

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

(10)

ORIGINAL APPLICATION NO:384 OF 1989

Nimain Charan Pani ... Applicant
Versus
Union of India and others ... Respondents

For the applicant Mr. U.S.Agarwal, Advocate
For the Respondents Mr. Aswini Ku.Misra, Sr.Standing
Counsel (Central)

A N D

ORIGINAL APPLICATION NO:363 OF 1989

Santosh Kumar Pani ... Applicant
Versus
Union of India and others ... Respondents

For the applicant M/s Devanand Misra, Deepak Misra,
R.N.Naik, B.S.Tripathy, U.S.
Agarwal, Advocate.
For the Respondents Mr. Aswini Kumar Misra, Sr.Standing
Counsel (Central)

DATE OF DECISION: 26th October, 1990.

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
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.
-

J U D G M E N T

B.R. PATEL, VICE-CHAIRMAN, The applicants in these cases are aspirants for the same post namely that of Extra Departmental Branch Post Master (E.D.B.P.M.) Srirampur in the District of Balasore. They have both challenged the selection made by the Superintendent of Post Offices, Balasore Division, Respondent No.3 in both the cases. As facts involved in both the cases are identical and the issue for determination is the same we have heard the cases analogously and pass this common order which would govern both the cases.

2. In Original Application No.363 of 1989 the applicant has challenged the selection of Respondent No.5 for the post of E.D.B.P.M. Srirampur on the ground that Respondent No.3 i.e. the Superintendent of Post Offices, Balasore Division did not ask the Employment Exchange for giving a Supplementary list of candidates but issued the Public notification dated 26.6.1989 (vide Annexure R/4), Respondent No.5 had submitted a false income certificate and the matter was under inquiry of the Sub-Collector, Balasore (Annexure-4). Guidelines on selection of candidates for the post of E.D.B.P.M. has been flouted by the Respondent No.3 and consequently the interest of the applicant has been jeopardised. As the selection has been vitiated for the



aforesaid reasons, the applicant sought a direction to be issued setting aside the selection.

3. In O.A. No. 384 of 1989 the applicant has alleged that Respondents No. 3 and 4 did not call him for the selection and without giving him an opportunity they were going to complete the selection. According to him the selection has been made arbitrarily and though he has satisfied all the conditions his candidature was not being taken into account. He has therefore, prayed that his candidature should be considered by the Respondents and the whole selection proceeding should quashed and selection should be made afresh.

4. The Respondents have maintained in their counter affidavit in both the cases that the selection have been made keeping in view the rules and instructions issued by the Competent Authority from time to time and there has been no irregularity which would vitiate the selection.

5. We have heard Mr. Deepak Mishra the learned Counsel for the applicant in O.A. No. 363 of 1989, Mr. U.S. Agrawal the learned Counsel for the applicant in O.A. No. 384 of 1989 and Mr. A.K. Mishra the learned Senior Standing Counsel (Central) for the Respondents in both the cases, and gone through the relevant records.



Mr. Deepak Mishra has urged that without calling for a supplementary list of candidates the Superintendent of Post Offices, Balasore Division has issued a notification, a copy of which is at Annexure B/4. As the Employment Exchange had not recommended the case of Respondent No.5 the notification dated 26.6.89 inviting applications from the intending candidates has unduly favoured Respondent No. 5 in as much as it has given her an opportunity to apply for the post. Mr. A. K. Mishra in this connection has drawn our attention to the letter No. 43-233/84-Pen. dated 1.5.1986, a copy of which is at Annexure- R/3. This letter has clearly stipulated that atleast three candidates should be sponsored by the Employment Exchange and where it is not possible to do so a vacancy should be notified through public advertisements and while making the final selection the comparative merit of all the candidates i.e. those who respond to the notification as also those sponsored by the Employment Exchange should be taken into consideration. This letter does not speak to any supplementary list. It has simply stated that in case of any difficulty in this regard the matter will be taken with the Director of Employment Exchange of the State Government concerned and Mr. A.K. Mishra has stated that this is a general instructions to sort out difficulties relating to sponsoring of candidates by the employment exchange and cannot have particular application to the present case. After going through this letter and the earlier letter of Director General P & T dated



