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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 493 of 1991.

Date of decision : January 18, 1994.

Umesh Kumar Jenamani Samant ...

Applicant.

Versus

Union of India and others ...

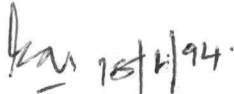
Respondents.

( FOR INSTRUCTIONS)

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

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

18 JAN 94

  
(K. P. ACHARYA)  
VICE-CHAIRMAN.

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Umesh Kumar Jenamani Samant ... Applicant  
Versus  
Union of India and others ... Respondents  
For the Applicant ... M/s. R.B. Mohapatra,  
D.R. Rath,  
N.J. Singh,  
Advocates  
For the Respondents ... Mr. Aswini K. Mishra,  
1 & 2 Standing Counsel (Central).  
For the Respondent ... Mr. U.Ch. Mohanty, Advocate  
No. 3

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C O R A M:

THE HON'BLE MR. K.P. ACHARYA, VICE- CHAIRMAN  
A N D

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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J U D G M E N T

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner Shri Umesh Kumar Jenamani Samant prays to quash the impugned order dated October 15, 1991 appointing Opposite Party No. 3 namely Shri Rusinath Mallick as Extra Departmental Branch Post Master in Janakadeipur Branch Post Office within the Kujanga Tahasil.

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2. Shortly stated, the case of the applicant is that Respondent No.2 i.e. the Superintendent of Post Offices, South Division, Cuttack issued a requisition to the Employment Exchange, Paradeep on April 2, 1991 to sponsor candidates by May 3, 1991, for considering them for appointment to the post of Extra-Departmental Branch Post Master, Janakadeipur Branch Post Office. The Employment Officer in response to the said letter vide its letter dated April 24, 1991 sent a list containing names of seven candidates to Respondent No.2. On May 2, 1991 the Employment Officer sent another list out of its own accord containing the names of three candidates. A notice was issued by the Superintendent of Post Offices, Cuttack South Division, calling for applications from the open market and in response thereto Respondent No.3 (Rusinath Mallik) was the only applicant. After receiving both the letters from the Employment Exchange, letters were issued to the candidates for submission of their educational qualification certificate, marks obtained in different examinations, residential certificates and income certificate from the concerned Tahasildar for adjudicating the suitability of different candidates. An application is said to have been filed by the Respondent No.3 before the Tahasildar, Kujanga challenging the certificate granted

by the Tahasildar, Kujanga that the income of the applicant was to the extent of Rs.26,000/- . In his turn, the Tahasildar, Kujanga informed Respondent No.2 that further enquiry is under progress regarding the income of the applicant. Without waiting for the report of the Tahasildar, Kujanga (Respondent No.4) Respondent No.2 issued a letter on 15th October, 1991 appointing Respondent No.3 i.e. Shri Rusinath Mallick as Extra-Departmental Branch Post Master of Janakadeipur Branch Post Office. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, Respondents maintained that the Employment Exchange, Paradeep, had sponsored names of seven candidates vide its letter dated 24th July, 1991. Subsequently, an additional list of candidates was received by the Superintendent of Post Offices from the Employment Exchange, Paradeep which contained the names of three persons including the applicant. In the first instance, the additional list was not taken into account as the names were sponsored without being called. This was as per the rules but a telephone message was received from the Additional Secretary to the Minister of Panchayati Raj, Orissa (Dr. Damodar Rout) that the name of the applicant sponsored in the additional list should be taken into consideration, as those candidates could not collect necessary documents as a result of closure of

State Government offices due to the sad demise of Rajib Gandhi. It was further mentioned that those candidates are approaching the Minister for extension of time. Instead of finalising the selection among the candidates sponsored in the first list and second list, an open advertisement should be published calling for applications from the open market as desired by Panchayati Raj Minister. Due to this communication over telephone, apprehending that there may be delay in finalising the appointment, Respondent No.3, Rusinath Mallik was provisionally appointed as Extra-Departmental Branch Post Master of the said Post Office.

