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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO: 396 OF 1988.

Date of decision : May 17, 1990.

Bankanidhi Giri,
At/PO:Mukundapur Patna,
Via: Ghatagaon, Dist:Keonjhar.

: 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/PO:Bhubaneswar, Dist-Puri
3. Superintendent of Post Offices, Keonjhar Division, PO:Keonjhargarh, Dist-Keonjhar.
4. Purna Chandra Sethy, Son of Shri Muliram Sethy, E.D.B.P.M, Mukundapur Patna Branch, PO :Mukundapurpatna, Dist-Keonjhar. : Respondents.

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For the applicant : M/s Devanand Mishra
Deepak Mishra
R.N.Naik &
Amil Deo, Advocate

For Respondent No.4 : M/s L.Mohapatra,
D.K.Misra, Advocate

For the Respondent Nos.1-3 : Mr. Ganeswar Rath, ~~Deputy Adm.~~
Standing Counsel(Central).

C O R A M :

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

A N D

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

N.SENGUPTA, MEMBER (J)

In this application the reliefs sought for are quashing the order at Annexure-1 to the application passed by the Superintendent of Post Offices, Keonjhar Division and for a direction to Respondent Nos. 1 to 3 to treat the applicant as continuing in service and give all consequential benefits with back wages.

2. The facts alleged by the applicant are that he was appointed as Extra Departmental Branch Post Master of Mukundapurpatna Branch Office in account with Ghatagaon Sub-Office on 23.6.1986. The present Respondent No.4 challenged the appointment of his in this Tribunal in O.A. No.54 of 1987. On 19.1.1988 this Tribunal quashed the order of appointment of the present applicant and gave a direction that as a stop-gap arrangement the applicant was to be permitted to continue in the Post of Extra Departmental Branch Post Master till final orders are Passed by the Post Master General. The Respondent No.3 i.e. the Superintendent of Post Offices, Keonjhar Division passed the order terminating his (applicant's) service under Rule 6 of the E.D. Agents (Conduct and Service) Rules, 1965. This order of termination is made Annexure-1 to the application. Respondent No.4 has been appointed as E.D.B.P.M. of that Branch Post Office. But as the said Respondent is running a candle factory under the "Educated-unemployed Scheme", he was disqualified

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17/1/90

from being appointed to this Post. Further disqualification of Respondent No.4 is that he incurred a loan of Rs.10,000/- from the Bank of India for having a candle factory. Making these allegations the applicant has prayed for the aforesaid reliefs.

3. Respondents Nos. 1 to 3 have filed a joint counter and Respondent No.4 a separate. The case of Respondents Nos. 1 to 3 is that an advertisement was made for appointment to the post as E.D.B.P.M. of Mukundapur - patna Branch Office on the resignation of the previous incumbent. In response to that advertisement the present applicant and the present Respondent No.4 filed their applications and the applicant was appointed as E.D.B.P.M. on 4.8.1986. Respondent No.4 herein thereafter filed an application and in that original application the appointment of the present applicant was quashed. In the previous application filed by the present respondent No.4 he made a grievance that even though he had submitted his income certificate, the Department saying that no such certificate was received by them, did not appointment him. In that context this Tribunal by the order referred to in this application directed the Department to give an opportunity to the present respondent No.4 to file an income certificate and then consider as to who of the applicant and respondent No.4 was to be appointed. The consideration was to be made by the Post Master General. Present Respondent No.4 who claims to be a person belonging to the

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Scheduled Caste. Filed a certificate of his income, whereafter the Post Master General going through all the concerned documents approved the selection of Respondent No.4 as E.D.B.P.M. and the order of appointment was issued in favour of the present respondent No.4. Since the Post Master General followed the direction of this Tribunal in the previous application, the present application is misconceived and the applicant is not entitled to any relief. They have annexed a copy of the judgment of this Tribunal in O.A. No.54 of 1987 as Annexure-R-1. In the counter filed by the Respondent No.4 he has averred that no doubt he borrowed money from the Bank of India, that was during the time when he was unemployed and O.A. No.54 of 1987 was pending. His case further is that under the Rules there is no provision not to appoint a person as a E.D. Agent who runs a business.