4th September, 1982(Annexure-R/2) we find no objection to Respondent No. 3 inviting application from intending candidates for the post in question. When a general notification of this type, is issued all intending candidates are competent to apply. As Respondent No. 5 intended to apply and has infact applied we cannot accept the plea of Mr. Deepak Mishra that the Respondent No. 3 has gone out of his way to favour Respondent No.5 . We have also noticed that cases of all the candidates i.e. those sponsored by the Employment Exchange and those who applied in response to the advertisement have been duly considered by Respondent No. 3.

6. Admittedly, the post fell vacant on 29.4.1989 on the retirement of the then incumbent on superannuation which necessiated selection of a suitable candidate to man the post. Admittedly the Employment Exchange sponsored only two names vide Annexure-R-1(a). Five more candidates applied in response to the notification dated 26.6.1989. There were thus, seven candidates including the applicant's and Respondent No.5 in O.A. No. 363 of 1989. All the candidates were required to submit a number of documents which were listed in the notification dated 26.6.1989(Annexure-R/4). Mr. A.K. Mishra has pointed out that there is no rule or instructions making it obligatory for the competent authority to interview the candidates before finalising the selection process. This point has not been controverted and no rule to the contrary has been placed before us. The plea of the applicant in O.A.

[Handwritten signature]

O.A. No. 384 of 1989 that he should have been called to an interview and given an opportunity to be heard is therefore not acceptable to us and we reject it.

7. The applicant in O.A. No. 363 of 1989 submitted an income certificate for Rs. 18,000/- (Annexure-3). No such certificate has been furnished by the applicant in O.A. No. 384 of 1989 though he has stated that the certificate is attached vide Annexure-R/2 to the counter affidavit filed by the Respondents in O.A.No.384 of 1989. The applicant in O.A. No. 384 of 1989 submitted only one character certificate vide Annexure-R/3 instead of two as required. The certificate produced has not been signed by the officer who is purported to have given the certificate. The candidature of the applicant in O.A. No. 384 of 1989 has been rejected by the Superintendent of Post Offices, Balasore Division on the ground that all the requirement documents have not been submitted by the candidate. We find from Annexure R/4 of O.A. No. 384 of 89 that on consideration of the case of the candidate the competent authority has made the following remarks on the margin "incomplete rejected". We cannot therefore find fault with the Superintendent of Post Offices, Balasore Division for not selecting his candidate for the post of EDBPM, Srirampur Branch Post Office. We find no merit in the application in O. A. No. 384 of 1989 which stand dismissed.



8. In regard to the allegation of false certificate of income submitted by Respondent No. 5 in O.A. 363 of 1989, Mr. A.K. Mishra submitted that the Department have got solvency of Respondent No. 5 inquired into by one of their officers and in this connection he drew our attention to Annexure- R/12 which is a copy of the report submitted by the Assistant Superintendent of Post Offices in charge Balasore Sub-Division. A copy of the inquiry report of the Revenue Supervisor, Basta which was sent to the Tahasildar, Basta, has been enclosed to the report of the Assistant Superintendent of Post Offices from which it is found that the R.I. has assessed the income of Respondent No. 5 to be Rs. 10,800/-. Earlier the Tahsildar had issued an income certificate for Rs. 18,000 in favour of Respondent No. 5 which she submitted to Respondent No. 3 as we find from the check list at Annexure-R/5 as also Annexure No. 4 in D.A. No. 363 of 1989. We have found from Annexure- 5 which is a copy of the report submitted by the Tahasildar to the Sub-Collector on 8.8.89 that while issuing the earlier certificate to both the applicant and Respondent No. 5 no field inquiry had been conducted. Mr. A.K. Mishra has averred that after receiving the petition from the Sub-Collector's office, the Tahasildar directed the Revenue Supervisor " to verify the field as well as the documents and go through the report of the R.I. and report". This