4. We have heard Mr.R.B.Mohapatra, learned counsel appearing for the petitioner, Mr.Aswini Kumar Misra, learned Standing Counsel(Central) for the Respondent Nos.1 and 2 and Mr.U.C.Mohanty, learned counsel appearing for ~~the~~ Respondent No.3.

5. At the outset we must say that one of the prohibitions imposed in the advertisement is that no influence should be exercised over the appointing authority either directly or indirectly relating to his/her appointment. By laying down such a condition, it is intended that every selection/appointment should

9

be fair and without being tainted with any undue pressure over the appointing authority by anybody to gain any undue advantage. In this connection, it may be stated that a second list was not entertainable from the employment exchange as per the rules. Finding the situation to be very difficult, the petitioner approached certain authorities to advocate his cause. In the counter, it is stated by Opposite Party Nos. 1 and 2 that the Additional Secretary to the Minister Panchayatraj Orissa (Dr. Damodar Rout) instructed Opposite Party No. 2 over telephone that some candidates could not apply in due time and could not collect necessary documents like income certificate, residential certificate as a result of closure of State Government offices due to sudden demise of Rajib Gandhi and as such those candidates are approaching the Minister for extension of time. Therefore, the Minister desires that a fresh opportunity be given to persons desirous of applying for the post by calling for applications from open market and accordingly an advertisement was published. To lend corroboration to this averment finding place in the pleadings, the note forming subject matter of the file in question is an important document written by the then Superintendent of Post Offices (Shri Shankar Prasad Das) which should be taken note of. Shri Das had written the note in his own hand which is as follows:

10

"Regarding selection of E.D.B.P.M., Jankdeipur Shri Satpathy, Addl. Secy. to Minister Panchayat Raj Orissa (Dr. Damodar Rout) talked to me over Phone from Bhubaneswar a few days ago that some candidates of the first E.E. List could not apply as they could not collect necessary documents like Income Certificate, resident certificate etc. as a result of closure of State Government Offices due to sudden demise of Shri Rajiv Gandhi and as such those candidates are approaching the Minister for extension of date instead of finalising the selection among the candidates sponsored in the second list of E.E. the Addl. Secy. emphatically suggested that another opportunity be given to those other desirous candidates by issue of an open notice as desired by the Panchayat Minister of Orissa. Hence open notice be issued so that the candidates who could not apply earlier can apply now".

In response to the open advertisement, Respondent No. 3 Shri Rusinath Mallik, ~~applicant~~ sent his application in the prescribed proforma which was received in the office of the Superintendent of Post Offices ~~on 27th June, 1991~~. In addition to above, one would find that name of the petitioner Shri Umesh Kumar Jenamani Samant was recommended for appointment by Shri Lokanath Chaudhury Ex-Member of the Parliament. In his letter addressed to Shri Sankar Prasad Das, Supdt. of Post Offices, South Division, Cuttack, Shri Chaudhury states as follows:

" I came to know that you are going to appoint a village postmaster at Janakadeipur under Erasama Block in Cuttack District. You have invited names from the Employment Exchange for the same. Sri Umesh Kumar Jenamani Samant of Janakadeipur is sponsored by the Employment Exchange Paradeep for the purpose. But unfortunately, his name is not being considered for the same post, as it is received in your office late.

Therefore, I request you to consider his case alongwith others and give him a chance for selection. I am very much interested about him. Hope he will get your sympathetic consideration 2.

In reply to this letter, Shri Dash Superintendent of Post Offices informed Shri Choudhury that the case of Shri Samant, applicant, cannot be considered as the Rules do not permit because of late receipt of the application. This letter is dated 29th May, 1991. Telephone call from Shri Satpathy, Additional Secretary to Government, Panchayati Raj and conversation with the Superintendent (as stated above) was on 1.7.1991 and the Superintendent of Post Offices, Shri Dash wrote back to Shri Choudhury saying in view of the changed circumstances the case of Shri Samant, the applicant is now under consideration and in the office copy of the letter, the Superintendent of Post Offices, Shri Dash has given an endorsement stating 'see my orders at 24 C.' This has reference to the note dated 1.7.1991 of the Superintendent of Post Offices quoted above.

