

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 426 of 1989.

Date of decision : December 12, 1990.

Ajaya Kumar Sarangi Applicant.

Versus

Union of India and others Respondents.

For the applicant ... M/s. Devanand Misra,
Deepak Misra,
A. Deo, B. S. Tripathy,
U. S. Agrawal, Advocates.

For the respondents 1 to 4 .. Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT)

C O R A M:

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

A N D

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

--- --- ---

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.

JUDGMENT

K. P. ACHARYA, VICE-CHAIRMAN, In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to the respondents to set aside the order of reselection made by the competent authority selecting Respondent No. 5, Surendranath Mallik as Extra-Departmental Mail Carrier-cum-Messenger of Biribati Sub Post Office within the district of Cuttack.



2. Shortly stated, the case of the applicant is that he was working as casual labour (Waterman) in the Biribati Sub-Post Office from 2.5.1989 to 25.10.1989. The question of making regular appointment to the said post came up and cases of some persons were considered including the case of Respondent No.5. Ultimately, Respondent No.5 having been appointed, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that no illegality has been committed in the matter of selection/appointment of Respondent No.5 and therefore, the order passed by the competent authority should not be unsettled- rather it should be sustained. It is further maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. R. N. Naik, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents at some length. It was vehemently contended by Mr. Naik that the case of the applicant was not considered along with the case of Respondent No.5 and other candidates and thereby the principles of natural justice having been violated the entire process of selection and ultimate appointment of Respondent No.5 should be quashed and because of the experience gained by the applicant, direction should be given that the applicant should be appointed to the said post. This was stiffly opposed by Mr. Aswini Kumar

(9)

Misra.

5. We have given our anxious consideration to the arguments advanced at the Bar. The respondents have specifically stated in their counter affidavit that the case of the applicant was considered along with Respondent No.5 and others and Respondent No.5 having been adjudicated as suitable, order of appointment followed in his favour. In such circumstances, onus lies on the applicant to prove satisfactorily that his case was not considered. The applicant has not discharged the onus of proof. Therefore, we are unable to give a conclusive and positive finding that the case of the applicant was not considered. In such circumstances, we do not feel inclined to interfere with regard to the selection/appointment of Respondent No.5.

6. Mr.Naik, strenuously urged before us that the applicant has served the Department as Waterman for three years and Extra-Departmental Mail Carrier cum Messenger for about 6 months. Depriving him of a place of rice would be a great hardship for him and therefore, this Bench and the competent authority should take a compassionate and liberal view over the applicant. We feel there is substantial force in this contention of Mr.Naik who has also told us that in nearby Post Offices i.e. Rajendranagar and Chouliaganj Post Offices there are some vacancies in the posts of Extra-Departmental Mail Carrier. In case, instructions given to Mr.Naik is correct and true, we hope the Superintendent of Post Offices, Cuttack City Division, or any other competent authority would favourably consider the case of the applicant for appointment to such posts

in the Post Offices mentioned above in view of the experience the applicant has gained and in view of the fact that he has served the Department for about 3½ years in different capacities. We hope and trust this matter would be finalised within a period of 90 days from the date of receipt of a copy of this judgment.

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

.....
Vice-Chairman

D. S. Bhatia
12/12/90

.....
Vice-Chairman

12/12/90

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 12, 1990/Sarangi.