explains the discrepancy in the two assessments made in regard to the income of Respondent No. 5. The Respondents have maintained in their counter affidavit that the solvency and the income of Respondent No. 5 have been duly enquired into through the Assistant Superintendent of Post Offices, Balasore Division and that they are not aware of any affidavit having been given by the Respondent No. 5 and " further even if there is some falsity in the income certificate it may not be sole criterion to reject the application of respondent No. 5. It is not a case of no income at all. Since educational qualification was given due weightage taking into consideration other aspects the selection cannot be said to be bad in law".(Para 6 of the counter affidavit) Mr. A. K. Mishra draw our attention to Annexure which is a copy of the instructions on method of recruitment. Paragraph 4 of this extract deals with exemption from property qualification and rules as follows :

" It has been decided that there is no need to fix any minimum limit of immovable property qualification. It will be enough if the appointing Authority ensures that the BPM is solvent, of temperate habits, honest and trustworthy and for this, necessary enquiries will have to be made in the locality through the departmental officials like Overseers and Inspectors who will also certify the above qualifies of the

mb

of the persons proposed for the post of Branch Postmaster".

The letter of Director General P & T dated 9th August, 1962 has thus given the responsibility for determining the solvency to the appointing Authority. We are therefore of the view that it is up to the Competent Authority that is Respondent No. 3 in this case to satisfy himself that the candidate is solvent before he or she is selected. As the Competent Authority considers Respondent No. 5 to be solvent on the basis of the report furnished by the Assistant Superintendent of Post Offices, Balasore Division there is nothing further for us to determine in this regard. Mr. Deepak Mishra has sent a note of argument on behalf of the applicant enclosing a xerox copy of the order passed by the Tahasildar, Basta which has reduced the income of Respondent No. 5 to be Rs. 2000/- and that of the applicant to Rs. 13,000/-. We are unable to appreciate this order of the Tahasildar when the matter was subjudice in the court of the Sub-Collector, Balasore as is clear from Annexure- 5. Moreover, hearing of this case was closed on 21.12.89 and judgment was reserved. This document was submitted on 26.12.1989 and the Respondents had no opportunity to see it and make their submission. As such, we are not

hnh

inclined to take judicial notice of the xerox copy of the order purported to have been passed by the Tahasildar, Basta. However, it is up to the Competent Authority to take note of various reports sent by the Revenue Authorities and the report of the Departmental officers and cause further inquiry if he considers necessary to satisfy himself again about the solvency of Respondent No. 5.

9. The respondents have maintained that Respondent No. 5 has been given preference over the applicant on the basis of educational qualification. We have found from Annexure R-8 that the applicant was reading in XI class as per the Transfer Certificate where as Respondent No. 5 was a matriculate vide Annexure R-10 which is a copy of the High School Certificate Examination issued by the Board of Secondary Education, Orissa. According to Annexure R- 11 though the prescribed educational qualification was VIII standard, " Matriculation or equivalent may be preferred". We have further found from the Advertisement dated 26.6.89(Annexure R-4) under " General" it has been mentioned, " Selection authority reserves the right " to give more weight to the applications having higher qualifications and large incomes". In this

[Signature]

case we have found the applicant has larger income and Respondent No. 5 has higher educational qualification. It is up to the selection authority, therefore, to choose between the higher qualification and the larger income and we have found Para -II of the counter that they have preferred higher qualification. This is also in conformity with Annexure R-11.

10. In view of what has been stated above we are not inclined to interfere with the selection made by the Superintendent of Post Offices, Balasore Division i.e. Respondent No. 3. O.A. No. 363 of 1989 is accordingly disposed of, leaving the parties to bear their own cost.

[Signature]
26.10.90
.....
MEMBER (JUDICIAL)



[Signature]
26.10.90
.....
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.