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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 36 of 1991

Date of Decision: 9.11.1992

Pitabas Choudhury

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. Devanand Mishra
Deepak Mishra,
R.N.Naik, A.Deo
B.S.Tripathy
P.Panda,
Advocates

For the respondents No.5

Mr. B.S. Mishra,
Advocates

For the respondent Nos.1to4

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

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C O R A M:

THE HONOURABLE MR.K.P.ACHARAYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR.K.J.RAMAN, 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 ? ~~Yes~~ No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order of appointment issued in favour of Opposite Party No.5 appointing him as Extra Departmental Sub-Post Master of Sarichuan Post Office.

2. Shortly stated the case of the petitioner is that a regular selection was held for appointment to the post of Extra Departmental Sub-Post Master of Sarichuan Post Office. O.P. No.5 was selected and took charge of the post office. The petitioner not having been selected has come up with the aforesaid prayer.

3. In their counter the opposite parties maintain that the selection has been done according to rules in force. No illegality having been committed, the order of appointment issued in favour of OP No.5 should be upheld.

4. We have heard Mr.B.S.Tripathy, learned counsel for the petitioner and Mr.Aswini Kr Mishra, learned Standing Counsel.

5. Mr.B.S.Tripathy, learned counsel for the petitioner submitted that the Income Certificate given by the petitioner is much more than OP No.5 who is landless. The petitioner is a Graduate whereas OP No.5 is Matriculate. In addition to above the petitioner is physically handicapped. All these facts should have been heavily weighed with the appointing authority, especially the fact that the petitioner is physically handicapped. In the present days the physically handicapped persons are getting preference. Complying with this attitude and approach of the Government of India, the petitioner should have been

selected.

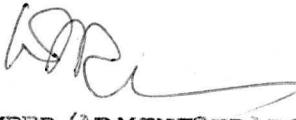
6. Mr.A.K.Mishra, learned Standing Counsel contended that since the competent authority has applied his mind to all these aspects and has exercised his discretion, which is not arbitrary or capricious in favour of O.P. No.5, the aforesaid contentions of Mr.Tripathy should not be accepted - rather it should be rejected.

7. We do not propose to express any opinion on the contentions advanced by Mr.B.S.Tripathy and Mr.A.K.Msirha because of the changed circumstances. It came to light that in the meanwhile services of O.P. No.5 has been terminated. This fact was not disputed either by the learned Standing Counsel Mr.Aswini Kumar Mishra or by Mr.B.S.Mishra, learned counsel appearing for O.P.No.5. But Mr.B.S.Mishra argued with vehemence that O.P. No.5 in the present ^{case} _{has already filed an application under} Section 19 before this Bench challenging order of termination. This forms subject matter of Original Application No. 70 of 1992. Mr.Mishra submitted that in case the said original application is allowed, fresh appointment resulting from the fresh selection would seriously jeopardise the interest of O.P. No.5 in this case and the petitioner in the aforesaid original application. In case the said original application is allowed there will be no berth available to accommodate the petitioner. There is some force in the contention of Mr.B.S.Mishra.

8. Therefore it is directed that the competent

authority may consider appointment of the petitioner Shri Pitabas Choudhury as Extra Departmental Sub Post Master of Sarichuan Post Office (if nobody else has been appointed earlier upto to-day) and in case the authorities appoint Shri Chaudhury, then such appointment would be purely on adhoc basis and temporary arrangement without vesting any civil right over him and his appointment/continuance in Sarichuan Post Office will be subject to the result of the application in Original Application No.70 of 1992. The petitioner should be specifically informed of this fact while the appointment order will be issued to him by the opposite parties.

9. Thus the application is accordingly disposed of leaving the parties to bear their own costs.


MEMBER (ADMINISTRATIVE)


9.XI.92
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 9/11/1992/ H.R. Sahoo

