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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.15 OF 1991

Cuttack, this the 25th day of April, 1995

Brundaban Pradhan

...

Applicant.

Vrs.


Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters
or not? *yes*
2. Whether it be circulated to all the
Benches of the Central Administrative
Tribunal or not? *yes*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D.P. HIREMATH)
VICE-CHAIRMAN

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CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 15 OF 1991

Cuttack, this the 25th day of April, 1995

CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH,
VICE-CHAIRMAN

AND

THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

..

Brundaban Pradhan,
son of late Arjuna Pradhan,
Ex-E.D.Packer,
Rajsunakhala S.O., Pin-752 056 ... Applicant.

By the Advocates

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M/s A.K.Bose &
P.K.Giri.

-Versus-

1. Union of India, represented by
the Post Master General, Orissa,
Bhubaneswar.
2. Senior Superintendent of Post Offices,
Puri Division, At/P.O-Puri, Dist.Puri,
Pin-752 001.
3. Sub -Divisional Inspector of post,
Nayagarh East Sub-Division, Dist.Puri.
4. Aparti Panda, aged about 40 years,
s/o late Shyam Panda,
At/P.O-Rajsunakhala, P.S-Ranpur,
Dist.Nayagarh ... Respondents.

By the Advocates

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Mr.Aswini Kr.Misra
(Respondents 1 to 3)
M/s N.K.Acharya, &
N.Panda (For Respon-
dent No.4) .

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ORDER

D.P.HIREMATH, VICE-CHAIRMAN

The applicant herein was

appointed as E.D.Packer by Respondent No.3, the Sub-Divisional Inspector of Posts, Nayagarh, by his order dated 21.6.1985. Respondent No.3 had called for names to be sponsored by the jurisdictional Employment Exchange, but the Junior Employment Exchange Officer forwarded the name of the applicant *only* along with his application and two conduct certificates and attested copy of his educational certificate received by him from the applicant. That means, the applicant did not directly apply before Respondent No.3, but his application received by the ^{Junior} Employment Exchange Officer was forwarded to Respondent No.3.

In his appointment order dated 21.6.1985 (Annexure-1) Respondent No.3 stated that his selection was provisional as E.D.Packer in regular measure and that he was given to understand that his appointment to the said post was purely provisional and could be terminated at any time without assigning any reason. He joined on the same day, but on 25.2.1986 an order came to be made by the same Respondent No.3 that under the provisions of Rule 6 of the E.D.A.(Conduct and Service) Rules, 1964 his services as E.D.Packer were terminated with effect from 1.3.1986. It is undisputed that he was relieved of this office on expiry of the date fixed in Annexure-2 and Respondent No.4 was

[Signature]

appointed on ad hoc basis on 5.5.1986 later confirmed on 3.5.1989. Since then Respondent No.4 is continuing in the post.

2. After the termination order was issued, the applicant made representations against the same. On 25.1.1987 a reply was sent by Respondent No.3 that his representation would be considered sympathetically. On 3.2.1987, however, a reply was received by the applicant with reference to his representation dated 25.12.1986 forwarded with the letter of the Senior Superintendent of Post Offices, Puri Division, dated 23.1.1987, that the Post Master General had carefully gone through the representation of the applicant and the connected records and he did not see any reason for interfering with the action taken against him. It was, therefore, rejected. Receipt of this reply by the applicant is not in dispute. However, it appears that the applicant made another representation to the concerned authority and ^{the} reply as per Annexure-4 dated 8.2.1990 came to be sent to him stating that his case had no relation or close connection with the judgments cited by him and that a reply had already been sent to him on 3.2.1987 stating that, his representation was rejected. This is how

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the applicant filed this application on 17.1.1991 with a prayer that the order of termination as per Annexure-2 be quashed and if required, Rule 6 of the E.D.A.(Conduct & Service) Rules, 1964 be struck down and that he be declared to be continuing in service without any break, and to pay him arrear of salaries and other financial dues, etc.

