

9

15

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 101 & 177 OF 1992

Cuttack, this the 20th day of January, 1998

Dukhi Shyam Nanda (in OA 101/92)

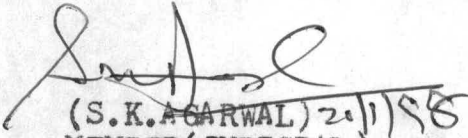
Ramesh Chandra Nanda (in OA 177/92) ... Applicants

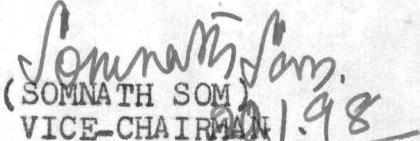
Vrs.

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 NO.
Central Administrative Tribunal or not?


(S.K. AGARWAL) 21/1/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 21.1.98

10

16

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 101 & 177 OF 1992
Cuttack, this the 20th day of January, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K. AGARWAL, MEMBER (JUDICIAL)

....

In OA 101/92

Sri Dukhisyam Nanda,
aged about 25 years,
son of late Dambarudhar Nanda,
At/PO-Pandurishila,
Via-Banaigarh,
District-Sundargarh

In OA 177/92

Sri Ramesh Chandra Nanda,
aged about 27 years,
son of Sisir Kumar Nanda,
At/PO-Pandrisila,
Via-Banaigarh, Dist. Sundargarh

....

Applicants

-versus-

In OAs 101 & 177/92

1. Union of India, represented by
Secretary to the Minister of Communication,
Government of India, New Delhi.
2. The Senior Superintendent of Post Offices,
Sundargarh Division, Sundargarh-770 001.
3. Sri Radhakanta Satpathy, son of Bire
Kishore Satpathy, At/PO-Pandrisila, Via-Banaigarh,
District-Sundargarh

....

Respondents

Advocates for applicants -

M/s A.S. Nandy, B.K. Kar &
K.N. Sinha
(in OA 101/92)

Mr. P.K. Das (in OA 177/92)

Advocates for respondents -

Mr. Ashok Mohanty, Sr. CGSC.
& (for R. 1 & 2)

M/s P.V. Ramdas, B.K. Panda &
K.P. Nanda
(For respondent no. 3)

.....

Somnath Som
20.1.98

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two O.As. 101 & 177/92 have been heard together and one order will govern these two cases. In OA 101/92 applicant Dukhishyam Nanda has asked for the following reliefs:

- (i) Appointment of respondent no.2 Radhakanta Satpathy as E.D.B.P.M., Pandrisila B.O. should be quashed; and
- (ii) Respondent no.2 should be directed to hold an examination or interview of all the candidates sponsored by the Employment Exchange and consider the cases of all the candidates on merit.

In OA 177/92 applicant Ramesh Chandre Nanda has asked for identical reliefs. Departmental respondents and respondent no.3 Radhakanta Satpathy have filed counters in both the cases. The facts alleged by the two applicants in these two O.As. are stated separately.

2. In O.A. 101/92 applicant Dukhishyam Nanda has stated that his name along with the names of respondent no.3 and some others were sponsored by the Employment Exchange for the post of E.D.B.P.M., Pandrisila, and respondent no.2 called the applicant to submit the detailed application with all the required documents. Applicant's case is that he submitted all the documents in letter dated 14.12.1991. By that time, the result of High School Certificate Examination was not declared. According to the applicant, the result was declared on 4.12.1991

Somnath Som
20.1.98

and sometime during the last week of December 1991, the applicant submitted the marksheet in person to the Head Clerk in the office of respondent no.2. Even though, according to the applicant, he was the most qualified and suitable candidate, respondent no.2 selected respondent no.3 for the post of E.D.B.P.M, Pandrisila. It is further alleged that even though the applicant had submitted all the documents on 14.12.1991 and 29.1.1992, respondent no.2 in his letter dated 12.2.1992 asked the applicant to furnish fresh income certificate in his own name and marksheet of H.S.C. Examination. According to the applicant, respondent no.3 is an undermatriculate, but even then he was selected. Because of this, the applicant has come up with the aforesaid prayer.

3. In OA 177/92 applicant Ramesh Chandra Nanda has stated that his name was forwarded by the Employment Exchange for the post of E.D.B.P.M., Pandrisila and respondent no.2 called upon him to furnish the detailed application with all the connected documents on or before 18.12.1991. Accordingly, he submitted the application with the necessary documents. The applicant had completed Bachelor of Arts from Sambalpur University. It is also his case that he had been working as a substitute in the post of E.D.B.P.M., Pandrisila, on behalf of Chintamani Nanda since 1991 and had acquired sufficient experience. But in spite of this, respondent no.3 Radhakanta Satpathy was selected ignoring the case of the applicant.

Domestic
20.1.98

4. In both these O.As., after admission, the applicants prayed for restraining respondent no.3 from working as E.D.B.P.M, Pandrisila. In OA 101/92 in order dated 30.4.1992 ,

13

19

it was directed that Overseer Mail attached to Sub-Divisional Inspector, Postal, Banaigarh Sub-Division, should take charge of the post of E.D.B.P.M., Pandrisila and ultimately the result of the Application would govern the future service benefit of the applicant and respondent no.3. In OA 177/92, in order dated 27.3.1997, it was noted that in view of the Division Bench order dated 30.4.1992 in OA 101/92, no further order was necessary by reopening the matter.

