

191

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.282 OF 1992
Cuttack, this the 7th September, 1998


Kumar Mallik Ananda Prasad Petitioner

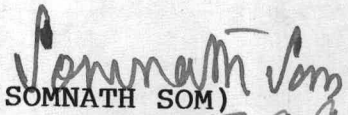
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

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


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 7.9.98

10

(20)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.282 OF 1992

Cuttack, this the 7th day of September, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Kumar Mallik Ananda Prasad,
aged about 26 years,
son of Sadhu Charan Mallik,
At/PO-Kadaliban, Via-Chaudkulat,
Dist.Cuttack

.....

Applicant

By the Advocates -

M/s R.B.Mohapatra
& N.J.Singh.

Vrs.

1. Union of India,
represented by its Secretary,
Department of Posts,
Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Orissa, At/PO-Bhubaneswar, Dist.Khurda.
3. Superintendent of Post Offices,
Cuttack North Division,
Cuttack-1, Dist.Cuttack.
4. Purusottam Das, s/o Gajendra Dash,
At/PO-Athagarh, now working as
E.D.B.P.M., Kadaliban Branch Post Office,
At/PO-.Kadaliban, Via-Chaudakulat,
Dist.Cuttack

.....

Respondents

By the Advocates -

Mr.Ashok Mohanty
Sr.C.G.S.C.
(for respondents 1 to
3)
& Mr.H.P.Rath for
Respondent no.4

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has prayed

for quashing the appointment of respondent no.4 as Extra Departmental Branch Post Master, Kadaliban Branch Post Office. There is also a prayer for a direction to respondent no.3 to consider the case of the applicant for appointment as E.D.B.P.M., Kadaliban B.P.O., in view of the instructions of Director-General, Posts and observation of the Tribunal in OA No.445 of 1989.

2. The facts of the case, according to the petitioner, are that the petitioner and respondent no.4 had submitted application for appointment as E.D.B.P.M., Kadaliban B.P.O. The applicant is a Scheduled Caste candidate and has all the requisite qualification for being selected on preferential basis. But he was not selected for the post and on the contrary, respondent no.4 was selected. Against the selection of respondent no.4, the petitioner filed OA No.445/89 which was disposed of in order 12.11.1990. In that case, respondent no.4 had not entered appearance. The Tribunal after hearing the petitioner and the departmental respondents quashed the selection of respondent ^{no.4} and directed reconsideration of the case of the applicant and respondent no.4 for appointment as E.D.B.P.M. The order dated 12.11.1990 is at Annexure-A/1. The petitioner further states that the above order of the Tribunal was not complied with by the departmental authorities and the applicant filed Misc. Case on 20.8.1991 for implementation of the order dated 12.11.1990. In the meantime, respondent no.4 filed O.A.No.9/91 seeking a direction to the departmental authorities to appoint him permanently as E.D.B.P.M., Kadaliban B.P.O. on the ground that he has been working as such for a long time. The Misc. Case filed by the applicant on 20.8.1991, which was registered as MA No. 273 of 1991 and O.A.No.9/91 filed by respondent no.4 were disposed of in order dated

S. Jom.

6.2.1992 . This order is at Annexure-A/2. The Tribunal directed that the order dated 12.11.1990 in OA No.445/89 be implemented and the case of the petitioner Shri Purusottam Das in OA No.9/91 and the petitioner K.M.Anand Prasad in OA No.445/89 be considered afresh for the post of E.D.B.P.M., Kadaliban. The Tribunal further directed that any observations made by this Bench or previous Bench while disposing of O.A.No.445/89 should not weigh with the concerned authority who is free to exercise his discretion according to law and select a suitable candidate for the post of E.D.B.P.M., Kadaliban, within a period of sixty days. The applicant has further stated that in pursuance of the above order dated 6.2.1992, respondent no.3 directed the applicant to produce all the relevant records. But respondent no.3 without considering the case of the applicant with regard to giving preference to Scheduled Caste candidate, appointed respondent no.4 to the post of E.D.B.P.M., Kadaliban. The applicant further states that respondent no.4 has not passed the H.S.C.Examination in the year 1966 and the certificate produced by respondent no.4 is a fraudulent one. He also prayed that a report should be called for from the Board of Secondary Education and Headmaster, Biswanath Bidya Pitha, Athagarh for ascertaining the correct facts. In the context of the above facts, the petitioner has come up with the prayers referred to earlier.

