

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NOS.366/93 & 189/93
Cuttack this the 27th day of July, 1999**

IN O.A. 366/93

Parameswar Sahu & another

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

IN O.A. 189/93

Soubhagya Ch. Pradhan

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No.*

L.M.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.7.99

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 366/93 & 189/93
Cuttack this the 27th day of July, 1999

CORAM:

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

...

IN O.A. 366/93

Sri Parameswar Sahu,
aged about 33 years,
S/o.Late Laxman Sahu
At: Tasarda, PO: Parposi
Via: Kusumi, Dist: Sambalpur
and

Sri Jaya Krishna Debta,
aged about 33 years,
S/o.Late Digambar Debata
At/Po: Parposi, Via: Kusumi
Dist: Sambalpur

...

Applicants

By the Advocates : M/s.D.N.Mishra
S.C.Samantray,
N.C.Sahu
S.P.Panda

-Versus-

1. Union of India represented by
Post Master General
Orissa, P.O: Bhubaneswar, Dist: Khurda
2. Senior Superintendent of Post Offices,
Sambalpur Division, Dist: Sambalpur
3. Sub-Divisional Inspector of Post Office
Deogarh, Dist: Sambalpur
4. Soubhagya Chandra Pradhan
At: Raipal, PO: Jharagogua
Dist: Sambalpur

...

Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Res.1 to 3)

...

Soubhagya Ch. Pradhan,
aged 23 years,
Son of Madanmohan Pradhan of
Parposhi, PO: Parposhi
P.S. Deogarh, Sambalpur

...

Applicant

By the Advocates : M/s.S.K.Das
A.K.Guru

-Versus-

1. Union of India represented by
Secretary to the Government of India
Ministry of Communication,
Department of Posts, Dak Bhawan
New Delhi-1
2. Post Master General,
Sambalpur Circle,
Sambalpur
3. Sr.Superintendent of Post Offices,
Sambalpur Division
Sambalpur

...

Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel

...

ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: These two cases have been heard together. The selection for the post of Extra Departmental Branch Post Master, Parposhi in Sambalpur District is the subject matter of dispute in both the cases. Therefore, one order will govern both these cases, but facts of both the cases as submitted by the petitioners are set out separately.

S.Som.
2. In Original Application No. 189/93, applicant Shri S.C.Pradhan has prayed for quashing order dated 31.3.1993 at Annexure-2 cancelling his provisional appointment issued in his favour for the post of Extra Departmental Branch Post Master, Parposhi Branch Office.

10

His case is that Senior Superintendent of Post Offices, Sambalpur (Res.3) issued an advertisement for filling up of the post of E.D.B.P.M., Parposhi Branch Office in pursuance of which he applied for the post along with necessary documentation. On 12.1.1993, he was issued an order of appointment, copy of which is at Annexure-1. Thereafter he was given training and joined the post and has been working as such. While he was so working, in impugned order dated 31.3.1993 at Annexure-2 his appointment was terminated and he was asked to handover the charge to Overseer Mail. The applicant has stated that as he was duly selected and appointed, termination of his service all on a sudden is illegal; that is why he has come up in this Original Application with the prayers referred to earlier.

By way of interim relief the applicant prayed that operation of order at Annexure-2 should be stayed. On the date of admission on 19.4.1993, the Tribunal stayed operation of the order at Annexure-2 and this order is continuing and by virtue of this interim order, the applicant Shri S.C.Pradhan, in O.A.189/93 has been continuing as E.D.B.P.M., Parposhi on provisional basis.

3. As the departmental respondents have filed counters in both the cases in which self same averments have been made, it is not necessary to refer to the counter filed by the departmental respondents twice.

4. In Original Application No.366/93, two applicants, viz., S/Shri Parameswar Sahu and Jaya Krushna Debta have prayed for quashing appointment of Res.4 (Shri S.C.Pradhan in O.A.189/93) and also for a direction to departmental authorities to consider the case of the

S.Som

applicants or to hold a selection test for the post of Extra Departmental Branch Post Master Parposhi. Their case is that applicant Nos. 1 and 2 are permanent residents of village Parposhi. Against a temporary vacancy applicant No.1 was appointed as E.D.B.P.M. in 1989, but on the return of the regular incumbent Shri Jaukim Oram, he was relieved from that post. Subsequently, Shri Oram expired on 20.8.1992. The applicant represented to the departmental authorities to consider his case, but this was not done and Res.4 was surreptitiously appointed on 22.9.1992. Applicant No.1 represented on 19.10.1992 to consider his case as he is a local man. At this point the departmental authorities issued a public notice on 7.12.1992 inviting applications for filling up of the post of E.D.B.P.M., Parposhi. In the said notice it was specifically mentioned that the applicant must be a resident of the post-village. It is stated that in response to this notice at Annexure-3, applicant Nos. 1 and 2 along with others applied for the post. It is further stated that no interview was held and Res.4 was surreptitiously appointed even though he did not satisfy any of the eligibility criteria under Annexure-3. It is further stated that the departmental authorities are now in the process of appointing Res.4 on permanent basis. Because of this these petitioners and other filed several representations to the departmental authorities, but without any result. It is further stated that Res.4 is not a resident post-village Parposhi. He is a resident of Raipal under Jharagogua Post Office as is evident from the certificates to that effect issued by Sarpanchs, Jharagogua and Raipal which have been filed as

