

16

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

for hearing
 Date 13/3 Bench

Free copy of
 the order
 dt. 13.3.01
 given to the
 both counsel -

Both
 15/3

15/3
 S.O

J.Jam.

Order dated 13.3.2001

Heard Shri S.N.Mishra, learned counsel for the petitioner, ~~and~~ Shri J.K.Nayak, the learned A.S.C. for the Department and Shri G.A.R.Dora, learned counsel for Respondent No.5 and perused the records.

In this O.A. the petitioner has prayed for a declaration that selection of Respondent No.5 to the post of E.D.M.C., Chhatua B.O. is illegal. The second prayer is for direction to Respondents to give appointment to the petitioner to that post. The third ~~prayer~~ and alternative prayer is for direction to Respondents to conduct a test for adjudging suitability of different candidates and select the most suitable person to the post in question. The Departmental respondents have filed their counter. Private Respondent No.5 has been represented by his counsel but has not filed any counter.

For the purpose of considering this O.A. it is not necessary to go into too many facts of this case. The departmental respondents in their counter have admitted that for filling up of the post of E.D.M.C., Chhatua B.O. no selection procedure, as envisaged under the rules was undertaken. It is stated that S.D.I.(P), Kujanga appointed Res. No.5 straightaway to the above post in view of order of the Tribunal in O.A.533/94. We had therefore, called for the records of O.A.533/95 and we found that this was disposed of on the date of admission on 12.9.94. In that O.A. applicant(Res.5 in the present O.A.) made a prayer for direction to the departmental authorities to dispose of the pending representations and to allow him to inspect his leave account. The Tribunal disposed of the above O.A. with direction to Superintendent of Post Offices, Cuttack(S) Division, Res.2 in that O.A. to dispose of the representations pending contained in Annexure-3 within a period of 30 days from the date of receipt of copy of ~~the~~ order in that O.A. by examining as to what relief could be provided to the applicant, as per rules. From the above, it is seen that the Tribunal never directed that Respondent No.5 should be given appointment straightaway to the post of EDMC, Chhatua B.O. On the contrary the Tribunal merely directed the

7

7

departmental authorities, more particularly, Superintendent of Post Offices, Cuttack (Sough) Division, to examine the case of the applicant as to what relief could be provided to him under the rules, in respect of his representation at Annexure-3 in that O.A. In that his representation Res. 5 had prayed for granting temporary status and regularisation. Thus it can no way be held that this representation was for appointment to the post of EDMC, Chhatua. Law is very clear that the a public post can be filled up only in accordance with the recruitment rules. As in this case the post of E.D.M.C. has been filled up without calling for names from either from the open market or from the Employment Exchange and/or without any process of selection on the basis of an alleged order of the Tribunal, which on examination is found containing no direction to the above effect, we have no hesitation to hold that appointment of Res. 5 to the post of E.D.M.C., Chhatua B.O. is vitiated being not in accordance with rules and therefore, the same is quashed, with direction to departmental authorities to ~~initiate~~ ^{and} ~~alone~~ complete the selection process in accordance with rules ^{U.M.} ~~U.M.~~ within a period of 180 (One Hundred & Eighty) days from the date of receipt of this order. The 1st prayer of the applicant is disposed of accordingly.

The 2nd prayer of the applicant is for direction to departmental authorities to give him appointment to the post of E.D.M.C., Chhatua. As we have already noted that appointment of Res. 5 was made without following the recruitment rules, a fresh selection process has to be initiated. In view of this second prayer of the applicant is held to be without any merit and the same is therefore, rejected.

As we have already directed the departmental authorities to initiate fresh selection to the post of EDMC, Chhatua, the third prayer of the applicant is substantially allowed.

In the result, Original Application is partly allowed in terms of observations and directions made above, but without any order as to costs.

U.M.
MEMBER (JUDICIAL)

Somnath Sircar
VICE-CHAIRMAN
13.3.2001