3. Respondent no.4 in his counter has not challenged the factual aspects but has stated that he has passed H.S.C.Examination from Biswanath Bidya Pitha, Athagarh, in 1966 and he has enclosed the certificate issued by Board of Secondary Education at Annexure-R/4. It has been further stated that in pursuance of the order of the Tribunal, the departmental authorities have considered the candidature of the applicant and respondent no.4, and have appointed respondent

13

(23)

no.4 and therefore, his appointment as E.D.B.P.M., Kadaliban B.P.O., cannot be termed illegal. In view of this, respondent no.4 has opposed the prayers of the petitioner.

4. Departmental authorities in their counter have submitted that in pursuance of the order of the Tribunal, the case of the petitioner and respondent no.4 was considered strictly in accordance with the relevant instructions. But the applicant was not selected because he did not have adequate means of livelihood. The respondents have also stated that the School Leaving Certificate filed by respondent no.4 was verified and was found correct. In view of this, the departmental respondents have submitted that respondent no.4 has been rightly appointed to the post of E.D.B.P.M., Kadaliban B.P.O., and the prayer for quashing his appointment is without any merit.

SJM . 5. The petitioner has filed a rejoinder to the counter filed by the departmental respondents, in which it has been stated that in the letter dated 8.3.1978 of Director General, Posts, it has been directed that preference should be given to S.C. and S.T. candidates for appointment as E.D. Agents. But in spite of this, the case of the petitioner has not been considered and he has not been appointed. It is further submitted that the departmental authorities have not properly considered the case of the applicant and have not given preference to him even though he is a resident of the village where the Post Office is situated. It is also submitted that the petitioner has adequate means of livelihood and his candidature should not have been rejected on the ground of his not having adequate means of livelihood. The petitioner has filed a further rejoinder in which he has submitted that the genuineness of the certificate regarding respondent no.4 passing H.S.C. Examination in the year 1966 was never verified

14

24

at the level of Headmaster, Biswanath Bidya Pitha and also from the Board of Secondary Education. Moreover, the original certificate has never been produced by respondent no.4. In view of this, the petitioner has challenged respondent no.4's assertion that he has passed the H.S.C.Examination. On that ground, the petitioner has stated that the appointment of respondent no.4 should be quashed. Besides the counters and rejoinders referred to above, the petitioner also filed MA No.71 of 1998 in which he prayed for a direction to Headmaster, Biswanath Bidya Pitha, Athgarh, to produce the Admission Register of the School and also the counter-foil of the School Leaving Certificate No.60 dated 12.10.1966 and the mark-list supplied by the Board of Secondary Education. There was also a prayer for a direction to Secretary, Board of Secondary Education, to submit a report about passing of Supplementary Examination, 1966 by respondent no.4. In consideration of M.A.No.71/98, the Headmaster of Biswanath Bidya Pitha, Athgarh, was directed to produce the relevant records and in compliance with the direction, one Bibhuti Bhusan Mohapatra, Assistant of Biswanath Bidya Pitha, Athgarh, appeared on 6.3.1998 and 21.4.1998 and submitted that the Admission Register relating to respondent no.4 is an old document in which some of the pages have been missing and the Admission Register could not be produced. He, however, produced the School Leaving Certificate Register for the period 1966 to May 1967 in which certificate no. 60 relates to Purusottam Das. Xerox copy of this was kept on record.

