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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.62 of 1990
&
Original Application No.413 of 1989.

Date of decision : July 9, 1990.

In O.A.62 of 1990 Laxman Barik	...	Applicant.
	Versus	
Union of India & others	...	Respondents.
In O.A.413 of 1989 Keshab K _r ushna Majhi	...	Applicant.
	Versus	
Union of India and another	...	Respondents.
In O.A.62/90	For the applicant ...	M/s.Devanand Misra Deepak Misra, R.N.Naik, Anil Deo, B.S.Tripathy, Advocates.
In O.A.413/89	For the applicant ...	Mr.S.P.Mohanty, Advocates.
In both the cases	For the respondents ...	Mr.Aswini Kumar Misra, Sr.Standing Counsel (CAT)

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 ? *Yes.*
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 above mentioned cases are linked in that the selection of the applicant in O.A.62 of 1990 has been challenged in O.A.413 of 1989 and have been heard

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analogously. This common judgment would govern both the cases.

2. Briefly stated, the facts are that when a vacancy in the post of Extra-Departmental Mail Carrier (E.D.M.C.) under the General Post Office, Cuttack fell vacant, the Employment Exchange was requested by the Departmental authorities to sponsor the names of suitable candidates. The Employment Exchange sponsored the names of Laxman Barik who is applicant in O.A.62 of 1990 and Keshab Krushna Majhi who is applicant in O.A. 413 of 1989. After considering the cases of these two candidates the Senior Postmaster, Cuttack General Post Office, Respondent No.2 in O.A.413 of 1989 selected Laxman Barik, the applicant of O.A.62 of 1990 for the post of E.D.M.C. Laxman Barik was also appointed as E.D.M.C. with effect from 1.2.1990 vide Annexure-3 of O.A.No.62 of 1990. Later, the order at Annexure-3 was modified under order dated 31.1.1990 vide Annexure-4 making the appointment provisional and confining it to the period from 1.2.1990 to 28.2.1990. Laxman Barik has prayed for orders of the Tribunal for quashing Senior Postmaster's order vide Annexure-4 in O.A.62 of 1990 and making him a regular E.D.M.C.

3. The respondents have maintained in their counter affidavit that the cases of the two sponsored candidates had been duly considered in the light of the Rules/ instructions governing the appointment of E.D.M.Cs.



and as Keshab Krushna Majhi, the applicant of O.A.413 of 1989 was not permanent resident of the delivery jurisdiction of Cuttack General Post Office he was not selected for the post. Laxman Barik was selected and subsequently appointed for he satisfied all the conditions including the qualification relating to the post ^{residence in} Village.

4. We have heard Mr.B.S.Tripathy, learned counsel for the applicant in O.A.62 of 1990, Mr.S.P.Mohanty, learned counsel for the applicant in O.A.413 of 1989 and Mr.Aswini Kumar Misra, Sr.Standing Counsel (CAT) for the respondents in both the cases and perused the papers relating to these two cases. Mr.Tripathy has contended that as Laxman Barik, applicant in O.A.62 of 1990 had all the qualifications required under the Rules/instructions and as for that reason he was regularly appointed vide Annexure-3 of O.A.62 of 1990, there is absolutely no justification to modify subsequently the appointment and that too only for a period of one month. Moreover, according to Mr.Tripathy, no explanation or reason has been furnished by the Department as to why a modification of the earlier appointment order was resorted to. Mr.Aswini Kumar Misra has however replied that the order at Annexure-3 of O.A.62 of 1990 had to be modified as Keshab Krushna Majhi, the other candidate for the post filed an original application i.e. O.A.413 of 1989 so as to avoid future embarrassment for the Department as well as for the candidate. He has referred to paragraph 3(b) of the counter affidavit in O.A.413 of 1989 which reads

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as follows:

" 3(b) That the contention of the applicant in para 4(b) of the application that the applicant is residing within the delivery jurisdiction of Cuttack GPO since last twelve years does not fulfil the condition for recruitment to the post of E.D.M.C. According to Rule 4(ii) section III of Service Rules for Extra Departmental Staff 1980 published by P. Muthuswamy the candidate should be the permanent resident of the delivery jurisdiction of the Post office where the EDMC is to be appointed (Annexure-R-1). But the candidate has submitted one residential certificate from the additional Tahasildar Sadar Cuttack to certify that the candidate ordinarily resides at Emporium lane, Ranihat Cuttack in a rented house since twelve years. (Annexure-R-2) Thus it is quite evident that the applicant is not a permanent resident of delivery jurisdiction of Cuttack GPO and does not fulfil the condition of recruitment of E.D. agents. As such his claim for appointment as EDMC is not tenable. "

We have read Rule 4(ii) of Section III of Service Rules for Extra-Departmental Staff in Postal Department (Incorporating Orders received upto October 1989) compiled by P. Muthuswamy. This rule reads as follows:

" (ii) ED Mail Carriers, Runners and Mail Peons should reside in the station of the main post office or stage wherefrom mails originate/terminate, i.e. they should be permanent residents of the delivery jurisdiction of the post office. "

Both Mr. Misra and Mr. Tripathy submit that Keshab Krushna Majhi, the applicant in O.A. 413 of 1989 has taken residence temporarily at Cuttack. According to them, he is a permanent resident of the district of Mayurbhanj. We find from Annexure- 3 filed by Keshab Krushna Majhi in his application that the Tahasildar, Betanati certified that Shri Majhi is a permanent resident of village Purinapani in the district of Mayurbhanj and Shri Majhi ordinarily resides in village Purinapani. Mr. Misra has also brought to our notice

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Annexure-2. This is a copy of Resident/nativity certificate issued by the Office of the Tahasildar, Cuttack Sadar, in Miscellaneous Certificate Case No.775 of 1989. This certificate also says that Mr.Keshab Krushna Majhi is a native of the district of Mayurbhanj and his family ordinarily resides at village/Town Emporium Lane, RanihatCuttack in a rented house since 12 years. These two certificates leave no room for any doubt that Keshab Krushna Majhi, the applicant in O.A. 413 of 1989 is a permanent resident of village Purinapani in the district of Mayurbhanj and as such the requirement of residence as per the Rules quoted has not been fulfilled and as such Shri ^{Majhi} ~~Joshi~~ has not been selected. Moreover, as pointed out by Mr. Misra, ^{that} though Laxman Barik, the applicant in O.A.62 of 1990 who has been appointed prior to the filing of O.A.413 of 1990 is a necessary party ^{and} ~~and~~ he has not been made a party in O.A.413 of 1989. ^{Therefore} We are of the firm view that no relief could be granted to the applicant in O.A.413 of 1989 ^{adversely} affecting Laxman Barik's appointment. We have come to the conclusion that there is no merit in O.A. 413 of 1989 which stands dismissed.

5. As regards the relief sought by Laxman Barik the applicant in O.A.62 of 1990, we quash Annexure-4 and direct that Annexure-3 should be given effect to.

We are given to understand that Shri Keshab Krushna Majhi was working on daily wage basis as a casual labourer at the rate of Rs.12/- per day in the

[Signature]

General Post Office, Cuttack. This fact should be taken
due notice ^{of} by the departmental authorities and if he
comes in order of seniority of casual labourers, he
may be suitably absorbed as and when vacancies arise.

Mr. E. S. 9.2.90.
.....
Member (Judicial)

B. S. 9.2.90.
.....
Vice-Chairman