Annexures. It is further stated that the applicants are eligible to be appointed as E.D.B.P.M., but ignoring their cases, Res.4 has been appointed.

4. The Departmental respondents in their counter to these two O.A.s have stated that post of E.D.B.P.M., Parposhi fell vacant due to death of regular incumbent Jaukim Oram and steps were taken to fill up the said post on regular basis. But in order to carryout the day to day work, Res.3 directed the S.D.I.(P), Deogarh to make an adhoc appointment. Accordingly S.D.I.(P) made adhoc arrangement by appointing the present applicant in O.A.189/93 Shri S.C.Pradhan provisionally with specific condition that the appointment was purely provisional and was from 22.9.1992 until further orders or till regular arrangement was made, whichever period is shorter. It was also provided that provisional appointment would be terminated when regular appointment was made and the applicant should have no claim for appointment to any post. It was further provided that Res.3 reserved the right to terminate provisional appointment even before the period mentioned in Para-1 without notice and without assigning any reason. Applicant in Original Application 189/93 was asked to indicate his consent to the above conditions and on his agreeing to the above conditions, he joined as E.D.B.P.M., Parposhi on adhoc basis. In the meantime, for filling up of the post the employment exchange was moved, but they replied saying that no eligible candidate was available in that locality. Thereupon Res.3 called for applications from the public and in response to this applicant in O.A.189/93 and applicants in O.A.366/93 and someothers applied for the post. When the process of selection was under

S. Jom

13

consideration a complaint was received from the villagers Parposhi, headed by Sarpanch, where it was alleged that Shri S.C.Pradhan, applicant in O.A.189/93 is not the resident of village Parposhi, which is one of the criteria mentioned in that public notice. Res.3 found that actually the applicant in O.A.189/93 is not the resident of post-village, but the resident of Raipal under Jharagogua Post Office. As the selection for the post was at a final stage, in order to avoid complication in the matter of handing over and taking over charge by the regularly selected appointee, the provisional appointment of the applicant in O.A.189/93 was cancelled in order dated 31.3.1993. It is stated that as per the conditions mentioned in the notice the applicant is not a resident of village Parposhi. Question of his selection and regular appointment does not arise and therefore, cancellation of his provisional appointment is justified. On the above grounds the departmental respondents have opposed the prayer of the applicant.

With regard to averments of the applicants in O.A.366/93, the departmental respondents have pointed out in their counter ~~that~~ facts as indicated above, besides, they have stated that applicant No.1 in O.A.366/93 Shri P.Sahu had earlier worked in leave vacancy and that experience on that score cannot be taken into consideration under the rules. Moreover, it is also stated that applicant No.1 Shri Sahu also does not belong to post-village. Respondents have also pointed out that the process of regular selection is yet to be finalised. They have also stated that for selection to the post of E.D.B.P.M. no test and/or interview is held under the

✓ Sim.

rules. On that ground the respondents have opposed the prayer of the applicants in O.A.366/93 for direction to hold the selection test.

In O.A.189/93 applicant has filed rejoinder in which he has reiterated almost the same averments as made in the Original Application which have also been taken note of.

5. We have heard Shri S.K.Das, learned counsel for the applicant in O.A.189/93 and Shri A.K.Bose, learned Senior Standing Counsel appearing for the departmental respondents. In O.A.366/93, we have also heard Shri S.C.Samantray, learned counsel for the applicants and Shri A.K.Bose, learned Senior Standing Counsel appearing for the departmental respondents (1 to 3) and Shri S.K.Das, learned counsel for Res.4 and also perused the records. It has been submitted by Shri S.K.Das, learned counsel for the applicant in O.A.189/93 that he was regularly selected through a process of selection and he has the highest percentage of marks and therefore, his appointment should not have been terminated without giving him an opportunity to show cause. Respondents have pointed out that pending a regular selection and pending calling for names from the employment exchange, applicant in O.A.189/93 was given provisional appointment with the specific condition that his appointment should be until further orders or should be terminated when regular selection was made. The applicant had also specifically agreed to this condition. In view of this the prayer of the applicant that he should be allowed to continue on regular basis as E.D.B.P.M. Parposhi on the basis of his provisional selection is held to be without any merit and

J.S.W.

the same is therefore, rejected.

