

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 638 of 1993

Date of Decision: 19.1.1994

Kedarnath Behera

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the *NO*
Central Administrative Tribunals or not ?


MEMBER (ADMINISTRATIVE)

19 JAN 94

KN 19.1.94
VICE-CHAIRMAN

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Kedarnath Behera Applicant

Versus

Union of India & Others Respondents

For the applicant

M/s. B.S. Tripathy,
B.K. Sahoo
S. Mallik,
K.P. Mishra,
P.K. Mohapatra,
P. Mohapatra,
Advocates

For the respondents Nos. 1 & 2 Mr. Ashok Mishra,
Sr. Standing Counsel
(Central)

For the respondent No. 3 Mr. D.P. Dhalasamant,
Advocate

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C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR. K.P. ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the impugned order dated 17.11.1993 passed by OP No. 2 contained in Annexure-1, appointing OP No. 3 Shri Dusmant Kumar Muduli as Extra Departmental B-branch Post-master, Patpur.

2. Shortly stated the case of the petitioner is that originally he had been appointed as Extra Departmental Branch Post-master, Patpur Branch post office. Under Rule-6, service

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of the petitioner ^{was} ~~were~~ terminated. He had invoked the jurisdiction of this Bench by filing an application under Section 19 of the Administrative Tribunals Act, 1985 which formed subject matter of O.A.No.297 of 1993. Therein we had quashed the order of termination passed against the petitioner in O.A.No.297/93 and we had directed re-selection to take place. In the connected Original Application bearing No. 37 of 1992 similar direction was given, **in furtherance** of which the competent authority held a fresh selection considering the cases of the petitioner, OP No.3 and some others. OP No.3 was found to be suitable and has been appointed; which is under challenge

3. In their counter the opposite parties maintain that no illegality/irregularity having been committed in the matter of selection of OP No.3, the case of the petitioner is devoid of merit and is liable to be dismissed.

4. We have heard Mr.K.P.Mishra, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel and so also Mr.D.P.Dhalsamant, learned counsel appearing for OP No.3.

5. Mr.K.P.Mishra, learned counsel for the petitioner strenuously urged before us that the selection process conducted by the competent authority is null and void because at the time when the petitioner was appointed and ultimately terminated the rule envisaged that the minimum qualification for appointment to the post of E.D.B.P.M. is Standard-VIII. Hence the vacancy for which fresh selection has been conducted dates back to the year of actual vacancy i.e. the year 1991 when the rule envisaged that the minimum

educational qualification for appointment to the post of EDBPM is Standard-VIII. Therefore, it was incumbent on the part of the competent authority to take into consideration the marks obtained by the petitioner and OP No.3 in their examination for Standard-VIII and the competent authority completely went wrong in comparing the marks obtained by the petitioner and OP No.3 in their respective matriculation examination. Despite vehement and strenuous argument advanced by Mr.K.P.Mishra, we are unable to agree with Mr.K.P.Mishra, because the selection made to fill up the vacancy in 1991 was quashed and fresh selection was ordered at a time when the amended rules had come into force that the minimum educational qualification to be appointed as EDBPM is matriculation. That apart admittedly the petitioner is a matriculate and so also OP No.3. The competent authority has compared the marks obtained by each of these candidates in their matriculation examination. We do not think any illegality to have been committed by the competent authority in appointing OP No.3 as EDBPM, Patpur Post Office and therefore, we find no merit to support the contention of Mr.K.P.Mishra. In view of the discussions made above, we find no merit in the prayer of the petitioner which stands dismissed leaving the parties to bear their own costs.

6. Before we part with this case we must mention that lastly it was contended by Mr.K.P.Mishra, learned counsel for the petitioner that the petitioner's services were ^{WPA} ~~were~~ _{kn} illegally terminated under Rule-6 without the principle of natural justice having been complied. Rightly the Bench had quashed the order of termination. The petitioner has

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The petitioner has gained considerable experience and has rendered services to the postal department with loyalty and sincerity. Instead of receiving an act of discouragement, the petitioner should have been given some encouragement for the service rendered by him, and, therefore, it was prayed on behalf of the petitioner that the competent authority be directed to consider the case of the petitioner sympathetically for appointment in some other post offices when vacancy occurs in future in some nearby post office. We feel that there is substantial force in the contention of Mr.K.P.Mishra, learned counsel for the petitioner and we would say we would be happy if the Superintendent of Post Offices (OP No.2) considers the case of the petitioner sympathetically for appointment to the post of EDBPM in anyother post office when vacancy arises in near future.


MEMBER (ADMINISTRATIVE)

19 JAN 94


VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 19.1.1994/ B.K.Sahoo