

7

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 261 OF 1994.

Cuttack this the 23rd day of April, 1998.

AJAYA KUMAR NAG.

....

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

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
23/4/98

*S.K. Agarwal*  
(S. K. AGARWAL) 23/4/98  
MEMBER (JUDICIAL)

8

8

Central Administrative Tribunal  
Cuttack Bench, Cuttack.

Original Application No. 261 of 1994 .

Cuttack this the 23<sup>rd</sup> day of April, 1998.

CORAM:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

AND

THE HONOURABLE MR. S. K. AGARWAL, MEMBER(JUDICIAL).

Shri Ajaya Kumar Nag, aged about 28 years,  
Son of Narendranath Nag, At/Po. Nachinda,  
Via. Kamarda, Ps. Bhogarai, Dist. Balasore. .... Applicant.

By legal practitioner :- M/s. B. K. Patnaik, B. Satpathy,  
S. Panda, S. Satpathy,  
Advocates.

-Versus-

1. Union of India represented by the Secretary,  
to Government Department of Post, Dak Bhawan,  
New Delhi.
2. Chief Postmaster General, Cuttack,  
At/Po. Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices,  
Balasore Division, At/Po. Dist. Balasore.
4. Inspector of Post Offices, Jaleswar East  
Sub Division At/Po. Jaleswar Dist. Balasore.
5. Shri Laxmikanta Das,  
At/Po. Nachinda, Via.  
Kamarda, Dist. Balasore. .... Respondents.

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

*Subd. 0*  
23/4/98

O R D E R

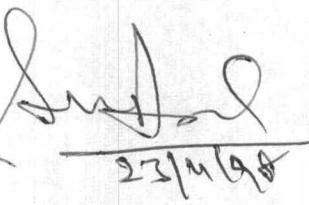
MR. S. K. AGARWAL, MEMBER (JUDICIAL) :-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the letter Annexure-4 cancelling the applicant's selection to the Post of Extra Departmental Branch Post master, Nachinda, Branch Post Office, be quashed and the Respondents may be directed to allow the applicant to resume and continue in service from 19.6.1994.

2. In brief, the facts of this case, as stated by the applicant, are that Shri Brajendra Kumar Chand was working as Extra Departmental Branch Post Master, Nachinda Branch Post Office, in account with Kamarda Sub Post Office. As his retirement was due, a selection was made to replace him. The applicant was selected for the post and he was informed by letter No. B/E-451, dated 3.1.1992 of the Supdt. of Post Offices, Balasore, the Opp. Party No. 3, subject to fulfilment of the conditions required for the post and outcome of the representation preferred by Shri B.K. Chand, directed the applicant to report for duty before the Inspector of Post Offices, Jalesore East Sub Division for further action. In obedience to the said order, the applicant reported for duty but his appointment was kept in abeyance pending withdrawal of the stay order by the Tribunal by letter No. B/E-451, dated

*Andol*  
23/4/88

13.1.1992 in O.A. No.12 of 1992. This Tribunal disposed of the O.A. No.12 of 1992 filed by Shri Brajendra Kumar Chand on 13.7.1993 but as yet, the present applicant, has not been recalled to duty. It is submitted that the date of birth of Shri B.K.Chand is recorded as 10.1.1927 and he was due to retire on 10.1.1992 on completion of sixty five years of age. He filed O.A. No.12 of 1992 claiming therein that on the basis of his matriculation certificate issued by the Utkal University, Shri Chand's date of birth was 19.6.1929 and he is due to retire on 18.6.1994 on completion of sixty five years of age. The Tribunal by order dated 7.1.1992 stayed his superannuation on the basis of his birth date being 10th January, 1927. By virtue of the stay order passed by this Tribunal, the Superintendent of Post Offices by his letter dated 13.1.1992 kept the applicant's selection in abeyance pending withdrawal of the stay order. By that time, the applicant had joined and was under training. It is stated that the Tribunal disposed of the said Original Application 12 of 1992 by its judgment dated 13.7.1993. After one month of the delivery of the judgment by the Tribunal, the applicant's selection was cancelled by letter No.B/E-419, dated 18.8.1993. It is stated that the selection had been completed and in pursuance of the instructions in Annexure-1, the applicant had reported for duty to the Inspector of Post Offices, the Respondent No.4. It is only thereafter, that in the interim order in OA 12/92, the Tribunal

