

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.23 of 1988

Date of decision : November 22, 1988.

Bhagirathi Mohanty, At/P.O. Adhuan,
P.S. Basudevpur, District-Balasore.

...

Applicant.

Versus

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle, At, P.O. Bhubaneswar, Dist-Puri.
3. Superintendent of Post Offices, Bhadrak Division, Bhadrak, District- Balasore.
4. Ganesh Prasad Sahoo, son of Gopal Prasad Sahoo, At/P.O. Adhuan, Via-Basudev Pur, Dist-Balasore.

... Respondents.

For the applicant	...	M/s. Devanand Misra, Deepak Misra, R.N. Naik, R.N. Hota, Anil Deo, Advocates.
For the respondents	...	Mr. A.B. Mishra, Senior Standing Counsel (Central)
For the intervenor	...	M/s. P.V. Ramdas, B.K. Panda, Advocates.

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 ? Yes.
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 prays to quash the notification contained in Annexure-2 inviting applications for filling up of the posts of Extra-departmental Branch Postmaster, Adhuan within the district of Balasore.

2. Shortly stated, the case of the applicant is that he was appointed as Extra-departmental Branch Postmaster of Adhuan Post Office after he was exonerated from the charges levelled against him. Since there was some irregularity in his appointment, the present Respondent No. 4, Ganesh Prasad Sahoo invoked the extraordinary jurisdiction of the Hon'ble High Court of Orissa by filing an application under article 226 of the Constitution which formed subject matter of O.J.C. 1762 of 1984 praying therein to quash the order of appointment issued in favour of the present applicant. The said O.J.C. was transferred to this Bench under section 29 of the Administrative Tribunals Act, 1985, and it was renumbered as Transferred Application No. 367 of 1986. The judgment in the said T.A. 367 of 1986 was delivered on 2.9.1987 and therein we cancelled the appointment of both the present applicant issued by the Postmaster General and that of Shri Ganesh Prasad Sahoo (Respondent No. 4 in this application) who was appointed by virtue of an order passed by the Superintendent of Post Offices, Balasore. This Bench further directed that fresh applications be invited from candidates and the case of the candidates be considered and thereafter, order of appointment be issued according to law. In compliance with the directions issued by this Bench in the aforesaid case,

fresh applications were invited and it is said that along with others both the present applicant and Respondent No.4 had made applications for appointment to the said post of Extradepartmental Branch Postmaster of Adhuan and the further grievance of the present applicant is that his case having not been considered by the competent authority as he has not come within the consideration zone having not passed Standard VIII, it is therefore prayed to quash the appointment of Respondent No.4.

3. Both Central Government and Respondent No.4 have filed counter separately. It is maintained on behalf of the Central Government that the notification issued by the competent authority being according to Rules it should not be quashed.

The contention of Respondent No.4 in his counter is that the applicant not having passed Standard VIII examination, the Superintendent of Post Offices, has rightly excluded the case of the application from consideration especially because he does not belong to the post village.

In a nut-shell it is maintained by the Respondent No.1 and so also by the Central Government that the case being devoid of merit, is liable to be dismissed.

4. We have heard Mr. Deo, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) and Mr. P. V. Ramdas, learned counsel appearing for Respondent No.4 at some length. We have heard Mr. P. V. Ramdas because Respondent No.4 was allotted to intervene in the matter.

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5. Before we express our opinion on the contentions advanced by counsel appearing for different parties mentioned above, it is worthwhile to state few facts. After disposal of Transferred Application No.367 of 1986 a review application was filed by the present applicant i.e. Bhagirathi Mohanty to review our judgment passed in T.A. 367 of 1986 urging there-in to recall the directions contained in our judgment to invite fresh applications. At the stage of admission we passed a reasoned order and we did not feel inclined to review our judgment in T.A. 367 of 1986 and therefore, it was not admitted and hence dismissed. Under such circumstances, our directions contained in our judgment passed in T.A. 367 of 1986 still stands. Mr. Deo contended on behalf of the applicant that the applicant having been once appointed as Extradepartmental Branch Postmaster of Eram Sub-Post Office, the authorities had appointed him keeping in view the rules on the subject especially relating to the question of qualification. At the time of appointment to such post the applicant had also qualified himself i.e. in the equivalent ~~class~~ of Standard VII and he had been appointed. It was further contended ~~that~~ by Mr. Deo that in such circumstances, the Superintendent of Post Offices has completely gone wrong in excluding the case of the applicant from consideration on the question of qualification. In order to repudiate the contention advanced by Mr. Deo, it was submitted by Mr. Ramdas that the prescribed qualification is Standard VIII (Matriculation or equivalent may be preferred to). Therefore, according

to Mr. Ramdas no illegality has been committed by the Superintendent of Post Offices and the case of the applicant should not be considered. Further contention of Mr. Ramdas is that the advertisement being according to Rules, it is liable to be quashed.