In O.A.366/93, the two applicants have prayed for direction to hold a test which is not envisaged under the rules and therefore, this prayer is held to be without any merit and the same is, therefore, rejected.

They have also prayed for quashing appointment of Res.4. Respondent 4's appointment is until further orders or until the regular selection is made. In view of this it is not necessary for issuing an order quashing appointment of Res.4 to the post of E.D.B.P.M., Parposhi.

6. The point of controversy in this case is that in the notice calling for applications from the public it was mentioned that the applicant must be a resident of post village which in this case is Parposhi. It has been pointed out by Shri S.C.Samantray, learned counsel for the applicants in O.A.366/93 that this is in accordance with para-4.1 of instructions dealing with E.D.Agents, gist of which has been printed at page-68 of Swamy's Compilation (6th Edition). This condition appears to be based on circular dated 20.1.1979 of D.G.(P&T). It is stated that the applicant in O.A.189/93 is not the resident of post village and he belongs to village Raipal under Jharagogua Post Office and as such, he cannot be considered for appointment to the post of E.D.B.P.M. The departmental respondents in their counter have also stated that because the applicant is not a resident of Parpashi, he cannot be considered for the post of E.D.B.P.M., Parposhi. It is submitted by the learned counsel for the petitioner in O.A.189/93, that denial of consideration of applicant because of he does not belong to post village would be violative of Articles 14 and 16 of the Constitution as laid down by the Hon'ble Supreme Court in the case of Union of India vs. Sanjay Pant

reported in AIR 1993 SC 1365. Besides this the Tribunal have also decided in earlier case that it is not necessary that for appointment to the post of E.D.B.P.M. the selected candidate must be a resident of post-village. All that is necessary is that on being selected he must take up his residence in that village where the E.D.B.O. is situated. It is submitted by the learned counsel for the applicants in O.A.366/93 that the decision of the Hon'ble Supreme Court cited by the learned counsel for applicant in O.A.189/93 (Supra) came in 11.12.1991, whereas the notice inviting applications from the public in the instant case was issued on 7.12.1992 and therefore, the law as laid down by the Hon'ble Supreme Court being prospective in nature is not applicable to this case. We are not inclined to accept this contention of the learned counsel for the applicants in O.A.366/93, because, such a condition has been disapproved by the Hon'ble Supreme Court and in the eye of law this provision must be taken to be non-est. It has also to be noted that Hon'ble Supreme Court, while deciding this case have referred/certain earlier decisions of different Benches of the Central Administrative Tribunal, which have been approved by them in this decision. In view of this it must be held that the selected candidate may not be the resident of post village, but shall take up the residence in the post village after being selected. Therefore, contentions of the departmental respondents that applicant No.1 in O.A.366/93 and applicant in O.A.189/93 do not belong to post-village is held to be without any merit and the same is rejected. It has also to be noted that even according to public notice, it has

SJM.

been mentioned that the applicant should be a resident of and post-village, in the instant case by virtue of provisional appointment applicant in O.A.189/93 has admittedly taken up the residence in the post-village from September, 1992. It has also to be noted that according to departmental respondents applicant No.1 in O.A.366/93 is a resident of some other village. It is also submitted by the learned counsel for the petitioner that Shri S.C.Pradhan (Res.4 in O.A.366/93) and applicant in O.A.189/93) does not have land in that village and therefore, he is not eligible for being appointed to the post in question. According to instructions of D.G.(P&T), selected candidate must have adequate means of livelihood and this aspect will nodoubt be looked into by the departmental authorities at the time of making selection. In consideration of the above, O.A.366/93 is disposed of by issuing direction to the departmental authorities to complete regular selection for the post of E.D.B.P.M., Parposhi strictly in accordance with rules keeping in view the observations made by us above within a period of 60 days from the date of receipt of this order. O.A.189/93 is also disposed of with a direction to departmental respondents that the applicant Shri S.C.Pradhan should continue as E.D.B.P.M., Parposhi till the regular selection process is over. In order to avoid further litigation and problem, if any, to be created by the applicant in O.A.189/93 in handing over charge to the selected candidate if the selected person is someother other one than him. It is ordered that after a person is selected in the regular process of selection, the departmental authorities will take over charge of the post of E.D.B.P.M., Parposhi from the applicant in

S. V. Joshi

O.A.189/93 through departmental official in case he is not the selected person.

With the above observations and directions both Original Application Nos.366/93 and 189/93 are disposed of leaving the parties to bear their own costs.

.....
(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.7.99