

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

O.A.No. 494 of 1989.

Date of decision - January 29, 1990.

Brajamohan Mohapatra,
Son of Bulei Mahapatra,
working as E.D.D.A. Binayakpur Post office,
Via- Pipili, District- Puri.

... Applicant

Versus.

1. Union of India, represented by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi.
2. Chief Postmaster General, Orissa,
At/P.O. Bhubaneswar, District-Puri.
3. Senior Superintendent of Post Offices,
Bhubaneswar Division, At, P.O. Bhubaneswar,
District-Puri.

.... Respondents.

For Applicant - M/s. Deepak Misra, R.N.Naik,
A. Deo, B.S.Tripathy and
U.S. Agarwal.

For Respondents - Mr. Aswini Kumar Misra,
Senior Standing Counsel for
Postal Department.

C O R A M :

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

A N D

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *yes* .
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT.

USHA SAVARA, MEMBER (ADMN.).

This application has been

filed by Sri Brajamohan Mohapatra working as Extra-Departmental Delivery Agent in Binayakpur Post office challenging the arbitrary action of the respondent No.3, the Senior Superintendent of Post Offices, Bhubaneswar Division for not considering his case for appointment to the post of Extra-Departmental Branch Postmaster of Binayakpur Post office.

2. The facts of the case are that the applicant was appointed as Extra-Departmental Delivery Agent on 19th October, 1984. In the year 1987, the Postmaster Sri Bhagaban Satapathy retired and the applicant was asked to continue as Branch Postmaster vide Annexure-2 on 4.3.1987. On 23.8.1989 the respondent No.3 invited applications for the post of Extra-Departmental Branch Postmaster (hereinafter referred to as 'E.D.B.P.M.') vide notification No.A-124/PF. The applicant also applied for the post in the prescribed pro forma in pursuance of the said notification. Respondent No.3 sent a notification to the applicant which was received by the applicant on 7.10.1989 mentioning therein that the applicant should apply before 26th October, 1989. The applicant filled in the prescribed pro forma and submitted

the same on 7.10.1989. It is the case of the applicant that though he applied for the post in the prescribed pro forma and as per the departmental rules and procedure, he is to be given preference, yet the respondent No.3 ignoring his claim has taken steps to appoint an outsider to the post of E.D.B.P.M. The applicant had reasons to believe that his case was not considered and that an outsider was going to be appointed to the post. The applicant submits that as per D.G., Posts' letter No.43-27/85-PM(EDC & Trg.) dated 13.8.88 circulated vide P.M.G. Orissa's letter No. ST/69-115/89 dated 4.9.89, the existing Extra Departmental Delivery Agent was to be given preference to work against the vacant post of E.D.B.P.M.. without coming through the Employment Exchange provided he is suitable for the post and fulfills all the required conditions. It is his case that he fulfilled all the conditions and that he had gathered experience in the post of E.D.B.P.M. and should have been preferred for being appointed to that post. He prays that a direction be issued directing the respondents to appoint him in a regular manner as E.D.B.P.M. in the Binayakpur Post office and to call for the file pertaining to selection of E.D.B.P.M. of Binayakpur and to set aside the selection.

3. Sri Deepak Misra, learned counsel for the applicant has reiterated the stand of the applicant cogently. He has submitted that the respondents have been satisfied with the working of the applicant and that he was fully eligible for working against the post of E.D.B.P.M. where he had been working since October, 1987. The circular of the D.G., Posts was very clear on this point that " when an ED post falls vacant in

the same office or in any office in the same place, and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided he/ she is suitable for the other post and fulfills all the required conditions."

Since Sri Deepak Misra submits that the applicant had applied for the post in the prescribed pro forma not once but twice, he was already working in the same place and actually officiating for almost two years and had conveyed his preference to work against the post of E.D. B.P.M. but instead of considering his application and giving him the appointment, the respondents took steps to appoint an outsider to the post of E.D. B.P.M..

4. Sri A.K.Mishra, learned counsel for the respondents has submitted that since the post of E.D. B.P.M. could not be kept vacant in the interest of public, the applicant who had been working in the Branch Post office as an E.D.D.A. was asked to manage the work of E.D. B.P.M. on ad hoc basis. and such ad hoc appointment / arrangement is subject to termination after selection of a suitable candidate following the usual procedure in accordance with rules. The Employment Exchange Officer was requested to sponsor the names of eligible candidates for filling up the vacant post by letter dated 27.3.1989 of the respondent No.3 but the applicant's name was not sponsored by the Employment Exchange office. Out of the five candidates whose names were sponsored, only one candidate applied for the post but his application was not considered as he failed to fulfil the conditions. The applicant being

the only candidate does not come under the purview of zone of consideration. Subsequently applications were again invited through local notice but none applied for the post except the applicant. As the rule does not permit to select a person from a panel list of solitary candidate and such selection is only permissible from a list of panel of atleast three eligible candidates in pursuance of instructions contained in the D.G., Posts' letter, the candidature of the applicant was not considered and a fresh notification was issued again. Three eligible candidates applied for the post and one Sri Surendranath Mishra who is a Matriculate and fulfils all the conditions for a regular selection was selected finally as E.D. B.P.M. of Binayakpur and he was also imparted necessary training and is now awaiting posting orders. Under the circumstances, Sri A.K.Mishra has contended that the appointment of Sri Surendranath Mishra had been finalised and the applicant was to be reverted to his original post of E.D.D.A. Shri A.K.Mishra has also relied upon the circular dated 13.9.1983 which has already been quoted earlier. Para-3 of the said circular states that in cases where a post has been abolished, E.D.D.As are to be offered alternate appointment within the sub-division in the next available vacancy, in accordance with Directorate orders No.43-24/64-Pen. dated 12.4.64 which were further clarified on 23.2.79, as per orders, those of E.D.As. are held as surplus consequent to the abolition of E.D. posts are to be adjusted against the posts that may occur subsequently in the same office or in the neighbouring offices. It is Sri A.K.Mishra's contention that since the post has not been declared to be surplus, the present incumbent i.e. E.D.D.A. cannot be considered for posting in the same office.

5. We have considered the contentions of both the learned counsels and the circulars mentioned above. It is unfortunate that the circular has been mis-understood by Sri A.K.Mishra and has caused unnecessary problems to the applicant. Para-3 of the circular goes on to state that it has now been decided that exceptions may be made in the following cases that when an E.D. post falls vacant in the same office and if an existing E.D.A. prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange provided he is suitable and fulfils all the required conditions. It is clear from this that the applicant who was already working in the post for over two years and fulfilled all the required conditions and was eligible according to the rules of the department, should have first been considered for the appointment. It is not clear why the respondent No.3 called for the applications from the open market time and again when the applicant had applied for the post in accordance with the notification being eminently eligible and fulfilled all the conditions. However, in the interest of justice and equity, the respondents are directed to regularise the applicant by appointing him to the post of E.D. B.P.M. of Binayakpur post office where he is working. In view of this order, we feel that it is not necessary to call for the file pertaining to selection of E.D. B.P.M. of Binayakpur as requested by the applicant.

15
 6. In the result, the application is allowed. There is no order as to costs.

.....M/s Epl 1.90.....

Member (Judicial).

.....b/.....

Member (Administrative)

