

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.289 of 1988.

Date of decision : May 22, 1990.

Gitarani Mohanty ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.S.K.Das,
S.B.Jena, Advocates.

For the Respondents

Nos.1 to 3 ... Mr.Tahali Dalai,
Addl. Standing Counsel(Central)

For the Respondent No.4 . Mr.R.N.Acharya, Advocate.

C O R A M :

THE HON'BLE MR.R.BALASUBRAMANIAN , MEMBER(ADMN.) ,
A ND

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

See page 15

N.SENGUPTA, MEMBER(J) The applicant has challenged the appointment of Respondent No.4 as Extra-Departmental Branch Postmaster of Anduli Branch Post Office. Undoubtedly, the post fell vacant and applications were invited to fill up the post responding to which the applicant and Respondent No.4, besides others, put in their applications. The Respondent No.2, Superintendent

of Post Offices, Cuttack North Division, selected Respondent No.4 and directed the said respondent to undergo the training, this was on 1.9.1988. The grievance of the applicant is that ~~she~~ she was directed by Respondent No.2 to file the necessary certificates and on going through the certificates filed by her under a mistake the said respondent rejected her candidature. In her application an allegation of favouritism has been made against the appointing authority i.e. Respondent No.2. Her case further is that Respondent No.4 gave a false report about the extent of lands that he possessed which led Respondent No.2 to believe that Respondent No.4 was possessed of more properties than she(the applicant). To her application, the applicant has annexed a copy of the notice, a copy of the letter addressed to her on 4.4.1988 asking her to file the School Leaving Certificate, Character certificate from two Gazetted Officers, Income certificate by a Revenue Officer, residential certificate, particulars of property in her name giving the details and if she was a member of ~~the~~ ^a Scheduled Caste or Scheduled Tribe, a certificate to that effect. The applicant has also given a copy of the income certificate granted by the Additional Tahasildar, Marsaghai to her which shows that from agricultural lands she had an income of Rs.10,000/- and from business Rs.25,000/-, her total income being Rs.35,000/-. After filing of the certificates

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Respondent No.2 addressed a letter on 3.6.1988 calling upon her to show how she was really in possession of Ac.1.47 decimals of land. In reply thereto she stated she had two Kabalas(sale deeds) in her favour, one for Ac.0.82 dec. and another for Ac.0.65 dec. Respondent No.4 filed property list showing total extent of landed properties to be Ac.1.53 dec. It is stated by the applicant that this was a wrong information given by Respondent No.4 to the Department and that led to a wrong selection i.e. selection of Respondent No.4 to man the post.

2. Respondents 1 to 3 have filed a joint counter and Respondent No.4, another. The case of the Respondent Nos.1 to 3 is that after a due enquiry through a departmental person about the antecedents of the two i.e. the applicant and Respondent No.4 and after considering the documents produced by those two applicants for the post, Respondent No.4 was selected for being appointed as Extra-Departmental Branch Postmaster, Anduli Branch Post Office. Their case further is that even though the applicant stated that she had an income from her business the departmental confidential enquiry revealed that infact she had no business worth the name of her own. Their case further is that as Respondent No.4 was in possession of more property, he was given appointment. During the enquiry by the Sub-Divisional Postal Inspector it was found that the applicant's husband's brother was the E.D.B.P.M. at the same post office and was put off duty.

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on allegations of commission of fraud. The grounds on which Respondent No.4 was preferred have been set out in paragraphs 11 and 13 of the counter. In substance, the case of the respondents 1 to 3 is that there was no irregularity in the appointment.

3. Respondent No.4 has filed a separate counter to which he has annexed copies of the certificate having passed H.S.C.Examination of sale deeds in his favour. The contents of the counter filed by Respondent No.4 need not be extracted in this judgment, suffice it to say that his case is almost the same as that of Respondents 1 to 3.

4. Today, the applicant has filed xerox copies of some records of rights ~~of complete~~ ^{and a plot} index.

5. We have heard Mr.S.K.Das, learned counsel for the applicant, Mr.Tahali Dalai, learned Additional Standing Counsel(Central) for Respondents 1 to 3 and Mr.R.N. Acharya, learned counsel for Respondent No.4 and perused the documents filed by the contesting parties. There is no controversy about the educational qualifications of the applicant and Respondent No.4, both of them have passed H.S.C.Examination. Neither of the two belongs to Scheduled Caste or Scheduled Tribe and both of them are residents of the post village. To this extent the two stand on equal footing. Learned counsel for the applicant has very strenuously contended that Respondent No.4 gave a false or incorrect information and declaration about the extent of the properties and for this he has referred us to Annexure- C to the

