

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 404 of 1983.

Date of decision: November 30, 1990.

Akshaya Kumar Acharya ... Applicant .

versus

Union of India and others ... Respondents.

For the applicant ...
M/s. Devanand Misra,
Deepak Misra,
R.N. Naik, A. Deo, Advocates.

For the respondents ...
1 to 3 Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M :

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE 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 ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

B. R. PATEL, VICE-CHAIRMAN, Briefly stated, the facts are that the incumbent ^{of} ~~for~~ the post of Extra-Departmental Branch Post Master (E. D. B. P. M.), Kotmal Branch Office in the district of Cuttack was put off duty on charges of misappropriation and the applicant was appointed on provisional basis in the resultant vacancy with effect from 26.3.1983 pending regular appointment. The previous incumbent moved the Hon'ble High Court of Orissa in a writ petition and by virtue of the order of the High Court, was reinstated into

service as a result of which the services of the applicant was discontinued with effect from 4.2.1986. Thereafter, the applicant was appointed as Mail Escort on 2.6.1986. The Extra-Departmental Branch Post Master of Kotmal Branch Office however resigned and the Department initiated the process for regular recruitment. They asked the Employment Exchange as required by the instructions of the Director General of Posts and Telegraphs dated 1.5.1986 (Annexure-R/9) to sponsor names of ^{snitch} 18 candidates. ^{Eighteen names were sponsored.} On scrutiny of the cases however it was found that only 8 of them had the eligibility to be considered as ^{they} only belonged to the post village. The Department wrote to those 8 candidates to apply for the post and to submit the required documents by 21.6.1988 but only two of them responded. Therefore, the Department issued an advertisement inviting applications from intending candidates. In response to the advertisement 5 candidates including the two sponsored by the Employment Exchange applied for the post. On consideration of the cases of these candidates they ultimately selected Respondent No.4. Being aggrieved by the decision of the Department the applicant has moved this Tribunal for orders to quash the selection of Respondent No.4.

2. The Respondents 1 to 3 have maintained in their counter affidavit that as only two candidates ultimately applied the Department wanted to have a larger area of selection, in order to pick up the best person available and they had to take resort to open advertisement.

9

3. We have heard learned counsel for the applicant and Mr. Tahali Dalai, learned Addl. Standing Counsel (Central) for Respondents 1 to 3 and perused the papers. The applicant's counsel has very vehemently contended that as ~~the~~ the instructions dated 1.5.1986 confines the selection to the candidates sponsored by the Employment Exchange the authority had no option to go to the open market and since they have gone to the open market the selection has been vitiated and the order of appointment of Respondent No. 4 should be set aside and the Department should be directed to have fresh selection. Mr. Tahali Dalai has said that the Department did ask the Employment Exchange to sponsor names of ~~suitable~~ candidates and infact larger number of candidates were sponsored by the Employment Exchange. As only two of those candidates responded to the letter of the Department asking them ^{to} ~~for~~ applying ⁱⁿ ~~ing~~ in the prescribed form, they have no option but to go to the open market to have a larger area of selection. ^{Such a} ~~This~~ situation is not ^{visualised in} ~~covered by~~ the D.G., P.T. letter referred to above. As the procedure followed by the Department was in larger public interest in order to get ~~a~~ best man possible to run the post office in the best manner no exception could be taken to the method adopted by them. We have carefully considered the D.G.P. & T letter dated 1.5.1986. This instruction was to the effect that several instances of nomination of only one candidate by the Employment Exchange ^{had come} ~~came~~ to the notice of the D.G., P&T. As such it was clarified as follows:

" In such cases, the resultant selection process

10

gets totally devoid of any element of competition. It has, therefore, been decided that in future sponsoring of at least three candidates by the employment exchange should be insisted upon. "

This makes it abundantly clear that there would be difficulty for the Department to find out the best man from out of one or two candidates sponsored by the Employment Exchange. In the present case the Department found that out of the two candidates who responded to their letter it would not be possible for them to pick up a good candidate. We therefore, ^{are inclined to} ~~do~~ not interfere with the selection of the Department solely on the ground that they issued open advertisement inviting applications from open market.

4. The applicant's counsel has further urged that though he has worked as E.D.B.P.M. and E.D.M.C. a fresher has been selected. According to him, experience should be given due weightage. The Department have however maintained that Respondent No.4 who has been selected has more income than the applicant. In this connection, Mr. Tahali Dalai has drawn our attention to Annexure - R-3 to the counter. This shows that the case of the applicant has been considered and the income certificate furnished by Respondent No.4 is Rs.10000/- per annum whereas the income certificate furnished by the applicant is Rs.2500/- per annum. Since the applicant's case has been duly considered and there is no procedural irregularity we do not like to interfere in the selection made by the Department. We however agree with the applicant's counsel that the applicant has worked

11

for about 3 years and that should be utilised to the advantage of the Department. We are , therefore, of the view that if there is any vacancy of an Extra-Departmental agent either in the said post office or nearby post Offices the case of the applicant should be considered for appointment to the vacancy.

5. This application is accordingly disposed of.
No costs.

M. S. Gupta
..... 30.11.90
Member (Judicial)



P. S. Mishra
..... 30.11.90
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 30, 1990/Saranghi.