

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No. 269 OF 1994.

Cuttack, this the 7th day of February, 2000.

TRILOCHAN KATHUA.

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APPLICANT.

Vrs..

UNION OF INDIA & ORS.

...

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.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 269 OF 1994.

Cuttack, this the 7th day of February, 2000.

CORAM:

THE HONOURABLE MR. ~~SIMNATH~~ SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.)

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TRILOCHAN KATHUA,
S/O. Bhaiga Kathua,
At. Similisan,
PO: Polbadi, PS: Daspalla,
DIST: Nayagarh.

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APPLICANT.

By legal practitioner: M/s. S.N. Mishra, A.N. Mishra,
G.P. Mohapatra, Advocates.

-VERSUS-

1. Union of India, through its Director,
General Posts, Dak Bhawan, Sansad Marg,
New Delhi.
2. Senior Superintendent of Post Offices,
Puri Division, Puri.
3. Chief Postmaster General Orissa,
At/PO/PS. Bhubaneswar,
Dist. Khurda.
4. Prahallad Pradhan,
S/O. Arjun Pradhan,
At/PO. Similisan,
PS: Daspalla,
Dist. Nayagarh.

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RESPONDENTS.

S. Som By legal practitioner: Mr. A.K. Bose, Senior Standing Counsel
for Res. Nos. 1 to 3. (Central).

By legal practitioner: M/s. B.M. Pattanaik (2),
for Res. No. 4. B.B. Panda,
A.K. Swain,
Advocates.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for quashing the order appointing Prahallad Pradhan, Respondent No. 4 to the post of EDBPM, Similisahi and directing to the Departmental Respondents to appoint the applicant to the Post of EDBPM, Similisahi.

2. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case, except to note that for the post of EDBPM, Similisahi, the petitioner who had passed Matriculation in 1982, intermediate in 1985 and BA in 1988, applied in response to a notice issued in December, 1993. But no action was taken on this and a fresh notice was issued, in response to which the applicant applied again for the post of EDBPM, Similisahi but no further action was taken even in response to the second notice and a third notice was issued on 1.2.1994, in response to which applicant applied with all necessary documentation. The petitioner's case is that even though OP No. 4 was less qualified than the petitioner, he was appointed ignoring the case of the applicant. It is further stated that the OP No. 4 is employed under the State Government as a Supervisor in the Office of the District Mass Education Officer, Puri, and as he was in full time employment, he could not have applied for the post of EDBPM. Moreover, in

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his application, he has suppressed the fact that he was working under the State Government. Applicant has made further averment with regard to his annual Income being more than the Respondent No. 4. He has also stated that he can provide much better house in the middle of the village for running the Post office where also a PCO is convenient to instal. But inspite of all these advantages, his case has been ignored and Respondent No. 4 has been appointed.

3. Departmental Respondents in their counter have stated that in response to the first notice, only two candidates i.e. applicant and Res. No. 4 had applied but applications of both of them were incomplete and therefore, a fresh notice was issued. In response to the second notice also again the applicant and Respondent No. 4 only applied and as instructions provide for considering atleast three candidates for the post, that notification had to be given up and a third notification was issued. In response to which, besides the applicant and Respondent No. 4, another candidate has also applied. Respondents have stated that amongst the eligible candidates, persons to be selected is one who have got highest percentage of marks in the matriculation and rules specifically provide that all qualification above matriculation is to be ignored. Therefore, the fact that applicant has passed intermediate and BA, could not be taken into consideration. Respondents have further stated that applicant has got 256 marks

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out of 700 in matriculation whereas Respondent No. 4 has got 281 marks out of 700 in matriculation and therefore, Respondent No. 4 has got more marks in the matriculation and therefore ^{has} rightly been selected according to the Departmental Respondents. As regards the allegation that Respondent No. 4 is working as Supervisor in the office of the District, Mass Education Officer, Puri, Respondents have stated that this fact was not mentioned by the Respondent No. 4 in his application. On the other hand, Respondent No. 4 had declared that he did not hold any post under the Government. After receipt of the Original Application from this Tribunal, the Departmental Authorities wrote to the District Mass Education Officer, Puri and enquired about the Respondent No. 4's engagement under them. The report of the District Mass Education Officer reveals that Respondent No. 4 was working as a volunteer with designation as Hawker under the Dist. Mass Education Officer and was in receipt of honorarium of Rs. 200/- per month. It is also stated that the Respondent No. 4 has resigned from the said post and his resignation was accepted on 16.5.1994 and after which Respondent No. 4 joined the post of EDBPM on 18.5.1994. Departmental Authorities have made further averments with regard to solvency and income of both the candidates and have stated that the Respondent No. 4 had the necessary income and eligibility to be considered for the post of EDBPM. Respondent No. 4 in his counter has opposed the prayer of applicant and has stated that he is working as part time worker in the Dist. Mass Education Officer

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and his work is in the evening and does not interfere with the work of the E.D.B.P.M. On the above grounds, he has opposed the prayer of applicant.

4. We have heard Mr. S.N. Mishra, learned counsel for the Applicant, Mr. A.K. Bose, learned Senior Standing Counsel (Central) appearing for the Departmental Respondents. Mr. B.M. Pattnaik, learned counsel appearing for Respondent No. 4 and his associates were absent nor was any request made on their behalf seeking adjournment. In view of this, as this is a 1994 matter, no further time could ^{be} given to learned counsel for Respondent No. 4. ~~we~~ have also perused the records.

5. The first grievance made by the petitioner is that inspite of his applying twice, his case was not considered and only when he applied in response to the third notification his case was taken up for consideration. Departmental Respondents have adequately explained the position by stating that in response to the first notice only two of them i.e. applicant and Res. No. 4 sent ⁱⁿ their ~~in~~ complete application and therefore, it had to be advertised once again. In response to the second notification only two applications were received i.e. of the applicant and Respondent No. 4 and thus, necessitating issuing of notification for the third time when three applications as required under rules were received. In view of this, it can not be said that the applicant has any reasonable cause of grievance with regard to this aspect. Departmental

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instructions provide that between the eligible candidates, person who has got highest percentage of marks in the matriculation is to be considered more meritorious and any qualifications above matriculation is to be ignored. In view of this, the action of the Departmental Authorities in not taking into consideration the higher qualification of the applicant beyond matriculation has been done strictly in accordance with the rules and instructions. It appears from the check list that Res.No.4 has got higher marks than the applicant and therefore, the Departmental Authorities have rightly selected Res.No.4.

6. Last aspect is with regard to the fact that at the time of filing of application, Res.No.4 was working in the office of the District Mass Education Officer, Puri. On enquiry it has been found and indicated by Respondents in their counter that he was working as a volunteer with designation of hawker and was in receipt of honorarium of Rs.200/- PM. Thus, it can not be said that he was a Govt. servant under the District Mass Education Officer, Puri as has been mentioned by the applicant in his original application. In any case, Respondent No.4 has resigned from that post on 16.5.94 before joining in the post of EDBPM on 18.5.94.

7. In view of this, we hold that the applicant

has not been able to make out a case for the
reliefs claimed by him in this Original Application
and the same is rejected.No costs.

G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.