

7

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 622 OF 1992 & 469 OF 1993  
Cuttack, this the 21st day of January, 1998

Birendra Kumar Mahanta (OA 622/92)

Madhusudan Mohanta (OA 469/93)

....

Applicants

Vrs.

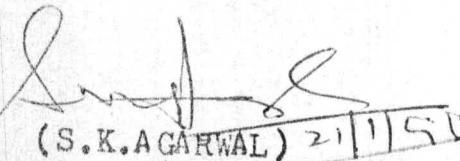
Union of India and others

....

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 CAO.

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

Sd/- S. Sam  
vice-Chairman

21/1/98

Sd/- S. K. Agarwal  
Member-(J)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS.622 OF 1992 & 469 OF 1993

Cuttack, this the 21st day of January, 1998

CORAM:

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

• • • • •

In OA 622/92

Birendranath Mohanta  
aged about 21 years  
son of Srihari Mohanta,  
At/PO-Tukpalasia,  
Via-Nalagaja, District-Mayurbhanj      ...      Applicant

Yrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Chief Postmaster General, Orissa Circle, At/PO-Bhubaneswar, District-Puri
3. Superintendent of Post Offices, Mayurbhanj Division, At/PO-Baripada, District-Mayurbhanj.
4. Madhusudan Mohanta, At/PO-Tukpalasia, Via-Nalagaja, District-Mayurbhanj .....

By the Advocate

Mr. Ashok Misra,  
Senior Panel Counsel.

In OA 469/93

Sri Madhusudan Mohanta, aged about 30 years,  
son of Sri Nityananda Mohanta,  
At/PO-Tukpalashia, Via-Nalaganja,  
District-Mayurbhanj. ....

By the Advocate —

Mr. S. K. Samantray.

Vrs.

1. Union of India, represented by its  
Secretary, Department of Posts, Dak Bhavan,  
New Delhi.

2. Chief Post Master General, Orissa Circle,  
At/PO-Bhubaneswar, District-Khurda.

3. The Superintendent of Post Offices,  
Mayurbhanj Division, At/PO-Baripada, Dist.Mayurbhanj.

4. Sri Gulia Naik, Overseer (Mails), I/c Branch Post Master,  
At/PO-Tukpalasia, Via-Nalaganja, Dist.Mayurbhanj

.....Respondents.

By the Advocate

Mr.Ashok Mishra,  
Senior Panel Counsel.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

One common judgment is being passed in both these cases where the subject-matter is selection for the post of E.D.B.P.M., Tukpalasia Branch Office. In OA 622/92 applicant Birendrenath Mohanta has prayed for quashing the order dated 11.12.1992 provisionally appointing one Madhusudan Mohanta (respondent no.4 in this case) as E.D.B.P.M., Tukpalasia B.O. and to appoint the applicant in his place.

2. Shri Madhusudan Mohanta (respondent no.4 in OA 622/92)

*W.M.M. 8/1/93*  
is the applicant in OA 469/93 in which the prayer is for a direction to the departmental authorities to reinstate him in the post of E.D.B.P.M., Tukpalasia from the date of his initial appointment. Facts of these two cases relate to the process of selection for the post of E.D.B.P.M., Tukpalasia, but it will be necessary to set out the averments of the two applicants separately.

3. In OA 622/92 applicant Birendranath Mohanta has stated that for filling up of the post of E.D.B.P.M., Tukpalasia, the Superintendent of Post Offices, Mayurbhanj Division (respondent no. 3) called for names from the Employment Exchange. Names of Birendranath Mohanta as well as Madhusudan Mohanta along with some others were sponsored by the Employment Exchange. Respondent no. 3, however, called for names through an open advertisement. In response to this, Birendranath Mohanta also submitted his application. His case is that even though he had all the qualification, he was not considered but respondent no. 4 Madhusudan Mohanta was selected in the impugned order dated 11.12.1992. That is why he has come up with the prayer referred to earlier.

