

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO:119 OF 1990.

Date of Decision : 6th November, 1990.

Ananta Mohanta : Applicant

Versus

Union of India and others : Respondents

For the applicant : M/s. Devanand Misra,
Deepak Misra,
R.N.Naik, A.Deo,
B.S.Tripathy, Advocate.

For the Respondents : Mr. A.K.Misra, Sr.Standing
Counsel (C.A.T) .

CORAM:

THE HON'BLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

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

J U D G M E N T

N.SENGUPTA, MEMBER (J),

The material facts in this case are that there was an advertisement calling for applications for appointment of E.D.Packer Cum-Mail carrier of Khireitangiri Extra Departmental Sub Office Vide Annexure-1. The applicant in response to that advertisement applied for the post of E.D.Packer cum Mail carrier of Khireitangiri Extra Departmental Sub Office in the district of Keonjhar and he was selected for the post vide Annexure-2. As per the letter cum order Annexure-2, the applicant took over charge of the office of E.D.Packer cum-mail carrier of Khireitangiri Sub office. It is alleged by the applicant that his services are going to be terminated by the Respondent No.3 i.e. the Superintendent of Post Offices, Keonjhar Division.

2. The stand of the Respondents is that the advertisement mentioned wrong particulars with regard to the educational qualification, residential qualification etc. and the appointment order issued by Respondent No.4 was in violation of the rules regarding reservation of posts for Scheduled Caste and Scheduled Tribe ^{- candidates -}. They have also maintained that Respondent No.3 is a superior Officer and has the authority to review the order passed

M. Sengupta
6.11.90

by Respondent No.4 under Rule 16 of the E.D. Agents Recruitment and Conditions of Service Rules.

3. We have heard Mr. Deepak Misra learned Counsel for the applicant and Mr. A.K.Misra learned Senior Standing Counsel(CAT) for the Respondents. Mr. Deepak Misra has contended that the Rule quoted by the Respondents in their counter is inapplicable to the facts of the present case. We would agree with this contention of Mr. Deepak Misra because from the language used in Rule 16 it would be apparent that this power of review is available only in case of a Departmental enquiry or a disciplinary proceeding. Here admittedly, there was no enquiry nor was the applicant facing any disciplinary proceeding. Therefore, there cannot be any power to review under ~~the~~ Rule 16 of the E.D. Agents (Condition of Service) Rules. However, we do not mean to say that a superior officer has no power to review or alter an order passed by a Sub-ordinate authority for valid reasons which power is inherent under the service Rules

4. It has next been contended by Mr. Deepak Misra that the applicant was not given any opportunity to be heard before cancelling the order of his appointment. In support of this, Mr. Deepak Misra has cited a decision

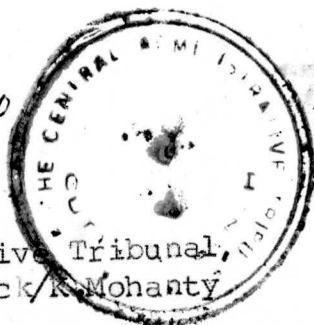
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14

reported in 1980 (2) S.L.R. 612 (E.S.M. Casteline Vs. State of Karnataka and others). Mr. Deepak Misra's contention is that the moment an appointment order is issued in favour of a person, a right accrues in his favour and he cannot be deprived of that right without being given an opportunity of being heard. This contention of Mr. Deepak Misra carries some force. With regard to the contention of Mr. A.K. Misra that even though the Educational qualification for appointment as E.D. Packer cum Mail carrier was a knowledge of simple arithmetic and ability to read and write the local language, but in the advertisement pass in Class-VIII was mentioned as the Educational qualification required, ^{if maybe said,} True it is, that for appointment as E.D. Packer Mail carrier, a person need not have passed Class VIII but admittedly Class-VIII is a higher qualification. If somebody had higher qualification and yet he satisfied the other requirements, we cannot say that the appointment is not in order. In the circumstances of the case we would direct that the services of the applicant cannot be terminated without giving him an opportunity of being heard but that does not mean that the services of the applicant cannot be terminated.

5. This case is accordingly disposed of. No costs.

Amal 6.11.90
VICE-CHAIRMAN



Neeraj 6.11.90
MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench, Cuttack / K. Mohanty