6. We have gone through the relevant rules and directions contained in our judgment. In last paragraph of our judgment we have stated,

" None of our observations would affect the petitioner's case and O.P.No.3 when they would be considered by the authority for appointment xx"

At the cost of repetition, ^{we say that} the petitioner is Ganesh Prasad Sahoo and O.P.No.3 is Bhagirathi Mohanty (who is the applicant in the present case). Having once expressed that the case of the petitioner and the O.P.No.3 should be considered for appointment, the Superintendent of Post Offices has no discretion in the matter but to carry out our directions.

We had given such a direction especially because the petitioner had been appointed to the post of Extradepartmental Sub-Postmaster, Eram and thereafter he was appointed as Extradepartmental Branch Postmaster, Adhuan under the orders of the Postmaster General, because he was a retrenched candidate. In this connection, we would also notice the directions of the Director General, Posts & Telegraphs, in letter No.27-3/77 (Pt) dated 19.8.1978 the crux of which have been stated in Swamy's compilation of Service Rules for Extra-Departmental Staff in Postal Department, 1987 Edition which runs thus :

" It has been brought to notice that post offices are being closed as a result of the instructions, but the ED Agents in those post offices are not being offered any alternative employment and are thus thrown out of their jobs. In this connection attention is invited to D.G., P & T. Letters No. SPB 295-4/53, dated 8-8-1953 and 43-24/64-Pen., dated 12-4-65. This is to clarify that these orders will also be applicable in cases where ED Agents are deprived of their employment because a post office has to be closed down/downgraded on account of being considered unremunerative as per Rule 568-A of P. & T. Manual, Vol. IV. It is requested that these instructions may be brought to the notice of all concerned and implemented carefully. "

In the letter of D.G., P. & T. bearing No. 295-4/53, dated 8.8.1953 it is stated,

" It has been decided that the ED Agents, whose services are to be dispensed with on departmentalisation of their offices, may be provided for in other available extra-departmental posts if they are suitable and willing. "

In another letter of the D.G., P. & T. bearing No. 43-24/64-Pen., dated 12.4.1965 it is stated as follows :

" The matter has been examined and it has further been decided that if at the time of departmentalisation of a particular office, it is not possible to provide the discharged ED Agent in a vacancy in the vicinity/neighbourhood of his residence, his name may be kept on the waiting list and he be offered the vacancy that may arise subsequently in the vicinity/neighbourhood of the place of his residence. If, however, the discharged ED Agent refuses to avail himself of this opportunity, no preference for further vacancies may be given to such an Agent. "

This point, in our opinion, was uppermost in the mind of the Postmaster General when he directed appointment of Opposite party No. 3 in T.A. 367 of 1986 (applicant in the present case) and therefore, in our judgment we stated as follows :

" The office of the Post-Master General was of the view that opposite party no. 3 being a retrenched candidate should have been appointed to the post despite the fact that there was a departmental proceeding pending against him xx "

Further we said,

" In these circumstances we have found from a particular correspondence that the office of the Post Master General directed that the appointment of the petitioner should be kept in abeyance. "

We repeat that while passing such orders the Postmaster General has kept in view the clarifications/directions given by the D.G., P & T. in his different letters quoted above.

7. Taking into consideration the overall situation of the case and the contentions raised by the counsel appearing for different parties and furthermore keeping in view the directions/clarifications issued by the D.G., P & T in his letters as quoted above, we are of the view that the Superintendent of Post Offices would not be justified in keeping out the case of the present applicant from his consideration. We think there is substantial force in the contention of Mr. Deo that while the applicant was newly appointed as Extra-departmental Sub Postmaster, Eram Post Office the question of qualification not having stood on his way it should not be a ground now to be used against him. Therefore, we would direct that the case of the present applicant, Respondent No. 4, Ganesh Prasad Sahoo and other candidates, if any, be considered by the competent authority for appointment to the post of Extra-departmental Branch Postmaster, Adhuan and orders be issued according to law keeping in view the Rules on the subject and the directions/clarifications given by the Director General,

P & T., in his different letters quoted above.

8. Before we part with this case, we must observe that for a single post available for the Adhuan Post Office one has to be appointed. Between the applicant and the Respondent No.4, either of them would be appointed and others would go disappointed. Neither the applicant nor Respondent No.4 may be appointed and some other person may be held to be suitable. Therefore, we would further direct that between the applicant and respondent No.4, either of them if appointed, the unsuccessful person should be kept in the waiting list and should be given appointment according to the directions, clarifications issued by the D.G., P&T in different letters quoted above. If any candidate other than the applicant and Respondent No.4 is found to be suitable and is appointed by the competent authority, then the names of the applicant Bhagirathi Mohanty and Respondent No.4, Ganesh Prasad Sahoo should be kept in the waiting list to be provided with appointment as and when vacancy arises. Thus, in view of the aforesaid discussions we do not consider necessary to quash Annexure-2. We direct that the Superintendent of Post Offices may consider the applications in response to Annexure-2 and pass orders according to law and the indications given above.

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

leg. ass. sub.
22.11.88
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9. agree.

B.R.PATEL
22.11.88
Vice-Chairman



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 22, 1988/*S. Sarangi*.