5. Departmental respondents in their counter in OA 101/92 have submitted that the applicant in that case Dukhishyam Nanda along with his petition did not submit the marksheet of Matriculation examination. He noted that he had appeared in Board of Secondary Education, Orissa, Examination, 1991 and the result was yet to be published. Copy of his petition dated 12.12.1991 is at Annexure-R-3. Respondents have stated that according to the certificate given by the Headmaster which is at Annexure-R-4, applicant Dukhishyam Nanda appeared in High School Certificate Examination in 1985 but got plucked. Respondents have stated that subsequently Dukhishyam Nanda submitted the marksheet. But as on the last date of submission of the application, he had not passed Matriculation Examination, which is the eligibility qualification for E.D.B.P.M., his case was not considered. Subsequently, he was asked to submit the marksheet and after the same was submitted, this was taken into consideration. According to the respondents, for selection to the post of E.D.B.P.M., percentage of marks in the Matriculation is the determining factor and there is no provision for holding any written examination or interview. Respondents have further stated that in the Matriculation

Sammam Sim
20.1.98

Examination, respondent no.3, the selected candidate got higher marks than the applicant in OA 101/92 and therefore, respondent no.3 has been rightly selected. On the above grounds, they have opposed the prayer of the applicant in OA 101/92.

6. In OA 177/92, the departmental respondents, besides mentioning all the above, have taken the further stand that according to the instructions, no weightage can be given for any qualification higher than the Matriculation and therefore, the fact that applicant Ramesh Chandra Nanda had passed B.A. has not been taken into account. As regards working of the applicant as substitute, respondents have stated that applicant Ramesh Chandra Nanda worked as substitute from 18.3.1991 to 27.3.1991. But as the incumbent Chintamani Nanda went on leave he was allowed to continue. The applicant did not hand over charge to Overseer Mail in pursuance of the order dated 30.4.1992 in OA 101/92. But with great difficulty, he was made to hand over charge only on 21.3.1997. The respondents have, therefore, contested the application that the applicant Ramesh Chandra Nanda has worked as a substitute for long period with the approval of the departmental authorities.

7. Respondent No.3 Radhakanta Satpathy, the selected candidate has filed counter in both these cases in which he has submitted that there is no infirmity in the selection and therefore, both the O.As. should be rejected.

8. We have heard the learned lawyer for the applicants, learned Senior Standing Counsel, Shri Ashok Mohanty appearing on behalf of the departmental respondents, and the learned lawyer for respondent no.3, and have also perused the records.

Sanjay Ram
21.1.98

15

21

9. At the outset, it has to be stated that the second prayer of the applicants in both the cases that the selection should be done after holding a written examination or interview is without any merit and must be rejected because the Rules do not provide for any such examination or interview. It is specifically laid down that subject to fulfilment of necessary conditions of eligibility, the person with highest percentage of marks in the Matriculation is to be selected. In view of this, we hold that the second prayer of the applicants for holding written examination or interview is without any merit and the same is rejected.

10. The first prayer is for quashing the appointment of respondent no.3. According to the counter filed by the departmental respondents in OA 177/92, it is noted that respondent no.3 got 44.28% marks whereas the applicant in OA No.101/92 got 34.57% marks. As regards Ramesh Chandra Nanda, the applicant in OA 177/92, he did not submit the High School Certificate Examination marksheet. In view of this, it is clear that the departmental authorities could not have considered and selected ^{the applicant} ~~applicant~~ Ramesh Chandra Nanda, in OA 177/92 instead of respondent no.3 because he had not submitted his H.S.C. Examination marksheet. Moreover, the Rules do not provide for taking into account his higher qualification of Graduation and also his experience as a substitute. Substitutes are not appointed through any process of selection. The incumbent holder of the office while going on leave provides a substitute at his own risk and responsibility and therefore, work as a substitute cannot confer any advantage on the applicant in OA 177/92. In this case, it is further seen

Commandant
20.1.98

that in spite of the order dated 30.4.1992 of the Tribunal in OA No.101/92 directing the Overseer Mail to take over charge of the office, the applicant in OA 177/92 handed over charge only in March 1997. He cannot be allowed to have any advantage of his continuing in the post of E.D.B.P.M., Pandrisila, in the face of the order dated 30.4.1992 directing the Overseer Mail to take over charge of the office. As regards the applicant in OA No.101/92, as we have noted earlier, he has got less marks than respondent no.3. In consideration of the above, we hold that the applicants in both these cases have not been able to make out a case for quashing the appointment of respondent no.3 who has been rightly selected because he got the higher percentage of marks amongst all the candidates in the High School Certificate Examination. The first prayer of the applicants also, therefore, is held to be without any merit and the same is rejected.

11. In the result, therefore, both the Applications fail and are dismissed. The order for interim arrangement passed on 30.4.1992 in OA No.101/92 also stands vacated. There shall be no order as to costs.

(S.K.AGARWAL) 20/1/98
MEMBER(JUDICIAL)

(SOMNATH SOM) 1-98
VICE-CHAIRMAN