

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 260 OF 1993.

Cuttack this the 9th day of September, 1998.

LAXMIKANTA HOTA.

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APPLICANT.

- VERSUS -

UNION OF INDIA & 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 Central Administrative Tribunal or not? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL).

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Laxmikanta Hota, Extra Departmental Delivery Agent,
P.R.Peta, S.O., Dist. Koraput- 764 003.

... APPLICANT.

By legal practitioner:- Mr. D.P. Dhalsamant, Advocate.

-Versus-

- 1) Union of India represented through
Chief Postmaster General, Orissa
Circle, Bhubaneswar-751 001.
- 2) Senior Superintendent of Post Offices,
Koraput Division, Jeypore (Koraput)-1.
- 3) Postmaster,
Jeypore (Koraput)-1.

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RESPONDENTS.

By legal practitioner:- Mr. Ashok Mishra, Senior Counsel
(Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to Respondent No.3 to allow the applicant to join his appointment forthwith and to grant him all service benefits w.e.f. 16.4.1993 when he presented himself to give his joining report, which was not accepted.

2. Facts of this case, according to the petitioner, are that, he is working as EDDA under the Respondent No.2. He appeared in the Postman Recruitment Examination held on 20.12.1992 and according to the order at Annexure-1, he came out successful and in the list of four successful candidates, he was shown against Sl.No.3. Thereupon, vide annexure-2, dated 1.4.1993, these four persons, including the applicant, was directed to take ten days training from 06.4.93 to 15.4.93. After completion of training, on 15.4.1993, in order at Annexure-3, it was directed to three persons, including the applicant, to report to the appointment units as per the earlier memo dated 29.3.93. In accordance with this, the petitioner, went to Jeypore Head Office on 16.4.93 forenoon and submitted his joining

S. Som

report, which is at Annexure-4, but this joining report of the petitioner was not accepted and the Postmaster made an endorsement on that joining report that in accordance with the SSPOs(J)(K) letter dated 15.4.93, the applicant's result was withheld and so his joining report, can not be accepted. Applicant has stated that as he has come out successful in the examination and has completed the prescribed training, it was in violation of the rules that he was not allowed to join and as such, he has come up in this Original Application with the prayer referred to above.

3. Respondents, in their counter has not disputed the factual aspects of the matter except that it has been indicated that the applicant has secured '104' marks and by mistake was put in the select list ignoring the case of one Shri Bijay Kumar Nayak inadvertently who had obtained '107' marks i.e. more marks than the petitioner. In view of this, Respondents have stated that the appointment of the applicant has been declared irregular and therefore, the applicant is not entitled to be appointed as postman as per recruitment rules. On the above grounds, the Respondents have opposed the prayer

of the petitioner.

4. We have heard Shri D.P.Dhalsamant, learned counsel for the Applicant and Shri Ashok Mishra, learned Senior Counsel appearing for the Respondents and have perused the records. As earlier stated, the factual aspects of the matter are not disputed. In support of his contention, it was submitted by the learned counsel for the applicant that the result of the petitioner was declared and once the result has been declared, there can not be any reason to withhold the result. It is submitted by the learned Counsel for the petitioner that for the error which has been brought out by the Respondents in the counter, the petitioner is not at fault and in view of this, the Departmental Authorities are estopped from cancelling his appointment and giving appointment to some one else. It is submitted by Mr. Ashok Mishra, learned Senior counsel appearing on behalf of the Respondents that in any administrative action if, there is a bona fide error there is always scope for correcting the same. In the instant case, another person Shri B.K.Nayak has secured higher marks in the examination than the petitioner and therefore, he has a right to be selected and appointed.