It is most shocking to note and one can never appreciate that appointment/selection or even consideration for selection is being interfered with by highly placed authority like a Minister or an ex-Member of the Parliament. Far from being appreciated, it has to be thoroughly deprecated because this mode adopted to obtain appointment for persons on whom they are interested is against all norms and conduct and so also against all

22



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cannons of justice, equity and fair play. We cannot disbelieve the statement made by the Superintendent of Post Offices in his note because it relates to the year 1991 and the Superintendent of Post Offices could not have gathered courage to make a false statement of this nature against a Minister, Ex-Member of Parliament and an Additional Secretary to the Minister. In adopting such a procedure free and fair selection is being trampled down. Equally, we cannot appreciate the reprehensible conduct of Shri Umesh Kumar Jenamani Samant, the applicant in approaching every post and pillar to influence the concerned authority for his appointment. Not only Sri Umesh Kumar Jenamani Samant is the villain of the <sup>in place</sup> ~~piece~~ but Respondent No.3, Shri Rusinath Mallik is a satan in the paradise. An undue request was made to the Superintendent of Post Offices on behalf of the Minister by his Additional Secretary that another opportunity should be given to desirous candidates by issue of an open notice. The Superintendent issued a notice and Respondent No.3, Rusinath Mallik was the applicant. Therefore, the possibility of such request for issue of a fresh notice was at the instance of Rusinath Mallik cannot be over-ruled. In our opinion, Rusinath Mallik has left no stones<sup>2</sup> unturned to exercise influence over the authority to make room for consideration of his case. On this account alone Shri Samanta, the applicant and respondent No.3, Rusinath Mallik have disabled themselves from being

considered. We are afraid such persons cannot be loyal to their duties in safeguarding the interest of the Government and the people at large especially in regard to the control and custody of Government money. Due to the aforesaid infirmity appearing in the conduct of the applicant Shri Samant and Respondent No.3, Rusinath Mallik, we would hold that they have discredited themselves for which in no circumstances their cases should be considered for appointment to any Government service.

6. Before we part with this case, we feel persuaded to observe that even the appointing authority has a cardinal duty cast on him to hold free and fair selection. Deviation from this righteous path is a serious reflection on the conduct of the appointing authority. In the present case, rightly a view was taken by the then Superintendent of Post Offices, Shri S.P. Dash that a second list containing names of different candidates was not to be considered. But surprisingly, Shri Dash having allowed himself to be influenced by a message conveyed to him on behalf of the Minister, Panchayat Raj, and also being unduly influenced by the letter of request sent to him by Shri Lokanath Choudhury, ex-Member of Parliament, swayed himself away from the righteous path of making a free and fair selection. We cannot appreciate the steps taken by him.

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7. In view of the aforesaid discussions <sup>made</sup> ~~made~~ <sup>in</sup> ~~above~~, we find no merit in this petition which stands ~~dismissed~~ with repetition of the observation made above that the candidature of both Shri Umesh Kumar Jenamani Samant and Respondent No.3, Shri Rusinath Mallik should not be considered at any point of time for appointment to the post of Extra-Departmental Branch Post Master, Janakadeipur Post Office. It is further directed that steps be taken afresh, according to Rules, by the concerned authority for filling up the post of Extra-Departmental Branch Post Master, Janakadei-  
-pur Branch Post Office on regular basis. It is further directed that Overseer Mails would remain in charge of the said Post Office till regular appointment is made and we further direct that Respondent No.3 Rusinath Mallik should hand over charge of the post of Extra-Departmental Branch Post Master, Janakadeipur Branch Post Office within 7(seven) days from the date of receipt of the order passed by the Superintendent of Post Offices to the above effect and the Superintendent of Post Offices should pass orders directing Respondent No.3, Rusinath Mallik to hand over charge within 7(seven) days from the date of receipt of a copy of this judgment.

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MEMBER (ADMINISTRATIVE)

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VICE-CHAIRMAN.

Central Administrative Tribunal,  
Cuttack Bench, Cuttack  
January 18, 1994/Sarangi, Sr.P.A.