

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 373 of 1988.

Date of decision: December 23, 1988

Benudhar Rana, son of Nrusingha Rana,
Village and P.O. Chhamundia, Via-Gania,
Dist- Puri. ...

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. Senior Superintendent of Post Offices, Buri Division, P.O/Dist-Puri-752 001.
4. Trinath Behera, son of Satura Behera, At/P.O- Chhamundia, Via- Gania, Dist- Puri.

... Respondents.

M/s Devananda Misra,
Deepak Misra, R.N.Naik
and A. Deo, Advocates ... For Applicant.

Mr. A.B.Misra, Sr. Standing
Counsel (Central) ... For Respondents.

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 permitted to see the judgment ? Yes.
2. To be referred to the Reporters or not ?
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 petitioner prays to quash the selection and appointment of Opposite Party No.4 and to command the respondents to appoint the petitioner as Extra- Departmental Branch Post Master of Chhamundia Branch Post Office.

2. Shortly stated, the case of the petitioner is that the petitioner's father was working as Extra- Departmental Branch Postmaster, Chhamundia within the district of Puri. Father of the petitioner retired and the post having fallen vacant an advertisement was published inviting applications to fill up the post in question. The petitioner, Opposite Party No.4 and some others applied. The petitioner was not selected and Opposite Party No.4 was selected for which this application has been filed with the aforesaid prayer.

3. It has been maintained on behalf of the Opposite Party Nos. 1, 2 and 3 that though the petitioner and Opposite Party No.4 were Matriculates and Matriculates are to be given preference according to the directives of the Director General of Posts and Telegraphs, the petitioner had more income and better solvency than Opposite Party No.4. The petitioner was not selected because he had been convicted in a G.R. Case No.74 of 1979 by the Judicial Magistrate, 1st Class, Daspalla and the petitioner had given a false declaration that he has not been convicted in any criminal case and

therefore he was not selected.

4. We have heard Mr. Deepak Misra, learned counsel for the petitioner and Mr. A.B. Misra, learned Sr. Standing Counsel for the Central Government at some length. Mr. Misra, learned counsel for the petitioner submitted before us that the declaration given by the petitioner that he has not been convicted in any criminal case is perfectly true and if that stigma vanishes on questions of fact then in the eyes of law he has a clean slate which should ^{not} be taken as a stigma against the petitioner for appointment. From the arguments advanced on behalf of both sides, we are of opinion that the conviction in the criminal case has stood as a bar for appointment of the present petitioner otherwise he ^{might} ~~would~~ have been in ordinary course appointed to the post in question. This ^{is} borne out from the averments made in the counter in para 3 (a) and Annexure- R/5 which is the note given by a particular officer of the Postal Department. It runs thus :

" As per documents compiled at 58/c candidates at sl.1 & 3 are Matriculates and these two are in preference of selection as per rule. Sri Benudhar Rana has more income, more solvency than Sri Trinath Behera. But on inquiry by the SDI (P) Nayagarh (W), it is reported that Sri Rana was an accused in G.R. Case No. 74/79 in the court of the J.M.F.C.

Daspalla. He was charged under sections 447/323 IPC and was sentenced with fine Rs. 115/- in each section or on default S.I. for 7 days each. Sri Rana has suppressed this information at item 4 (e) of his application form and thus he is not considered suitable/eligible for the post."

The moot question that needs determination as to whether the ground of ineligibility of the petitioner is sustainable. Mr. Deepak Misra filed ~~the~~ certified copy of the judgment passed by the Additional Sessions Judge, Puri who had heard the appeal preferred by the present petitioner against the Judgment of the Judicial Magistrate, 1st Class, Daspalla passed in G.R. Case No. 74 of 1979 convicting the petitioner. The appellate court came to a positive finding that the charges could not be brought home against the appellant i.e., the present petitioner and it was further found that the prosecution has failed to prove its case and therefore accused Benudhar Rana was acquitted and the appeal was allowed. Application for the post in question was admittedly filed on 27.9.1988 and the judgment of acquittal ^{order was} passed by the learned Additional Sessions Judge, Puri ^{is} dated 4.5.1983 i.e., five years prior to the date of filing of application. By virtue of the acquittal of the petitioner and the judgment of the trial court having been set aside rightly the petitioner stated in his application that the petitioner had not been convicted in any criminal case. The competent authority completely lost sight of the fact that the petitioner had been acquitted by the Additional

Sessions Judge, Puri. By virtue of acquittal, the petitioner has a clean slate to his credit and therefore the conclusion of the Superintendent of Post Offices regarding the ineligibility of the petitioner due to the conviction is not correct and therefore the view taken by the Superintendent of Post Offices is not sustainable. Since on this account, the petitioner was not appointed, we are of opinion that appointment of Opposite Party No.4 is illegal and bound to be set aside. Incidentally we may mention that Opposite Party No.4 was noticed and he didnot appear and contest the matter.

5. Since we have held that non-consideration of the case of the petitioner for having been convicted in a criminal case is not within the four corners of law because of the conviction having been set aside in appeal, while quashing the appointment of Opposite Party No.4 we would direct that cases of the petitioner and Opposite Party No.4 be considered afresh and who ever is found to be suitable be appointed to the post in question and till final orders are passed by the competent authority, Opposite Party No.4 should continue as Extra- Departmental Branch Post Master, Chhamundia. Final order should be passed by the Senior Superintendent of Post Offices, Puri Division within thirty days from the date of receipt of a copy of this judgment.

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

leg. a/c 23/12/88
..... Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, *I agree.*

Roshan 23.12.88
..... Vice Chairman.



Central Administrative Tribunal,
Cuttack Bench.
December 23, 1988/Roy, Sr.P.A.