3. The application is resisted on three grounds, namely, that in the letter addressed by Respondent No.3 to the Junior Employment Exchange Officer, Nayagarh, dated 24.11.1984, it was mentioned that the sponsored candidates should be asked by the Employment Exchange, Nayagarh, to apply directly to the Sub-Divisional Inspector of Posts, Nayagarh, within thirty days from 24.11.1984. But the said Junior Employment Exchange Officer instead of nominating the names of the eligible candidates forwarded a single application of the applicant along with two conduct certificates and attested copy of his educational certificate to Respondent No.3 which was entertained by Respondent No.3 and on that application the applicant came to be appointed on provisional basis against the post of E.D.Packer in contravention of Rules/instructions with regard to the sponsorship of the names of the candidates to be considered for such appointment. Secondly, an E.D.Packer under the

Rules governing his recruitment should be the resident in or near the place of work, but in the instant case the applicant was appointed without there being any proof of his residential criterion which disqualified him for the said post. Thirdly, as per the D.G.P. & F. letter of 4.9.1982, the Employment Exchange should nominate the names of candidates to the competent recruiting authority whereas in this case the Junior Employment Exchange Officer, Nayagarh, instead of nominating the names of candidates forwarded the single application of the applicant and the same was accepted by Respondent No.3 in contravention of the instructions. Lastly, as per Rule 13 of Section III, the recruitment authority should address the Employment Exchange sponsored candidates by name under registered post whereas in the instant case the same procedure 'was adopted' (counsel states - 'was not adopted'). The spirit appears to be so. It is unnecessary to refer to other averments made in the counter excepting that a decision of this Bench reported in the case of Prahallad Charan Swain v. Union of India and others, (1987) 3 ATC 54

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has been cited in support of the action taken by the respondents. The counter of Respondent No.4 was formal in nature as it should be as he only requires his continuance in the office as he has been regularly appointed observing all the Rules in vogue.

4. During arguments it was urged on behalf of the applicant that he was not given any opportunity to be heard before the impugned order came to be passed, that the question of limitation need not move large at this point of time as the application has been admitted and is being heard on merits, and that even if any irregularity is committed the applicant's appointment cannot be considered as being a nullity.

5. The fact that the application of the applicant alone was forwarded by the concerned Employment Exchange is not in controversy. In this behalf our attention is drawn by the Respondents' counsel to the directions issued by the Department in which it has been directed that E.D.Agent should

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be appointed through Employment Exchange of the area and it should be insisted upon the Employment Exchange to send at least three candidates and in case of any difficulty, the matter may be taken up with the Director of Employment Exchange of the State concerned. Normally they have instruction to send a panel of candidates not less than thrice the number of posts notified to them. In the event of the Employment Exchange failing to sponsor the minimum number of candidates, the vacancy should be notified through public advertisements and while making the final selection, the comparative merit of all the candidates, i.e., those who respond to the notification as also those sponsored by the Employment Exchange should be taken into consideration. Even as far back as on 19.1.1988 official direction was issued that whenever it is proposed to appoint an E.D. Agent due publicity should be given to this fact and this may be done by displaying a notice giving particulars of the appointment to be made and the allowances and other conditions attached to it at the concerned post office. Further, the sponsored Employment Exchange candidates should be intimated by registered post in supersession of the earlier instructions for issuing notices by ordinary post. The letter of

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4.9.1932 from the D.G.P. & T. states that in case no nominations are received from the Employment Exchanges regarding the candidates as per requirements within the stipulated period of thirty days or if any of the candidates sponsored by the Employment Exchange is not found suitable as per prescribed condition of eligibility, it would be open to the competent recruiting authority to make selection from other applicants in accordance with the existing procedure. These instructions together with the instructions referred to above with reference to the directive and the letter dated 1.5.1936 clearly require that there should be sufficient publicity before recruitment could be made and there should be adequate number of candidates to compete for the post so that the Department could have choice to select the best among them and also to give opportunity to those unemployed and who have registered their names in the Employment Exchanges for being considered for the post to be filled in the Government Department. In the admitted facts, it is patently clear that this material requirement was not adhered to when the concerned Employment Exchange sponsored the candidature of the applicant alone. The irregularity

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with regard to non-sending of intimation to the applicant by the Department itself may not, on the face of it, appear to be so material as to vitiate the appointment made otherwise regularly. Therefore, we do not attach much importance to that. With regard to the second contention that there is no material to show that he was not residing at the place in or near the place of work, it must be said that there is nothing to show that the appointing authority was not satisfied with this requirement though no specific document was produced. However, it is required that the person, who aspires for being appointed, should furnish adequate materials to show that he is a resident of that locality or the place of work.