4. In OA 469/93 applicant Madhusudan Mohanta has submitted that his father retired from the post of E.D.B.P.M., Tukpalasia B.O. on 16.7.1992 and the post fell vacant. On requisition from the departmental authorities, District Employment Officer, Beripada, sponsored the name of Madhusudan Mohanta along with other candidates. Madhusudan Mohanta submitted necessary documents and he was selected and appointed in order dated 11.12.1992. He also underwent training and joined as E.D.B.P.M, Tukpalasia on 1.2.1993. It is further submitted that one Birendranath Mohanta, who was a student and was continuing his studies in Nalaganja College at Nalaganja, had applied for the same post, but he was not selected. He filed OA 622/92 where in order dated 15.12.1992 the prayer for interim relief was rejected with the observation that the result of that Application would govern the future service benefits of Birendranath Mohanta. Madhusudan Mohanta further states that all of a sudden

*Vijaynath Vam  
21.1.98*

on 4.6.1993 he was asked to hand over charge to Overseer, Mail (respondent no.4). Accordingly, the Overseer, Mail took over charge on 5.6.1993 and handed over charge to one Hrudananda Mohanty, Branch Post Master of Khuruntia, who took leave from Khuruntia Post Office and continued at Tukpalasia B.O. while the work at Khuruntia was managed by the son of Hrudananda Mohanty apparently as a substitute. The case of Madhusudan Mohanta is that respondent nos.3 and 4 have acted illegally in taking over charge from him and therefore, he has come up with the prayer referred to earlier.

5. Departmental authorities have filed counters in both the cases. It is not necessary to set out the averments made by the departmental authorities separately in the two cases and their averments in both the counters are noted below. According to the departmental authorities, in response to the requisition to Employment Officer, Beripada, eleven names were sponsored and all these persons were addressed to apply in the prescribed proforma along with all required documents. In response, only four candidates including Madhusudan Mohanta submitted applications. Madhusudan Mohanta submitted an income certificate showing annual income of Rs. 300/- issued by Tahasildar, Rasgovindapur and the other three candidates did not submit any income certificate. As the income of Madhusudan Mohanta was found inadequate and the other three candidates could not be considered in the absence of income certificate, none was selected and the vacancy was notified again calling for applications from open market. In response to this public advertisement six candidates including Madhusudan Mohanta and Birendranath Mohanta applied. Madhusudan Mohanta is a failed Matric and Birendranath Mohanta had passed I.A. Examination. At the relevant time, the

*Govt. of Orissa  
81/1/98*

-5-

minimum educational qualification for E.D.B.P.M. was Class VIII pass. So, Madhusudan Mohanta had the necessary qualification for the post. Candidature of Birendranath Mohanta was not considered because he was continuing his studies in a college in village Nalaganja which is away from village Tukpalasia and it was felt that as Birendranath Mohanta was a regular student, his services would not be available for running the post office during Post office hours. As such, Madhusudan Mohanta was selected in order dated 11.12.1992. In this order, however, it was clearly indicated that the appointment of Madhusudan Mohanta was purely provisional and would be terminated in case of regular appointment. Madhusudan Mohanta joined as E.D.B.P.M on 1.2.1993 after completion of four days training. About selection of Madhusudan Mohanta a complaint was received by Chief Post Master General (Respondent no.2) and the Vigilance Cell of his office took up enquiry. During enquiry and perusal of documents it was seen that the case of Birendranath Mohanta was not considered on the ground that he was reading in Nalaganja College and his services would not be available till the end of the academic year and since Madhusudan Mohanta had the minimum qualification, he was selected. Departmental respondents have stated in the counter that rejection of candidature of Birendranath Mohanta on the ground of his studying in College is illegal. It should have been ascertained if he would be available for working as E.D.B.P.M. during post office hours and without ascertaining this, his candidature should not have been rejected. As regards Madhusudan Mohanta, originally the income certificate issued by Tahasildar, Rasgovindpur to Madhusudan Mohanta and submitted by the latter showed annual income of Rs.300/- only. This was considered highly inadequate vis-a-vis the requirement

