

12

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS.339/95 & 495/97
Cuttack this the 4th day of September, 1998

IN O.A.339/95

Gopal Prasad Panda

Aplicant(s)

-Versus-

Union of India & Others

Respondent(s)

IN O.A. NO.495/97

Damodar Biswal

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administraitve Tribunal or not ?

(SOMNATH SOM)
VICE-CHAIRMAN

(G.NARASIMHAM)
MEMBER(JUDICIAL)

13
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS.339/95 & 495/97
Cuttack this the day of September, 1998

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...
IN O.A. 339/95

Gopal Prasad Panda,
aged about 23 years,
S/o.Sri Narayan Chandra Panda
At/Po:Sikudi, P.S.Rajkanika
Dist:Kendrapara

...

Applicant

By the Advocates:

M/s.B.Pujari
U.K.Mishra

-Versus-

1. Union of India represented by
Director General of Posts
Dakbawan, New Delhi-110001
2. Senior Supeintendent of Posts
Cuttack North Division, Cuttack
3. Chief Post Master General,
Orissa Circle, Bhubaneswar
4. Sub-Divisional Inspector(Postal)
Pattamundai, Dist:Kendrapara
5. Damodar Biswal, S/o.Late Bairagi Biswal
E.D.D.A. Baradia Branch Post Office
P.S.Rajkanika, Dist:Kendrapara

By the Advocates:

...

Respondents

Mr.Akhaya Mishra
Addl.Standing
Counsel(Central)
(Res.1 to 4)

M/s.Dr.M.R.Panda
D.K.Pani
Mrs.M.K.Das
M.K.Nayak
(Res.5)

IN O.A.495/97

Damodar Biswal,
S/o.Late Bairagi Biswal
At:Baradia, P.S:Rajkanika
District:Kendrapara

...

Applicant

By the Advocates:

M/s.Dr.M.R.Panda
Mrs.M.K.Das
M.K.Nayak

-Versus-

1. Union of India represented through
Director General of Post, Dak Bhawan
New Delhi-110001
2. Senior Superintendent of Posts
Cuttack North Division, Cuttack
3. Chief Post Master General,
Orissa Circle, Bhubaneswar
Dist:Khurda
4. Gopal Prasad Panda, aged about 23 years
S/o.Sri Narayan Ch.Panda
At/Po:Sikudi, PS:Rajkanika
Dist:Kendrapara
5. Sub Divisional Inspector(Postal)
Pattamundai, Dist:Kendrapara

...

Respondents

By the Advocates: Mr. Akhaya Mishra

Mr.Akhaya Mishra
Addl.Standing
Counsel(Central)
(Res.1,2,3 and 5)

M/s.Dr.M.R.Panda
Mrs.M.K.Das
M.K.Nayak
(Res.4)

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): These two applications centre round the post of Extra Departmental Delivery Agent, Baradia Branch Office in the district of Kendrapara. Hence these applications though heard separately are being disposed of through this common order.

2. Applicant Shri Gopal Prasad Panda in O.A.339/95 is Res.4 in O.A.495/97 preferred by Damodar Biswal, who himself is Res.5 in O.A.339/95. Four other respondents representing the postal department are common in both the cases.

3. In response to the requisition made by S.D.I(P) Patamundai (one of the common respondents) for filling up of this post becoming vacant in 1995 due to retirement of Gopal Prasad Panda's father, the District Employment Exchange Officer, Kendrapara, sponsored three names including the name of Damodar Biswal. Name of Gopal Prasad Panda was not sponsored though he has the requisite qualification and registered in that exchange. Hence on 10.4.1995 the applicant Gopal Prasad Panda sent representation direct to SDI(P) by Regd.Post, but without any response. He then moved this Tribunal in O.A.220/95 seeking appropriate direction to the Employment Officer to sponsor his name to the respondent (SDI)(P). By order dated 26.4.1995 this Tribunal disposed of that application directing SDI(P) to consider his name if applied directly or sponsored through the Employment Exchange and further giving liberty to the applicant to approach the Tribunal, if necessary. On 25.5.1995 SDI(P) selected Damodar Biswal for this post.

4. Gopal Prasad Panda thereafter preferred this O.A.339/95 seeking direction to quash the appointment of Damodar Biswal and to appoint him in his place averring that after this Tribunal passed order on 26.4.1995, he met the then Postal Inspector and apprised him about the contents of this order and as the latter refused to act

on such intimation the applicant sent intimation in writing by Regd.Post; that when he learnt that still the Postal Inspector with malice was not considering his case, the applicant again sent another application to the Inspector by Regd.Post on 20.5.1995 requesting him to examine his candidature for this post in view of the direction of the Tribunal; that even though the Inspector received this letter on 22.5.1995, did not consider his case though among the four candidates he secured the highest marks in the H.S.C.Examination and illegally appointed Damodar Biswal.

The department and Damodar Biswal filed separate counters in O.A. 339/95 opposing the applicant's prayer. On 22.6.1996, this application was heard and order was pronounced on 12.8.1996 by quashing the appointment of Damodar Biswal and directing the departmental authorities to consider the claim of the applicant for the post along with all other eligible candidates within eight weeks of the date of receipt of the order. There was further direction to the C.P.M.G.(Res.3) to examine the record and submit a factual report to the Tribunal as to whether the then S.D.I.(P) Shri S.C.Sukla deliberately ignored to consider the case of the applicant. Pursuant to this direction the C.P.M.G. submitted a report which forms part of this O.A.

