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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 343 of 1990

Date of Decision 29.4.1992

Akshaya Kumar Swain Applicant

Versus

Union of India & Others Respondents

For the applicant

M/s.Devanand Mishra
Deepak Mishra,
R.N.Naik,A.Deo,
B.S.Tripathy,
P.Panda,Advocates

For the respondents

Mr.A.K.Mishra,
Standing Counsel
(Central Government)

For the respondent No.4
.....

Mr.P.V.Ramdas,B.K.Panda
and D.N.Mohapatra,Advocates

C O R A M

HON'BLE MR.K.P.ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MR.C.S.PANDEY, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *no yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

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MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to quash the advertisement issued by the competent authority calling for applications from the open market for filling up the post of Extra Departmental Branch Post Master, Kerikol Branch Office (Athagarh Sub-division) within the district of Cuttack and to quash the order of punishment issued in favour of OP No.4.

2. Shortly stated the case of the petitioner is that in order to fill up the vacancy in the post of E.D.B.P.M., Kerikol on regular basis a requisition was issued by the Superintendent of Post Offices, Cuttack South Division requesting the Employment Exchange to sponsor names of candidates to fill up the said post. The Employment Exchange sponsored the names of 18 persons, but the recommendation of the employment exchange ~~not~~ having been received within the stipulated period, the Superintendent of Post Offices (OP No.3) called for applications from the open market. While considering the suitability of the different candidates, the Superintendent of Post Offices did not consider the names of the candidates who had been sponsored by the employment exchange, because recommendation was not received within the stipulated period. The concerned Superintendent of Post Offices considered the cases of the applications from the open market and issued order of appointment in favour of OP No.4 which is under challenge and sought to be quashed.

3. In their counter the opposite party no.1,2 and 3

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state that the consideration of the candidates from the open market is according to rules and no rules having been infringed, the selection of OP No.4 and appointment order issued in her favour should not be quashed - rather it should be sustained. It is further more maintained that since the recommendation of the employment exchange was not received within the stipulated period, the Superintendent rightly did not take notice of the recommendation. In a crux it is maintained that the case being devoid of merit is liable to be dismissed. A counter has also been filed by Mr. P. V. Ramdas, learned counsel, on behalf of the OP No.4. Therein it is maintained that the selection of OP No.4 is according to rules and norms laid down by the D.G., Posts and according to law laid down by Their Lordships of the Supreme Court. Therefore in no circumstances the appointment of OP No.4 should be quashed.

4. We have heard Mr. R. N. Naik, learned counsel for the petitioner, Mr. A. K. Mishra, learned Standing Counsel for the Central Government and Mr. P. V. Ramdas, learned counsel appearing for OP NO.4.

5. Mr. Naik urged before us that the recommendations of the employment exchange was received before the Superintendent of Post Offices considered the candidature of the different applicants from the open market and therefore there was no justification on the part of the Superintendent to overlook the recommendations of the employment exchange. It was further submitted by Mr. Naik had the recommendations of the employment exchange been received after the closure of the selection process or

when the selection process began, there might have been some justification on the part of the Superintendent of Post Offices to have not considered the recommendations of the candidates sponsored by the employment exchange.

6. In such circumstances a clear illegality has been committed by the Superintendent of Post Offices and therefore the appointment of OP No.4 is liable to be quashed. On the other hand it was argued on behalf of the OP Nos.1,2 and 3 and on behalf of OP No.4 that no illegality has been committed in the matter of non-consideration of the cases sponsored by the employment exchange. Mr.Ramdas strongly and emphatically relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1987 SC 1227 (Union of India & others vs. N.Hergopal and others). In that case the challenge was made before the Court regarding consideration of cases of the applicants from the open market. It was submitted before the Hon'ble Supreme Court that no discretion vests with the concerned authority to consider the cases of the applicant from open market, because in view of the provisions contained in employment exchange (Compulsory Notification of Vacancies) Act, the candidates sponsored by the employment exchange has to be ^{only} ~~have~~ considered. This contention advanced by the learned ~~Add'l~~ ^{Additional} Solicitator General was overruled by the Hon'ble Supreme Court on the ground that the ~~g~~ choice must be wider opened to the employer to choose the best candidate and therefore Their Lordships had held that there was no illegality in the matter of consideration of the cases of the applicants from the open market. In this connection the observations of Their Lordships in paragraph-6 of the judgment is very important.

Their Lordships observed as follows:

"It is, therefore, clear that the **object** of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and most efficient and to widen opportunity to the workers to have his claim for appointment considered when the worker having done at every door for the employment. We are therefore firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchange".

7. ^{Main} ~~Many~~ themes of the observations of Their Lordships

^{brief} ~~falls~~ down to the fact that the choice of the employer must be wider opened to choose the best candidate. Therefore it was ^{in incumbent} ~~irregular~~ on the part of the Superintendent of Post Offices to choose the best candidate amongst the candidates sponsored by the employment exchange and the candidates who ~~had~~ applied from the open market. Such procedure not having been adopted and the candidates sponsored by the employment exchange having been overlooked, we are of opinion that the Superintendent of Post Offices acted ~~illegally~~

8. Mr. Naik, learned counsel for the petitioner urged that the petitioner is a matriculate whereas OP No. 4 is an under matriculate. It was further submitted by Mr. Naik that preference not having been given to the petitioner being a matriculate, an illegality has been committed by the Superintendent of Post Offices. On the other hand it was submitted by Mr. Ramdas that the OP No. 4 being a lady and having passed standard-VIII examination, she ^{had} ~~was~~ successfully qualified to gain the appointment and she being a lady, preference ought to be given to the weaker sections of the

society which has been done by the Superintendent of Post Offices and therefore no illegality has been committed by the Superintendent.

9. In view of the order which we propose to pass, we refrain ourselves from expressing any opinion on the above mentioned ^{Contentions} ~~conditions~~ advanced by Mr. Naik and Mr. Ramdas, lest we may fetter the discretion of the Superintendent of Post Offices which we do not propose to do. The Superintendent of Post Offices must be left with fullest discretion ^{for} ~~through~~ adjudicating the suitability of the candidates sponsored by the employment exchange and the applicants from the open market ^{in which being influenced} ~~being not~~ by any observation made in this case which is solely confined for the purpose of this case only.

10. Therefore we would quash the appointment of OP No.4 and we remand this case to the Superintendent of Post Offices (OPNO.3) to consider the cases of the candidates sponsored by the Employment Exchange and also the candidates who have applied from the open market including the petitioner and OP No.4 and thereafter the superintendent should adjudicate the suitability of the different candidates and whoever is found to be suitable by the Superintendent, appointment order should be issued in his/her favour.

11. ^{question} ~~said post~~ In case OP No.4 is still continuing in the post in ⁱⁿ she should be allowed to continue till the final selection and appointment is made. Thus the application is accordingly disposed of. No cost.



Chandray
MEMBER (ADMINISTRATIVE)

legat
29.4.92
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 29th April, 1992/Sahoo