J. J. M.

6. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner, Shri H.P.Rath, the learned counsel for respondent no.4, and Shri Ashok Mohanty, learned Senior Standing Counsel appearing for the departmental respondents, and have also perused the records.

7. The first point urged by the learned counsel for the petitioner is that according to the instructions of Director General, Posts, preference should have been given to the petitioner as he is a Scheduled Caste candidate, but such preference has not been given and in that process, the departmental authorities have violated the direction of the Tribunal issued in their order dated 12.11.1990 in OA No.445/89. So far as the direction of the Tribunal in OA No.445/89 is concerned, in the subsequent order dated 6.2.1992 in OA No.9/91 and MA No.273/91, the Tribunal had directed that the departmental authorities should consider the candidature of the applicant and respondent no.4 strictly in accordance with rules unguided by any of the observations made by the Tribunal while disposing of OA No.445/89 . In view of this, the contention of the learned counsel for the petitioner that the departmental authorities have violated the direction of the Tribunal must be held to be without any merit and is, therefore, rejected.

8. The second aspect for consideration is whether in accordance with the departmental instructions, preference should have been shown to the applicant over the case of respondent no.4 and if appropriate consideration to this aspect has been bestowed by the departmental authorities while considering the candidature of the applicant and respondent no.4 for appointment to the post of E.D.B.P.M, Kadaliban B.P.O. From the instructions of Director-General, Posts, it is clear that preference is to be shown to a person belonging to S .C. or S.T. if the other considerations are equal between the contending candidates. The departmental respondents in their counter have submitted that the candidature of the applicant was rejected because he did not have adequate means of livelihood. It is further submitted by the learned Senior Standing Counsel for the respondents that

S. J. M.

16

(26)

in accordance with the circular dated 30.1.1981 printed in **Swamy's Compilation** of instructions applicable to E.D.Agents, the preference to educated unemployed persons and candidates belonging to SC, ST, Backward Class and weaker sections of Society is subject to the first and foremost condition that the candidate selected should have adequate means of livelihood. In other words, a person belonging to the reserved category must have adequate means of livelihood for his case to be considered for appointment as E.D.Agent. The departmental respondents in Annexure-R/2 of their counter have pointed out that the petitioner in his application had indicated that he possessed 80 decimals of landed property. But actually on verification it was found that he possessed 47.7 decimals of landed property and as such it was held that the applicant has given a false declaration. The enquiry report also noted that the annual income of Rs.1000/- from the landed property is impossible inasmuch as the plot of land measuring 47.7 decimals was purchased only on 3.2.1989 and the income certificate was applied for on 7.2.1989. Thus, the property could not have produced income of Rs.1000/- within five days. It is further stated in the enquiry report that although the last date of receipt of applications was fixed to 7.2.1989, the petitioner applied for the income certificate to the concerned Tahasildar on 7.2.1989, got it on 8.2.1989 and submitted the same to the departmental authorities on 9.2.1989, i.e., after the last date was over. It is further submitted that income of Rs.4500/- from other sources was not found correct on enquiry because the applicant could not produce any valid document in support of his income of Rs.4500/- from other sources. On the above grounds, the departmental authorities have held that the applicant did not have adequate means of livelihood, and this being the prime consideration for appointment to the post of E.D.B.P.M., the departmental authorities have rightly rejected


J.Som.

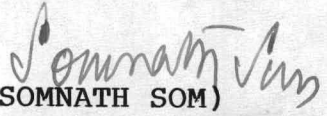
17

(27)

the candidature of the applicant on the ground of his not having adequate means of livelihood and in the process, respondent no.4 was selected as E.D.B.P.M. We, therefore, find nothing illegal in the action of the respondents in rejecting the candidature of the applicant and in selecting respondent no.4 for the post of E.D.B.P.M, Kadaliban B.P.O.

9. In the result, therefore, the Original Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
1.9.98

AN/PS