DMM/MJM  
21.1.98

in the Rules that the person selected as E.D.B.P.M. should have independent means of livelihood. Subsequently, Madhusudan Mohanta submitted a letter dated 22.6.1992 from Revenue Inspector showing his annual income as Rs.3500/- from different sources; Rs.500/- from agriculture, Rs.1000/- from daily labour, and Rs.2000/- from Sabai grass rope business. Respondents have stated that this certificate showing his annual income as Rs.3500/- is dated 22.6.1992 which is prior to the certificate issued by the Tahsildar, Rasgovindpur, on 30.6.1992, in which his income has been shown as Rs.300/- per year. Considering all the above, Chief Post Master General (respondent no.2) ordered for cancellation of selection of Madhusudan Mohanta and accordingly, he was relieved on 5.6.1993. Therefore, the respondents have opposed the prayer made by Madhusudan Mohanta. Regarding the prayer of Birendranath Mohanta, the respondents in their counter have traversed the same ground as regards facts and have indicated that candidature of Birendranath Mohanta was rejected on the ground that/he was a student in College in another village, his services would not be available till the end of the academic year.

*sunam/AM*  
01.1.98

6. We have heard the learned lawyers for the applicants and the learned Senior Panel Counsel, Shri Ashok Misra appearing on behalf of the respondents and have also perused the records.

7. Learned lawyer for Birendranath Mohanty has filed a Memo after closure of hearing indicating that Birendranath Mohanty has discontinued his studies in Nalaganja College even prior to selection and therefore, the candidature of Birendranath Mohanty should not have been rejected. Considering the submissions made by

14  
 the learned counsels for both Birendranath Mohanta and Madhusudan Mohanta and the learned Senior Panel Counsel, we are of the view that the departmental authorities were within their rights in cancelling the appointment of Madhusudan Mohanta. Firstly the appointment was provisional and it was indicated that it could be terminated when a regular appointment was made. Here instead of a regular appointment, the Overseer Mail, a departmental officer has taken over charge from him after the selection of Madhusudan Mohanta has been cancelled. Moreover, for reasons noted earlier, the income certificate of Rs.3500/- submitted by Madhusudan Mohanta does not inspire much confidence because ~~prior to~~ <sup>after</sup> the date of issue of this certificate, Madhusudan Mohanta had obtained another income certificate from Tahasildar where his annual income has been shown as Rs.300/-. We also hold that an annual income of Rs.300/- cannot by any stretch of imagination be considered adequate means of livelihood. In view of this, we hold that Madhusudan Mohanta, applicant in OA No.469/93 has not been able to make out a case for his reinstatement as E.D.B.P.M, Tukpalasia. After his original appointment, which was provisional in nature, the Vigilance Cell had conducted an enquiry and Chief Post Master General (respondent no.2) has cancelled his selection. The grounds of cancellation of his selection cannot be termed arbitrary or capricious.

8. As regards the case of Birendranath Mohanty, applicant in OA No.622/92, his first prayer is to quash the appointment order dated 11.12.1992 appointing Madhusudan Mohanta as E.D.B.P.M., Tukpalasia. This order has already been set aside by the departmental

14  
 Jemmath Jom  
 21.1.93

authorities and therefore, this prayer of Birendranath Mohanta has become infructuous. His second prayer is to give him appointment in the post of E.D.B.P.M., Tukpalasia. It would not be correct for the Tribunal to consider this prayer because there were other candidates also in the field and they have not come up before the Tribunal. In view of this, it would not be correct for the Tribunal to pass an order selecting Birendranath Mohanta for the post of E.D.B.P.M., Tukpalasia.

9. In the result, therefore, both the Applications fail and are dismissed but without any order as to costs.

Sd/- S. K. Agarwal  
Member-(S)

Sd/- S. S. Som  
Vice-Chairman