J. Som.

In case the prayer of the petitioner is allowed, then a more meritorious candidate, who has a right to be appointed to the post will be denied his right. In support of his contention, learned counsel for the petitioner has relied on a decision of the Calcutta Bench of the Central Administrative Tribunal in the case of UJAL KR. CHATTOPADHYAY VRS. UNION OF INDIA AND OTHERS reported in (1990) 14 Administrative Tribunals Cases 1631. In that case for the post of Refrigeration Mechanic (Sk.) under the Railways, the Railway Recruitment Board issued Advertisement indicating that the minimum qualification is 10+2. Later on it was found that according to the Railway Board's instruction, the minimum educational qualification is Matriculation. Panel of selected candidates had been drawn up. Because of the mistake, the panel was cancelled. One of the selected candidates came up before the Tribunal in the above case and the Tribunal held that before cancelling the panel, no reason has been assigned. It was also noted that only two Matriculate candidates applied for the post and therefore applications were rejected of course

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because of mistake in inviting 10+2 qualified candidates. But those candidates have not challenged the recruitment Notice. In consideration of this, the Tribunal directed for issuance of letter of appointment to the applicant. Following the above decision, it has been submitted by the learned counsel for the petitioner that as there was no fault on the part of the petitioner and he has been selected and given offer of appointment, the appointment order should not have been withheld. It is submitted by the learned counsel for the petitioner that in para-6 of the counter, respondents have stated that the appointment of the petitioner has been declared irregular but actually no such declaration has been made and in any case before making such declaration a show cause notice should have been issued to the petitioner and not having done so, his order of appointment can not be cancelled by the Respondents.

J. Jom. From the pleadings of the parties and submissions of the learned counsels for both sides, it is seen that in this case, a genuine mistake has been committed by the Departmental Authorities and Shri B.K. Nayak who has not been made a party in this O.A., has secured more marks i.e. 107 marks as against which the applicant has secured

'104' marks. Obviously, Shri B.K. Nayak has a greater right to be appointed to the post. It is also noted that in this case no stay order has been given and it is submitted by the learned Senior Counsel that in this case there was no interim order and the selected candidate must have already joined in his post. If any administrative action an order is committed, there is always scope for correcting the error. The only question is whether, before correcting such error a show cause notice is required to be given to the person who will be affected by such correction. Facts of this case are such that no purpose would have been served by issuing a show cause notice because the factual aspects are not in dispute. The Respondents stand by their position that the applicant has secured '104' marks which is also admitted by the applicant. In the circumstances of the case, we do not think, not issuing a show cause notice has resulted in denial of reasonable opportunity to the applicant. In view of this, we hold that the petitioner has not been able to make out a case for getting an appointment in place of Shri B.K. Nayak as per his original appointment at Annexure-2.

J. J. J.

5. It has been submitted by the learned counsel for the Petitioner that the examination which was held is a qualifying examination and the petitioner admittedly has qualified in this examination. He has also given his option to be selected in a departmental post in some other division, which is permissible under the rules. In support of this, learned counsel for the petitioner has drawn our attention to the Departmental rules which has been given by the Respondents as a enclosure to Annexure-R/1. From these instructions, which are printed at page 99 of Swamy's compilation of Service Rules for Extra Departmental staffs, it appears that these instructions provide that after absorbing the required number of candidates as per announced vacancies in respective divisions, the Divisional Superintendent will send the statement of marks of the remaining qualified EDAs who could not be accommodated in the Division to the Regional Director of Postal Services indicating therein the choice of Divisions preferred by the respective EDA in his application. Thereupon, the Regional Office will allot the candidates on the basis of merit that is marks in the examination in the whole Region. The allotments will be to the Divisions/Group A post office which will have shortfall.

It has been submitted by the learned counsel for the Petitioner that while appearing in the examination, the applicant has given option for giving to some other Division. As the applicant has qualified in the examination and in case he has given such option, then according to that option and in accordance with the rules referred to above, the case of the applicant for appointment to the post of Postman should be considered taking into account his case on the basis of merit in the examination in the whole region in that year. It is further submitted by the learned counsel for the applicant that if there are vacancies, ^{*this year} in ~~that year~~, in that particular division, then the case of the applicant should also be considered. It is agreed to.

*Corrected
vide order
no.7, dt.5.1.99.

Vice-Chairman

Member(Judl.)

In view of this, the Respondents are given direction in terms of the order in paragraph-5 and the Original Application is disposed of in terms of the observations and directions given in paragraph-5. There shall be no order as to costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN