

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 471 of 1990

Date of Decision. 14. 2. 1992.

Gajendra Mahali

Applicant

Versus

Union of India & others

Respondents

For the applicant

M/s. G. K. Mishra, R. Ray,
B. Dash, K. C. Swain
Advocates

For the respondents

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

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C O R A M

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

AND

HON'BLE MISS USHA SAVARA, 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*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

The applicant has filed this application challenging the appointment of Respondent No.5 as Extra Departmental **Delivery** Agent, Bodhpur. The facts averred by the applicant are that he was provisionally appointed as E.D.D.A, Bodhpur on 26.4.1989. His appointment was challenged by Shri Prasant Kumar Tripathy, i.e. Respondent No.5 in the present Case. After going through the merits of the case, his selection as E.D.D.A. was quashed and it was directed that a selection be made by following the proper procedure by order dated 26.7.1990. The Sub-Divisional Inspector(Posts) Central(Appointing Authority)finalized the process of selection and duly selected Respondent No.5. This application has been filed challenging the selection of Respondent No.5 as E.D.D.A.

2. The applicant claims preferential rights for an appointment to the post, and challenges the appointment of Respondent No.5 as being illegal, erroneous, arbitrary and without jurisdiction. It is claimed by him that he should have been given an opportunity of hearing by the authorities before allowing Respondent No.5 to work as E.D.D.A. This is violation of rules of natural justice. The learned counsel Mr.G.K.Mishra, submitted that a direction be given to the postal authorities to consider the applicant's case with regard to his qualifications, and experience as compared to that of Respondent No.5. It is also suggested that since the provisional appointment

of the applicant has not been cancelled, he is entitled to resume the duties of E.D.D.A., Bodhpur. Therefore, it is prayed that suitable orders be passed directing Res.Nos. 1 to 4 to cancel the appointment of Respondent No.5, and to allow the applicant to continue in the said post.

3. Learned Standing Counsel Shri A.K.Mishra submitted that the appointment of Shri Gajendra Mahali - the applicant had been made provisionally earlier without verification of any kind. Now, fresh selection has been made observing the proper procedure as laid down by the Department. It was pointed out that the applicant does not have a preferential claim as a Scheduled Caste candidate, because candidates of scheduled castes are not to be given preference in all cases, but only in certain percentage of the posts in the concerned administrative units. Matriculates are given preference only if all other eligibility conditions of the candidates are the same. Here, however, the experience gained by Respondent No.5 was also taken into consideration, and that gave him a weightage over the applicant.

4. Ordinarily we would have upheld the selection of OP No.5, because the judiciary cannot take the role of the executive to adjudicate the suitability of a particular incumbent for a particular post. But in the present case we find from the check sheet (Annexure-R/3) that the Sub-Divisional Inspector(P) has stated that the Central Administrative Tribunal, Cuttack Bench has ordered to consider the case of Shri Prasant Kumar Tripathy taking

into account his experience and that the Cuttack Bench has quashed the appointment of Shri Gajendra Mahali and hence it is felt unreasonable to offer appointment to Prasanta Kumar Tripathy as per the ~~indication and~~ orders of the Central Administrative Tribunal, Cuttack Bench in this regard. This ~~statement~~ made by the Sub-Divisional Inspector(P) is against weight of evidence on record, and we completely disapprove this observation of the said Inspector, who had absolutely no justification to say so, especially when there is no such observation made by the Bench except that the Bench observed that the concerned authority may take into consideration the experience gained by Shri Tripathy. Such observation of the Bench does not amount to the fact that Shri Tripathy should be appointed and the quashing of the appointment of the selected candidate should not have weighed with the selecting authority while adjudicating the suitability of a particular person. The selecting authority is always free to take his own decision irrespective of any other instructions. Therefore we are of opinion that for the ends of justice and for equity and fair play, the selection should be once again conducted without any other exterior circumstances weighing with the selecting authority and in no way the said fact of quashing of a particular appointment should weigh with the selecting authority. We, therefore, quash the appointment of OP No.5 and direct the competent authority to once again consider the cases of all the ~~candidates~~ including that of the petitioner and

O.P. No.5 and take his own decision regarding the suitability of the different applicants. He, ~~who~~ is found to be suitable may be appointed, past experience of any of the candidates be also taken into consideration. At the cost of the repetition it may be said that the selecting authority is completely free to exercise his own independent decision and pending finalization of the selection, OP No.5 may be allowed to continue in the said post office and again we would repeat that this direction should not weigh with the selecting authority in any manner whatsoever. Thus the application is accordingly disposed of leaving the parties to bear their own costs.

5. The selection and appointment should be completed within 45 days from the date of receipt of a copy of this judgment.

K. S. Srinivasan
14.2.92
VICE-CHAIRMAN



A. S. Srinivasan
14.2.92
MEMBER (ADMINISTRATIVE)