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CENTRAL ADMINISTRATIVE TRIBUNAL.
CUTTACK BENCH: CUTTACK

Original Application No.447 of 1991.

Date of decision: 5.1.93

Manoj Kumar Behera 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,
P.Panda, Advocates.

For the Respondents : Mr. Aswini Kumar Misra, St.
Counsel(Central)

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CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN
AND

THE HONOURABLE MR. C.S.PANDEY, MEMBER (ADMINISTRATIVE)

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1; Whether reporters of local news paper 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.

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JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19

of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the order cancelling his appointment and to direct the Opposite Parties that the Petitioner should continue in the Post of Extra Departmental packer cum Mail carrier Bhainsa Sub Office in account with Bolangir Head Office.

2. Shortly stated the case of the Petitioner is that the Post of Extra Departmental Packer cum Mail Carrier, Bhainsa Sub Office in account with Bolangir Head Office having fallen vacant, Opposite Party No.4, i.e. the Sub Divisional Inspector, Postal requested the Employment Exchange to sponsor certain names for being considered for appointment to the said post and the Employment Exchange sponsored certain names including the name of the Petitioner. Appointment order was issued in favour of the Petitioner as Extra Departmental Packer cum Mail Carrier by Opposite Party No.4 contained in Annexure 2. The Petitioner took charge of the post in question and while the petitioner was continuing as such, vide letter dated 7th November, 1991, the order of appointment was cancelled. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that since Opposite Party No.4 had not issued order of appointment in favour of the petitioner according to rules, such order of appointment was rightly cancelled by Opposite Party No.3 and fresh selection was ordered. In a ~~crux~~ ^{heart}, it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed

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4. We have heard Mr.R.N.Naik learned counsel for the Petitioner and Mr. Aswini Kumar Mishra, learned Standing Counsel(Central) for the Opposite Parties at a considerable length.

5. Before we discuss the merit of this case, vide order dated 26th November, 1991, it was directed that if it is contemplated to terminate the services of the Petitioner, it should not be done until further orders and the Opposite Parties were also directed to show cause as to why the interim order should not be made absolute till ^{the} final disposal of this application. The stay matter was fixed to 16th December, 1991. Counter to the stay matter not having been filed by 16th December, 1991 and there being no response ~~on from~~ ^{the} Opposite ~~parties~~ Parties, the stay order passed on 26th November, 1991 was made absolute. Therefore, it is presumed that the Petitioner is still continuing in the post in question. The Reasons for cancellation of the order of appointment of the Petitioner as stated in paragraph 3 of the Counter are as follows:

(a) In case the ST candidate at Annexure R/5 did not submit the Board Certificate or one Character Certificate he should have been asked to submit in order to give him the reasonable opportunity;

(b) The selection did not comply with the condition laid down in Annexure R/4.

(c) As regards, selection of reserved community the Respondent No.4 has not noted any discussion in the selection file as to if the ST representation in his Unit was full as required vide Annexure R/9.

(d) It was suspected that the application at R/5 was received by hand by the Respondent No.4 as the Regd. envelope was not kept in the file and it was also doubted that the Respondent No. 4 in order to appoint the candidate of his choice, did away with the two documents keeping a note to save the situation."

6. From Annexure R4 of the counter, it is found that while considering the cases of all other categories of ED Agents, preference be given to ST/ SC candidates. True it is so, but if a particular ST or SC candidate has not filed the required documents his candidature is liable to be rejected and in the present case, from the counter, it is found that the ST candidate did not submit the Board Certificate and a Character certificate. Opposite Party No.3, is of opinion that he should have been given opportunity to file the same. We do not accept this view of Opposite Party No.3. If such opportunity is given to the ST/SC candidate, then there is no point in rejecting the applications of other candidates who are similarly circumstanced. Hence we find no justifiable reason to accept the view of Opposite Party No.3 on this point. Against Paragraph (d) of the counter, it is further maintained that Opposite Party No.3 has a suspicion that Opposite Party No.4 in order to help the petitioner ^{in the} has done away / two documents keeping a note to save the situation. This is not only a suspicion but Opposite Party No.3 has jumped into a conclusion and has drawn an

inference without any basis. This amounts to a conjecture on his part which is not permitted under the law.

7. As regards the fact mentioned in paragraphs (b) and (c), we are of opinion that Opposite Party No.3 has committed travesty of justice and question of discussion of ST representation does not arise when an application of a particular ST candidate was not complete.

8. In such circumstances, we are of opinion that the order of cancellation of the appointment of the petitioner is illegal and without any basis ~~on~~ foundation. Hence the order of cancellation of appointment of the petitioner is hereby quashed. It is directed that the petitioner Shri Mangal Kumar Behera be reinstated to the post in question.

9. Thus the application stands allowed leaving the parties to bear their own costs.

Chaudhury
MEMBER (ADMINISTRATIVE)

Chaudhury
5/1/93
VICE-CHAIRMAN



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