

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 572 OF 1994.

Cuttack this the 18th day of September, 1998.

Pitabas Das.

...

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

18.9.98

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 572 OF 1994.

CUTTACK THIS THE 18th DAY OF SEPTEMBER, 1994.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

..

Pitabas Das, aged about 23 years,
S/o. Debendra Mishore Das,
At/Po. Bharatpur, Dist. Kendrapara.

...

APPLICANT.

By legal practitioner :- Mr. B. S. Tripathy, Advocate.

- Versus -

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi.
2. Chief Postmaster General Orissa Circle,
At/Po. Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Cuttack North
Division, At/Po/Dist. Cuttack.
4. Assistant Superintendent of Post Offices,
Kendrapara Sub Division, At/Po/Dist. Kendrapara.

... RESPONDENTS.

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

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :-

Applicant, who is serving as Extra Departmental Branch Postmaster of Bharatpur Branch Post Office, in this application under section 19 of the Administrative Tribunals Act, 1985 seeks to quash the notice dated 2.9.94 (Annexure-3) of termination of his employment after expiry of the period of one month from the date of service of notice on him. On 27.9.94, the application was admitted and on the prayer of the applicant interim stay of operation of this notice under Annexure-3 was granted.

2. The following ^{and} facts which are not in dispute and as averred in the pleadings ^{and} emerge.

3. The applicant was selected by Respondent No. 3 and was appointed as Extra Departmental Branch postmaster, Bharatpur Branch Post Office w.e.f. 31.3.1993. As some complaint was received regarding his irregular selection, The Chief Postmaster General, Orissa Circle, Bhubaneswar (Respondent No. 2) examined the selection file and found the selection of the applicant to be

irregular one as he was given preference over candidates having higher educational qualification like matriculation. The applicant is admitted an under matriculate having studied upto class-IX. On the basis of this observation of Respondent No. 2, his appointment was terminated w.e.f. 2.7.93. The applicant, then moved this Tribunal in Original Application No. 332/93.

Similar candidates Smt. Sanjukta Mohanty and Shri Karuna Kar Behera of that selection filed O.A. No. 462/93 and O.A. No. 464 of 1993 respectively. All the three applications were disposed of by this Tribunal through a common order dated 15.9.93 (Annexure-2). The Tribunal held that before termination, the applicant should have been served with a notice to show cause and consequently quashed the order of termination and directed for his reinstatement. At the same time, there was a direction to the Superintendent of Post Offices, i.e. Respondent No. 3 to undertake another selection process for that post in which cases of applicant as well as Sanjukta Mohanty and Karunakar Behera shall be considered along with other applicants and who so far is found to be

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suitable, should be appointed and till then the applicant should continue in that post. Pursuant to this direction of the Tribunal, the applicant assumed charge of the post on 18.10.93. Respondent No. 3 after finalising the selection process afresh, again selected and appointed the applicant w.e.f. 23.1.94. Thereafter, a report was submitted to the Chief Postmaster General, Orissa Circle, Bhubaneswar, Respondent No. 3 by the Respondent No. 3. Respondent No. 2 examined the selection file and observed that the applicant did not possess the requisite qualification of matriculation for appointment as Extra Departmental Branch Postmaster and Matriculates were where available in the fray of selection. He was also selected inspite of report of unsatisfactory record of service like suppression of PCO collections reported by ASPOs and others. On the basis of this assertion and direction of the Respondent No. 2, the impugned notice of termination under annexure-3 has been issued.

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4. During pendency of this application, Shri Karunakar Behera filed a Miscellaneous Application No. 638/94 and Sanjukta Mohanty filed Miscellaneous Application No. 685/1994 on 26.10.94 and 23.11.1994 respectively praying to be impleaded as Intervenors. However, ^{they} having not pursued these MAS, the same have been rejected by order dated 14.1.1995. At the same time, Karunakar Behera, has been allowed to submit written argument if any. Accordingly, after conclusion of the arguments, he filed written submissions.

5. As per the narration of the admitted facts above, it is clear that a fresh selection was held in January, 1994, pursuant to the direction of this Tribunal in O.A. No. 332/93 and in that selection, the applicant Pitabas Das was selected and appointed on 28-1-1994. Admittedly, the applicant did not pass matriculation but studied upto class-IX. The minimum qualification required for appointment of EDBPM has been revised as per the Directorate letter No. 17-366/91-ED and Trg. dated 12.3.93 (Annexure-R/1). This circular also finds mentioned at pages 67 to 69 in Swamy's compilation of Service Rules for ED staff (1995 edition).

As per the revised instruction which has come into force w.e.f. 1.4.1993, the minimum educational qualification for ED Sub Post master is matriculation. That even in a selection taken place after 1.4.1993, applicant who did not possess the minimum educational qualification of matriculation, was selected as EDBPM by Respondent No. 3. His selection itself is contrary to law. Hence question of his continuance in that post does not arise. Learned counsel for the applicant, however, vehemently contended that issue of notice of termination under annexure-3 is bad in law and as such needs to be quashed. Reliance has been placed on the decision of the Hon'ble Supreme Court in K.I. Sehepherd Vrs. Union of India and others reported in AIR 1988 SC 686 and Swadeshi Cotton Mills Vrs. Union of India reported in AIR 1970 SC 2042. We have carefully gone through these two decisions wherein the concept of natural justice has been explained. But these two decisions ^{when} ~~can~~ lay down any principle that if a person is appointed to a post for which he is not at all educationally or otherwise qualified is still entitled to ^{serve} ~~serve~~ with a notice to show cause before any order of termination is passed. On the other hand, the decision

of the Hon'ble Supreme Court in the case of District Collector and Chairman, Vizianagaram Social Welfare Residential School Society vrs. M. Tripura Sundari Devi reported in (1990) 3 SCC 655 has cleared on this point. It was held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the concerned appointee. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. Again the Hon'ble Supreme Court in the case of Union of India and others vrs. M. Bhaskaran reported in 1996 Supreme Court Cases (L&S) 162 held that once an employment was secured by fraud and the same was detected, later, it is voidable at the option of the employer and an employee can not plead estoppel.

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6. This apart, rule-6 of ED Agents (conduct and Service) Rules is clear that service of an EDA who has not rendered more than three years of continuous service from the date of his appointment, is liable to be terminated at any time by notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee and the period of such notice shall be one month. In notice annexure-3 this period of one month has been clearly provided.

7. For the reasons discussed above, we are unable to accept the contention, advanced by the side of the applicant. We hold that notice under Annexure-3 does not suffer from any legal infirmity and is, ^{not} liable to be quashed. The application is accordingly dismissed. The order of stay granted on 27.9.1994 stands vacated. There is no order as to costs.

Somnath Sop
(SOMNATH SOP 27.9.98)
VICE-CHAIRMAN

18-9-1998
(G. NARASIMHAM)
MEMBER (JUDICIAL)