
MEMBER (JUDICIAL)

The 6th September, 1989/ Jena, Sr.P.A.