  
23/11/98

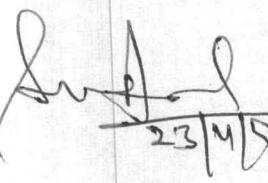
stayed the superannuation of Shri B.K.Chand and by virtue of the stay order, the Superintendent of Post Offices, kept in abeyance the selection of the applicant but by that date, the applicant had already joined and on the directions of Opposite party No. 4, he was deputed for training as per Annexure-6 to the O.A. Therefore, it is stated, it can not be said that the applicant's selection as E.D.B.P.M., Nachinda Branch Post Office, has been time barred and a fresh selection is required. It is further stated that Shri B.K.Chand will retire on 18.6.1994 and this will have the effect of lifting of the abeyance order on the functioning of the applicant. Therefore, it will have the effect of allowing the selection communicated by letter dated 3.1.1992 in Annexure-1. Therefore, the letter dated 18.8.1993, Annexure-4, is illegal and without jurisdiction. Further also the cancellation of the appointment of the applicant is without following the principles of natural justice. It is further stated that fresh advertisement has been issued by OP No. 3 and some persons have been called for interview to fill up the post which is illegal and the applicant is a fit and proper person to continue in service which was disturbed by the stay order of this Tribunal passed in O.A. No. 12/92. It is therefore, submitted that letter at Annexure-4 cancelling the applicant's selection be quashed and the Respondents be directed to allow the applicant to resume and continue in service from 1994.

*Surajpal*  
23/4/98

3. Counter was been filed by the Respondents. It is stated in the counter that Shri Brajendra Kumar Chand was working as Extra Departmental Branch Post Master, Nachinda, Branch Post Office in Balasore Division. There was discrepancy in the date of birth of said Shri Chand and accordingly Shri Chand was due to retire from service with effect from 9.1.1992 afternoon. Therefore, on receipt of retirement notice, Shri Chand filed a case before this Tribunal bearing OA No. 12/92 and this Tribunal passed an interim order on 7.1.1992 directing the Respondents, therein, to allow Shri Chand to continue in service and accordingly, Shri Chand was allowed to continue in service upto 18.6.1994. It is stated that the selection process of the new Branch Postmaster was almost finalised and the applicant was provisionally selected for appointment as Branch Postmaster subject to the outcome of the decision on the representation preferred by Shri Chand. This was also communicated to the applicant in letter dated 3.1.92 (Annexure-1) and the said selection order was kept in abeyance subsequently in a letter dated 13.1.1992 (Annexure-2). It is stated that in OA No. 12/92, judgment was delivered on 13.7.1993 directing the respondents to allow the applicant to continue in service till 18.6.1994. Therefore, the provisional selection order of the applicant was cancelled vide letter dated 18.8.1993 (Annexure-4). In the meanwhile, financial review of the

*S. N. S.*  
23/6/98

B.O. was taken up in which the income of the office is calculated to be Rs. 4381.20P as against the cost of establishment of Rs. 25,125.52P per annum. The position was brought to the notice of the Branch postmaster, Nachinda, Chief Postmaster General, Cuttack Bhubaneswar and the Inspector of Post Offices, Jaleswar East in letter dated 18.3.1994 (Annexure-2) followed by a detailed report on 22.3.1994. The matter is under active consideration for combining the duties of the Branch postmaster with that of the Extra Departmental Delivery Agent with a view to reduce the cost of establishment by the OP No.2. It is stated that although the selection process was started since 10.1.1994, the same was not finalised awaiting the final judgment and sanction of OP No.3 regarding combination of the Posts. It is further stated that the applicant had never joined in the training, as the training programme was fixed from 9.1.1992 to 13.1.1992. After the interim order dated 7.1.1992, all process were stayed over phone but office order was passed keeping the provisional selection in abeyance on 13.1.1994 (Annexure-2 to the application). Therefore, it can not be said that the applicant was under training. The applicant was provisionally selected for appointment as EDBPM, Nachinda BO

  
23/4/98

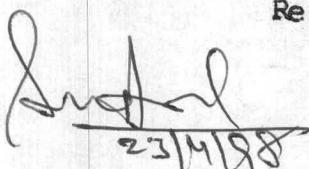
14

-7-

and subsequently this order was kept in abeyance and finally, the provisional selection of the applicant was cancelled after the final judgment dated 13.7.1993 was received. New selection process has already been started. In view of the submissions made in the counter, the Respondents have prayed to dismiss the Original application with costs.

4. We have heard Shri B.K.Patnaik, learned counsel for the applicant and Shri Ashok Mishra, learned Senior Panel Counsel appearing for the Respondents, and perused the whole record.