6. Rule 6 is analogous to the discharge of a probationer simpliciter without attaching any stigma to him. The order of appointment, as we have already pointed out, clearly states that the appointment of the petitioner was provisional and was liable to be terminated at any time without any notice. Whether this should be considered as provisional

or not would be taken up at a later stage. The Respondents' counsel has invited our attention to two decisions of this Tribunal under Rule 6. In the case of Prahallad Charan Swain (supra) it was held that the termination of the petitioner's services was on administrative grounds and the appointment of the petitioner was terminated on the ground that his selection was not properly done and nothing had been urged before them challenging the conclusion of the P.M.G. and no bias or ill-will had been alleged against him. The termination of service was on administrative ground and Rule 6 permitted such termination simpliciter without making any enquiry. Reliance was placed on certain decided cases. There was no question of there being imputation of unsatisfactory work on the part of the petitioner in that case. Even in the case of Sri Abhimanyu Sahani v. Union of India, (1987) 2 A.T.C.900, the appointment order itself stated that the petitioner was provisionally appointed as E.D.B.P.M., Bankual and that his appointment was purely temporary and could be terminated at any time without any notice and assigning any reason. Even in that case the services of the petitioner were

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terminated for administrative reasons following the Rules. It was contended therein, relying on the decision of the Supreme Court in the case of Jarnail Singh v. State of Punjab, (1986) 3 S.C.C. 277 that when the order of termination is challenged as casting stigma on the service career, the Court can lift the veil in order to find out the real basis of the impugned order even though on the face of it the order in question appears to be innocuous. This decision, however, in the opinion of the Bench did not apply to the facts of the case as termination was purely on administrative ground.

7. The applicant's counsel, however, has urged, relying on a decision of the Supreme Court in the case of K.I. Shephard & others v. Union of India & others, AIR 1988 SC 686, wherein the Supreme Court held that natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet. Natural justice has various

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facets and acting fairly is one of them. In that case, the question was whether the Reserve Bank of India, which monitored the amalgamations, was required to act fairly. The situation necessitated a participatory enquiry in regard to the excluded employees. Since the decision to exclude them from service under the transferee Banks ^{was} ~~is~~ grounded upon a set of facts the correctness whereof they denied, if an opportunity to know the allegations and to have their say had been afforded, they could have no grievance on this score. Thus there were circumstances enough before the Supreme Court which could have been explained by the affected persons before any action administratively could be taken. In the instant case, however, the Respondents do not say that it was on account of misconduct, laches or lapses on the part of the applicant that the order of termination came to be passed. It was purely on their own lapses, breach of adherence to the Rules governing the recruitment, and failure on the part of the Employment Exchange to send adequate number of candidates for being considered for the post. These in our view are not matters which require answer from the applicant or to be explained by the applicant. It is & purely a lapse on the part of the authority who was competent to appoint the applicant and, therefore, considering

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the facts of the peculiar case before us, we are of the view that the decision relied upon by the applicant's counsel cannot be said to have been attracted. If that be so, it is patently clear that Respondent No.3 though sent his requisition to the Junior Employment Exchange Officer at Nayagarh for sponsoring the candidature of candidates to be considered for appointment to the said post, for reasons best known to the said Junior Employment Exchange Officer, the name of the applicant alone together with his application and conduct certificates were forwarded though it was not required to be forwarded by the Employment Exchange itself. Be that as it may, we are of the firm view that the officer concerned was clearly guilty of violation of the Rules of recruitment. If that be so, there was no other option left for the authorities excepting to terminate the services of the applicant on administrative grounds. As we are not prepared to accept the contention of the applicant that his termination is not proper and/or legal, we find it unnecessary to go into the other points, namely, provisional appointment and period of limitation. The application fails and is dismissed.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D.P. HIREMATH)
VICE-CHAIRMAN

25 APR 91

A. Nayak, P.S.