4. We have heard Mr. Deepak Mishra learned counsel for the applicant, Mr. Ganeswar Rath learned Standing Counsel (Central) for the Respondents Nos. 1 to 3 and Mr. B.K. Mishra for Respondent No.4 at length. Mr. Deepak Mishra has urged that the order of termination at Annexure-1 does not mention any reason for such termination except saying that it was passed under Rule 6 of the E.D. Agent, (Conduct and Service) Rules, 1965.

*Memorandum
17/5/90* In elaborating his arguement he has submitted that though under the Rules the appointing authority has the power to terminate the services of an E.D. Agent who has not completed three years service, yet resort

to that Rule cannot be made arbitrarily and there must be an indication, though in brief, of the reason for such a termination. In the instant case, it is admitted on all sides that the appointment of the applicant came to be questioned in O.A. No.54 of 1987 and that appointment was quashed by this Tribunal, the present applicant was to continue to hold the post of E.D.B.P.M. on stop-gap basis till the matter was considered by the Post Master General. From the averments it is also clear that the real reason behind the issue of Annexure-1 was the order passed by this Tribunal in O.A. 54 of 1987.

5. Mr. Deepak Mishra has next contended that the Post Master General did not comply with the order passed by this Tribunal in O.A. No.54 of 1987 in as much as he simply approved the selection and did not himself consider the suitability of Respondent No.4 to be appointed as E.D.B.P.M.. The learned counsel has drawn our attention to the part of the judgment in O.A. No.54 of 1987 where in it stated that the applications of the applicant and Respondent No.4 of that case were to be considered by the Post Master General and whosoever would be found suitable, such person was to be appointed to the Post. This Tribunal further observed that the Post Master General was particularly requested to consider the applications of the applicant and Respondent No.4 and

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17/5

pass orders according to law so that in future no further criticism would be levelled against the Department in regard to the particular appointment. Mr. Deepak Mishra contends that the direction of this Tribunal was for the Post Master General to consider the applications and not to delegate the functions to any officer sub-ordinate as appears to have been done on going through Annexure-R-2. i.e. the letter issued to the Director of Postal Services, Sambalpur Region, Sambalpur. It would be profitable the quote the material part of the letter, Annexure-R-2.

" I am directed to intimate that the selection of Shri P.C. Sethy has been approved by Post Master General, Orissa Circle, Bhubaneswar. Please ensure the implementation of the judgment with compliance report to this Office".

We have quoted the letter for a proper appreciation of the facts. On going through the letter it would be apparent that the Post Master General applied his mind in the manner directed by this Tribunal in O.A. No.54 of 1987 and thereafter said that he approved the appointment of the present Respondent No.4. One of the meanings of the word 'approved', as understood in legal parlance, is to sanction officially or judge well. Therefore, the contention of Shri ^{Deepak} B.K. Mishra that Annexure-R-2. is to be read as consideration to have been made by another officer and ratified by the Post Master General is not acceptable.

Mar 17 1990

6. The next contention of Shri Mishra about the dis-qualification of Respondent No.4 for being appointed as E.D.B.P.M. may be considered. The Rules prescribe that a person who has adequate means of livelihood and can spare space for post Office and is otherwise fit, can be appointed as E.D.B.P.M. Mr. Mishra has ought some reliance on the abolition of the provision of appointment on part time E.D.B.P.Ms. to contend that a business man is apt to devote time to run his business and therefore he cannot be a whole time employee. Respondent No.4 has averred that he thought of entering into the business during the time when original selection was made he had no other engagement. Therefore, the fact that he started a business later can be of no consequence. We do not like to examine to the correctness of the proposition an advanced by the Mr. D.K.Mishra, the learned counsel for Respondent No.4 , All that we need to say is that without any allegation that respondent No.4 has not devoted the time required of an E.D.B.P.M. to run the Branch Office, this contention Mr. Deepak Mishra is also bound to fail.

7. For the reasons mentioned above the applicant is not entitled to any of the reliefs claimed. However, we would observe that for some reason or other, the present applicant was initially appointed as E.D.B.P.M. and he functioned as such B.P.M. for some time by which he gathered

Mr. S. S. 17/5

experience. In case there ~~be~~ any opportunity for appointment later, his case would perhaps need some sympathetic consideration. With the above observation, the application is rejected. No Costs.

T. Balasubramanian
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MEMBER (ADMINISTRATIVE)

M. S. S. S. S.
17-5-90
MEMBER (JUDICIAL)