5. It is admitted that the applicant was provisionally selected for the post of EDBPM, Nachinda BO in account with Kamarada SO subject to fulfilment of the conditions required for the post, and the outcome of the decision on the representation preferred by Shri Chand. Further also it reveals that the applicant was selected for the post in question, after following due process of law. Respondents, nowhere, have stated in the counter that the selection of the applicant, was in any way, irregular or illegal. The order, at Annexure-1, issued by the Respondents is as under:-

  
23/4/98

**"Sub-Selection of candidate for the post of  
EDBPM, Nachinda BO in account with Kamarda SO.**

You are hereby provisionally selected for the post of EDBPM Nachinda BO in account with Kamarda SO subject to fulfilment of conditions required for the post and out come of the decision on the representation preferred by Shri Brajendra Kumar Chand. Please report before the sub divisional Inspector (Postal), Jaleswar (East) Subdivision for further action".

6. Thereafter, it appears on the perusal of the record that this order issued at Annexure-1, dated 3.1.1992 was kept in abeyance vide order issued by the Respondent No. 3 dated 13.1.1992 (Annexure-2) pending withdrawal of the stay order issued by this Tribunal.

7. On perusal of record, further it reveals that on 13.7.1993, this Tribunal has disposed of the OA 12/92 filed by Shri Brajendra Kumar Chand, declaring that the date of birth of ShriChand is 19th June, 1929 and he should be made to retire on 18th June, 1994. It appears that, after this judgment, Respondent No. 3 has cancelled the selection of the applicant vide its order at Annexure-4 dated 18.8.1993 which is sought to be quashed. No doubt, the selection of the applicant, was provisional. But at the same time, the selection was made by the Respondents, after following the due process of law.

23/11/98

16

The Respondents, did not take note of the fact that the applicant has stated specifically, in his application that he has already joined for training which is also evident from Annexure-6, dated 6.1.1992. Although, in the counter, the Respondents have stated that the applicant had never joined the training as the training programme was fixed from 9.1.1992 to 13.1.1992, but there is no such evidence on record that the applicant did not join the training programme. It is also clear, on the perusal of the record, that on account of stay order passed by this Tribunal in OA No.12/92, the selection of the applicant was kept in abeyance pending withdrawal of the stay order by this Tribunal. Thereafter, there appears to be no justification to cancel the selection of the applicant only because the OA 12/92 was disposed of by this Tribunal and it was declared that the date of birth of Shri Brajendra Kumar Chand is 19th June, 1929 and he is made to retire on 18th June, 1994. The selection of the applicant, in no stretch of imagination can be said to be irregular. Under the Extra Departmental Agent (conduct and service) Rules, 1964, only irregular appointment of ED Agents having less than three years of service, can be terminated under rule-6 but in this instant case, the applicant was selected against a vacancy of retirement of Shri B.K. Chand and when Shri Chand filed OA No.12/92, claiming

*[Signature]*  
23/11/88

his date of birth as 19th June, 1929 and he was asked to continue by the orders of the Tribunal, the selection of the applicant was ordered to be kept in abeyance which can be said to be most proper according to the circumstances. But when OA filed by Shri Chand was disposed of declaring his date of birth as 19th June, 1929 and he was made to retire on 18th June, 1994, after the judgment of this Tribunal, there was no justification on the part of the Respondents, to cancel the selection of the applicant - rather, it would have been proper, if, after the retirement of Shri Chand, the applicant, could have been appointed to the post of Extra Departmental Branch Post Master, Nachinda Branch Post Office. It is also evident that impugned order of cancellation of the selection of the applicant was passed without affording any opportunity of hearing to the applicant. Therefore, the impugned order has been passed in violation of the principles of natural justice.

3. On the basis of above all, the impugned order at Annexure-4, is void and bad in law which is liable to be quashed.

9. As it has been admitted by the Respondents that no selection has been made to the post in question, therefore, it would be just and proper to issue necessary direction to the Respondents to consider the case of the applicant for appointment

  
23/7/88

-11-

to the post of Extra Departmental Branch Post Master,  
Nachinda Branch Post Office.

10. We, therefore, allow this Original Application and quash the impugned order at Annexure-4 and direct the Respondents to consider the case of the applicant for appointment to the post of Extra Departmental Branch Post Master, Nachinda Branch Post Office within a period of 30 days from the date of receipt of Order.

11. In the result, the Original application is allowed, leaving the parties to bear their own costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
1.1.98

*S. K. Agarwal*  
(S. K. AGARWAL) 23/1/98  
MEMBER (JUDICIAL)

KNM/CM.