

V

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

10

Original Application No.214 of 1988.

Date of decision : November 18, 1988.

Benudhar Das, aged about 36 years,
son of Anam Charan Das, at present
working as E.D.B.P.M., Mulagaon,
E.D.B.O., Jagatsinghpur, District-Cuttack.

... Applicant.

Versus

1. Union of India, represented by its Secretary in the Department of Posts, Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle, At/P.O. Bhubaneswar, District-Puri.
3. Assistant Superintendent of Post Offices In Charge, Jagatsinghpur Sub-Division, P.O. Jagatsinghpur, District-Cuttack.
4. Surendranath Das, son of Harekrushna Das, village-Mulagaon, Kaduapada, District-Cuttack.

... Respondents.

For the applicant ... M/s. Deepak Misra,
Anil Deo, Advocates.

For the Respondents 1 to 3 : Mr. A.B. Mishra, Senior Standing Counsel (Central)

Mr. Tahali Dalai, Addl. S.C. (C).

For the Respondent No. 4 Mr. S.K. Mohanty, Advocate.

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 ? *Y*
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, the applicant challenges the order passed by the competent authority selecting the Respondent No. 4, Shri Surendranath Das in the post of Extra-Departmental Branch Postmaster, Mulagaon within the district of Cuttack.

2. Shortly stated, the case of the applicant is that initially he was working as an Extra-departmental Delivery Agent in Mudupur Post Office within the district of Cuttack. The post of Extra-departmental Branch Postmaster, Mulagaon having fallen vacant the applicant was relieved from the post of Extra-departmental Delivery Agent, Mudupur and was directed to discharge the duties of the Extra-departmental Branch Postmaster, Mulagaon pending final selection. As an interim measure the applicant took charge on 5.5.1987 and the case of several candidates was considered by the competent authority though the case of the applicant was not considered and ultimately the Respondent No. 4 was selected for the said post. Hence, the applicant has a grievance because his case was not considered and therefore this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that no illegality having been committed in the matter of selection of Respondent No. 4, the impugned order should not be unsettled. Furthermore, it is maintained on behalf of the Central Government that the present applicant did not submit any application in the prescribed proforma for the

said post and therefore his case was not rightly considered by the concerned authority. Hence, it is maintained by the Central Government that the case being devoid of merit is liable to be dismissed.

Respondent No.4 has filed a counter separately adopting the same stand as has been taken by the Central Government.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel for the Central Government and Mr. S. K. Mohanty, learned counsel for the Respondent No.4 at some length. Before we express our opinion on the merits of the case, it would be profitable to state certain facts for better appreciation of the contentions advanced on behalf of the parties before us. Vide Annexure-R/2 dated 10.6.1987 the Superintendent of Post Offices, Cuttack South Division sent a requisition to the Junior Employment Officer, Jagatsinghpur requesting him to act on the requisition memo attached thereto and send requisite names for appointment to the post of Extra-departmental Branch Postmaster, Mulagaon and such names should be sent within 30 (Thirty) days. It further appears from the record that there was no response from the Employment Officer within thirty days but vide his letter No. 1338 dated 15.9.1987 the Junior Employment Officer, Jagatsinghpur sent names of about 15 persons to the Superintendent of Post Offices in response to the letter, Annexure-R/2. From the counter, it appears

that prior to receipt of the names from the Employment Exchange and after the lapse of 30 days the competent authority invited applications from the open market and after considering the case of all the applicants from the open market and also the case of the candidates sponsored by the Employment Exchange, selected Respondent No.4 though the application filed by the applicant on 14.9.1988 was not considered by the competent authority. At the outset we may say that an illegality has been committed by the competent authority in considering the cases of persons sponsored by the Employment Exchange because Rule 11(5) contained in Swamy's compilation of Service Rules for Posts and Telegraphs Extra-Departmental Staff stands as a bar for the action taken by the competent authority in entertaining the reply given by the Employment Exchange, sponsoring certain names. Rule 11(5) reads thus :

" In case no nominations are received from the employment exchanges regarding the candidates as per requirements within the stipulated period of 30 days or if any of the candidates sponsored by the Employment Exchange is not found suitable as per prescribed conditions of eligibility, it would be open to the competent recruiting authority to make selection from other applicants in accordance with the existing procedure. "

Discretion is given to the competent authority to consider the candidature of the persons sponsored by the Employment Exchange only when it is received within a period of 30 days. But in the present case, the names sponsored by the Employment Exchange having been considered long after lapse of 30 days it was ^{an} the illegality committed on the part of the

competent authority to have considered the same. Therefore, such consideration is hereby held to be ~~an~~ initio void. Now remains the consideration of the candidature of different persons from the open market. It was vehemently urged by Mr. Tahali Dalai and so also by Mr. Mohanty that there being no valid application filed by the applicant in the prescribed proforma by the last stipulated date, it was not obligatory on the part of the competent authority to consider the application filed by the applicant on 14.9.1987 contained ~~w~~ in Annexure-R/13. True it is that it was not within time but we cannot lose sight of the fact that the applicant is already an employee in the Postal Department and under the orders of the competent authority he has been asked to temporarily discharge the duties of the Extra-departmental Branch Postmaster, Mulagaon. Therefore, we are of opinion that the delay in filing of the application by the applicant should have been liberally viewed and we may go to the extent of saying that the competent authority should have condoned the delay. In past ~~w~~ in some cases we have directed condonation of delay. Taking into consideration all the facts and circumstances stated above, we would direct that the reply of the Junior Employment Officersponsoring the names after lapse of 30 days is not legally entertainable for consideration and we would further direct that the case of the applicant, Respondent No.4 and other candidates who had made applications in response to the advertisement inviting applications from open market be considered afresh and

he who ever is found suitable be appointed to the post in question.

5. Before we part with this case we must record the fact that we have quashed the selection of Respondent No.4 should not weigh with the selecting authority. He is at liberty to make his own independent ^{Conclusion} ~~session~~ regarding the suitability of the applicants including the applicant and Respondent No.4 and thereafter reach his own conclusion. Necessarily Annexure-2 is quashed. It was admitted before us that the present applicant is still continuing as Extradepartmental Branch Postmaster, Mulagaon as an interim arrangement. He is allowed to continue as such but the selection should be finalised within 30 days from the date of receipt of copy of this judgment and the person who would be selected should take charge within 7 (seven) days therefrom and in case the present applicant is not selected, he must hand over charge without deferring the matter on ^{one} any pretext or the other.

6. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

*Leave apply
18-11-88*
.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

*Nov 18, 1988
Vice-Chairman*
.....

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 18, 1988/S.Sarangi.