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counter filed by Respondent No.4, i.e. a copy of a sale deed 1.2.1985 by one Nrusingha Charan Mohanty in favour of Respondent No.4 and three others who are his brothers. By that sale deed an area of Ac.0.27 dec. was sold to the vendees. Mr.Das has next drawn our attention to Annexure-R/4 and the averments made in paragraphs 3 & 13 of the counter filed by the Respondents 1 to 3. In those paragraphs the extent of properties of Respondent No.4 has been mentioned to be a little more than Ac.1.53 dec. Mr.Das has contended that as four persons purchased under the sale deed dated 1.2.1985, the share of Respondent No.4 could be 1/4th i.e. little more than Ac.0.6 dec. So, the total extent of landed properties of Respondent No.4 would be about Ac.1.33 dec. which is definitely less than that of the applicant, in such circumstances, the reason given by Respondents 1 to 3 for selecting Respondent No.4 can easily be found to be unsustainable. Therefore, the selection has to be set aside. In the property list submitted by the Respondent No.4 under item No.3 it was clearly mentioned that he (Respondent No.4) and others ~~who~~ are the owners of Ac.0.27 dec. of land, ofcourse the Department added up the total of Ac.0.27 dec. to the other two items and arrived at the figure of Ac.1.53 dec. but that cannot lead to inference that the Respondent ^{4th} ~~himself~~ ^{and} led the Department. What is really necessary for the department to judge is the solvency of the person to run the Post Office. It is not necessary that a person ~~with~~

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higher incomes should always be preferred. In the instant case, whether the applicant is a person having a higher income is also doubtful.

6. Learned counsel for the applicant has strenuously urged that before the Department could utilise the report of the Sub-Divisional Inspector (Postal), the applicant must have been given an opportunity to have her say in the matter and since that was not done, the report cannot be pressed into service in rejecting the claim of the applicant. The Rules prescribe an enquiry to be made departmentally to judge the integrity, and suitability or otherwise of an applicant to be appointed as an Extra-Departmental Agent. On going through the report of the S.D.I.(P) it would appear that he infact wanted to make a confidential enquiry regarding the character and antecedents of the candidates but nothing substantial could be ascertained by him excepting that the applicant is a housewife who really does not have any income from business and further that she is the wife of the local Sarpanch who is the brother of the Ex-E.D.B.P.M. who was then put off duty on allegations of having committed fraud. It is true that merely because somebody is a close relation of a person accused of fraud, ~~in~~ no inference can be drawn that ~~she~~ she would also indulge in fraudulent transaction but when matters relating to fraud committed in a particular post by a person ~~are~~ ^{are} under enquiry, in ordinary circumstances, it may not be advisable to appoint a relation of such a person. The applicant has filed a rejoinder. In that rejoinder she has not

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refuted the fact of she being the sister-in-law of the Ex-E.D.B.P.M. who was accused of fraud.

7. In conclusion, it may be stated that the function of this Tribunal is not to act itself as a Selection Board or a Selector of candidate for appointment. It is the prerogative of the appointing authority. What the Tribunal is to see is that no unfair treatment was meted out to the applicant. To repeat, both the applicant and Respondent No.4 have the same educational and residential qualification, both of them are solvent and have adequate means of livelihood. Therefore, they stood on an equal footing. The selector, i.e. the Respondent No.2 preferred to appoint a person other than a close relation of an ex-Postmaster who in all probability have a tendency to do something to frustrate the enquiry into allegation of fraud against the ex-Postmaster. This cannot be said to be something unfair or unreasonable. We would accordingly dismiss the application but we would not pass any order as to costs.

D. Subramanian
.....
Member (Administrative)

Mr. Eap
.....
22.5.90
Member (Judicial)



SL. NO. 1(R)

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D. No. 970A/90 /XI-A.

SUPREME COURT OF INDIA,

New Delhi, dated 19th January, 1990

From:

D. Saro

The Assistant Registrar,
Supreme Court of India,
New Delhi.

To:

The Registrar,
High Court of Central Administrative Tribunal,
Cuttack Bench, Cuttack.

70 NO 36/1/90
PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 12606 of 1990
(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the Judgment
and Order dated the 22nd May 1990 of the High Court
Court of Central Administrative Tribunal, Cuttack Bench
at Cuttack in original Application No 289 of 1988.)

Gitanjali Mohanty

... PETITIONER(S)

- VERSUS -

Union of India & Ors.

... RESPONDENT(S)

Sir,

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Sh. A.K.S.*
I am to inform you that the Petition above-mentioned
for Special Leave to Appeal to this Court was filed on behalf
of the Petitioners above-named from the Judgment and Order
above-noted and that the same was dismissed with some direction
by this Court on the 26th day of November, 1990.

A Certified copy of the Order of this Court as
contained in the Record of Proceedings dated _____
in the matter is enclosed herewith for your
information and record.

Please acknowledge receipt.

Yours faithfully,

D. Saro
ASSISTANT REGISTRAR.

Ps/-