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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

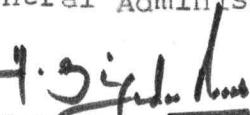
ORIGINAL APPLICATION NO: 602 OF 1993

Date of decision: 24th January, 1994

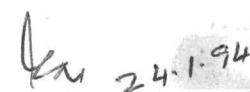
Tribeni Pradhan	...	Applicant
	Vs.	
Union of India & Others	...	Respondents

(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 Tribunals or not?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

24 JAN 94


(K.P. ACHARYA)
VICE-CHAIRMAN

24.1.94

Central Administrative Tribunal
Cuttack Bench; Cuttack

Original Application No.602 of 1993

Date of decision: 24th January, 1994

Tribeni Pradhan	Applicant
		Vs.	
Union of India & Others	Respondents
For the Applicant	...	M/s Deepak Misra, A. Deo, B. S. Tripathy, P. Panda, Advocates.	
For the Respondents	...	Mr. Ashok Misra, Senior Standing Counsel (central)	

CORAM:

THE HONOURABLE MR.K.P.ACHARYA, VICE CHAIRMAN
&
THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

ORDER

K. P. ACHARYA, V. C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to issue appropriate orders quashing Annexure-3 and allow the petitioner to continue in his present ~~phase~~^{post} till the disciplinary proceeding against Shri Kumuda Bandhu Pradhan is terminated or regular selection is made to the post of Extra Departmental Branch Postmaster, Kantapali Branch Post Office.

2. Shortly stated the case of the petitioner is that one Shri Kumuda Bandhu Pradhan was ordered to be put off from duty on a contemplated proceeding and according to the Petitioner a proceeding has been initiated against Shri Kuumuda Bandhu Pradhan which is now pending. In order to fillup the post, in question the petitioner Shri Tribeni Pradhan was temporarily

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appointed to carry on the duties ~~of~~ the post of Extra Departmental Branch Postmaster of Kantapali Branch Post Office till a final selection is made. Employment Exchange was requested to sponsor~~e~~ names of candidates and the Employment Exchange had sponsored names of eleven candidates including the Petitioner Shri Tribeni Pradhan and Shri Girija Shankar Pradhan. Cases of all candidates including the Petitioner and Shri Girija Shankar Pradhan was considered and Shri Girija Shankar Pradhan was found to be suitable in the selection process because **Shri** Girija Shankar Pradhan had secured 285 marks in the matriculation examination whereas the Petitioner Shri Tribeni Pradhan had secured only 270 marks in the matriculation examination. Shri Girija Shankar Pradhan could not file any document to indicate that he had any landed properties in ~~his~~ own name. Shri Girija Shankar Pradhan was given some time to file the documents and since Girija could file the documents within the stipulated period, the entire selection was cancelled and a fresh requisition was issued to the employment exchange to sponsor~~e~~ names of candidates. In reply thereto, the employment exchange sponsored ten candidates including the Petitioner and Shri Girija Shankar Pradhan. Cases of all the candidates sponsored by the employment exchange was considered and Shri Girija Shankar Pradhan was found to be suitable and by that time, **Shri** Girija Shankar Pradhan had filed the
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the required documents owning and possessing of certain landed properties and therefore, appointment order was issued in favour of Shri Girija Shankar Pradhan for which the petitioner has filed this original application with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that no illegality has been committed in the matter of selection. The appointing authority exercised its discretion by granting sometime to Girija to file the documents. Since no documents were filed, the selection process was cancelled and again the employment exchange was asked to sponsor names of candidates which the employment exchange did and after issuance of letters to the candidates to file their applications, since there was no response from any of the applicants, an open advertisement was published inviting applications from the different intending candidates. Cases of all the candidates were considered and Girija Shankar Pradhan was found to be suitable. Hence order of appointment was issued in favour of Shri Girija Shankar Pradhan though he has not taken charge of the post in question. In the circumstances stated above, no illegality has been committed by the appointing authority and hence the case being devoid of merit is liable to be dismissed.

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4. We have heard Mr.B.S.Tripathy learned counsel for the Petitioner and Mr.Ashok Mishra learned Senior Standing Counsel(Central).According to us, the initial mistake committed by the appointing authority is there was absolutely no justification to grant time to Girija Shankar Pradhan to file the required documents. If the Shri Girija Shankar Pradhan has not filed the Income certificate then the application was itself defective and should not have come up for consideration. At the initial stage due to nonfiling of the property certificate etc. the application should have been rejected. However, once a mistake was committed by the bringing the matter into consideration and the appointing authority has been found that the Income certificate was not given by Girija Shankar Pradhan, Second mistake was committed by giving some time to Girija Shankar Pradhan to file the documents and third mistake was committed by the appointing authority that during the stipulated period, Girija Shankar Pradhan not having been filed the required documents, his selection should have been cancelled and the appointing authority should have devoted his attention to the next man i.e. the Petitioner Shri Tribeni Pradhan who was a matriculate and he had also secured 270 marks next to Girija Shankar Pradhan. Instead of adhering to this process, it was absolutely illegal on the part
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of the appointing authority to have cancelled the entire selection process which give~~s~~rise^t to a strong suspicion in our mind regarding the conduct of the appointing authority, who was perhaps inclined to help Girija Shankar some how or the other. Therefore, selection of Girija Shankar by the appointing authority creates an impression in our mind that intentionally a helping hand was being extended to Girija Shankar. Therefore, we would direct that candidature of Girija Shankar in the first selection process has to go out of consideration because he had not filed the required documents. The candidature of Girija Shankar having been kept out of consideration in the first selection, next man who is to come into consideration is Tribeni Pradhan, Petitioner having secured 270 marks in the matriculation examination. There nothing appears in the counter that there is any adverse remarks against this Petitioner during the period of his incumbency in the post in question. Therefore, while cancelling the appointment of Girija Shankar, we would direct the appointing authority to issue order of appointment in favour of Tribeni Pradhan who will be allowed to continue till the disciplinary proceeding initiated against K.B. Pradhan reaches a final stage. In case Shri K.B. Pradhan retires on superannuation during the pendency of the proceeding, Tribeni Pradhan, Petitioner will continue or in the alternative if the disciplinary

proceeding ends against Shri K.B.Pradhan and if maximum penalty is imposed on Mr.Pradhan then Tribeni will continue and in case Mr.K.B.Pradhan is acquitted or exonerated from the charges and he is reinstated to the post in question,Tribeni Pradhan,Petitioner,must vacate the post in question in favour of Mr.K.B.Pradhan.

5. Thus, the application stands allowed leaving the parties to bear their own costs.

..... MEMBER (ADMINISTRATIVE) 24 JAN 94

Reassess
..... 24.1.94
VICE CHAIRMAN

Central Admn. Tribunal,
Cuttack Bench/K. Mohanty,
24th January, 1994.