5. After disposal of O.A.339/95 on 12.8.1996, Damodar Biswal preferred Misc.Application 653/96 for rehearing of the matter. This was rejected on 5.9.1996. Thereupon he preferred S.L.P(Civil) No.24161-24162 of 1996. The Hon'ble Apex Court on 19.12.1996 disposed of

SLP by passing the following order;

"We do not find any reason warranting interference in this matter. The case of the first respondent was not considered for the reasons that his name was not sent by the Employment Exchange, inspite of the directions issued by the Tribunal. Under these circumstances the Tribunal has directed the authority to consider the case of the first respondent herein and send the report to the Tribunal within three months from the date of receipt of the impugned order by the authority. Therefore, it is not necessary for us to go into the merits of the matter. In the event, any decision is being taken against the petitioner, it will be open to him to argue the case on merits before the Tribunal. The S.L.Ps are accordingly dismissed."

After obtaining the aforesaid order from the Hon'ble Apex Court, petitioner Damodar Biswal preferred Misc.Application 145/97 in O.A.339/95 praying to fix a date of re-hearing of the O.A.339/95 in accordance with the direction of the Hon'ble Apex Court. No notices were issued to the applicant as well as other respondents in O.A.339/95 in the matter of rehearing of this O.A. No specific final order appears to have been passed in this M.A. In the meanwhile as the postal department terminated the service of Damodar Biswal and appointed Gopal Prasad Panda, Damodar Biswal preferred O.A. No.495/97 praying for quashing his termination order and order to appoint him. Both the cases were heard on 8.7.1998 and reserved for orders.

6. On perusal of the records of both cases, it revealed that no formal order reopening O.A.339/95 (since disposed of) for rehearing on the basis of the observation of the Hon'ble Apex Court has been passed in spite of a prayer to that effect made in M.A.145/97. Hence both the cases were listed again and the learned

counsels of both sides have been heard. The learned counsel appearing for Shri Gopal Prasad Panda objected that O.A.339/95 having finally disposed of should not be opened for rehearing. In fact this submission was ^{not} made by him during hearing of both the cases. We do not see any force in the submission made by the learned counsel. In fact no counter has been filed on behalf of Gopal Prasad Panda opposing the prayer in M.A.145/97. On 8.7.1998 all of us including the learned counsels of both sides were under an impression that an order for rehearing O.A.339/95 has already been passed. In view of the aforesaid observation of the Hon'ble Apex Court and no counter having been filed to M.A.145/97, we have no hesitation ~~to set aside~~ to set aside the order dated 12.8.1996 passed in O.A.339/95 and consider this case along with O.A.495/97. This is how both the applications are before us for disposal.

7. The present factual position as earlier indicated is that Gopal Prasad Panda is holding the post and Damodar Biswal, who has been previously appointed has since been removed.

The learned counsel appearing for Damodar Biswal contended that Gopal Prasad Panda has been appointed even though his application was received by the department much after the closing date fixed for receipt of applications and as such his appointment cannot be legally sustained and his client being more meritorious than other candidates and he having appointed in normal course should not have been removed from the post.

8. No authority has been cited by the learned

counsel in support of his contention that if an application has been received after the last date fixed for receipt of applications, the employer has no discretion at all to consider such application. This apart the case of Gopal Prasad Panda was considered as revealed from the counter of the respondents in O.A.495/97 pursuant to the direction of this Tribunal in O.A.220/95 and that Gopal Prasad Panda secured higher marks in the Matriculation than Damodar Biswal. It is not in dispute that while Gopal Prasad Panda secured 403 marks out of 700, i.e. 57.57%, Damodar Biswal secured only 319 marks out of 700, i.e. 39.87% vide Annexure-R/4. Hence as per the departmental rules Gopal Prasad Panda being more meritorious than Damodar Biswal is eligible for the post.

According to Damodar Biswal the last date of receipt of applications is 7.3.1995, but no document in support of this has been annexed. On the other hand the department in their counter specifically pleaded that the last date for receipt of application was 10.5.1995. It is true that there is nothing on record that by 10.5.1995 application of Gopal Prasad Panda was received by the department and this Tribunal in order passed in O.A.220/95 nowhere limited the discretion of the department in considering the application of Gopal Prasad Panda if received after the last date fixed for receipt of applications. On the other hand the order nowhere mentions about the last date of receipt of application. The operative portion of the order as quoted in O.A.339/95 (not controverted by the respondents) is as follows:

"Leaving liberty to the petitioner to approach this Tribunal if his name is not considered either if sponsored by the Employment Exchange or if directly applied to the competent authority under the rules, the petition is dismissed without admitting."

In other words the order of the Tribunal is to the effect that the department shall consider the application of Gopal Prasad Panda if received prior to completion of selection process. Hence the date of receipt of application before the selection is very much relevant.

It is the specific case of Gopal Prasad Panda that after the order in O.A.220/95 was passed, he personally met the Respondent (Postal Inspector) and apprised him of the contents of the order. Since the latter refused to accept on this information, he gave him in writing intimating the order passed by the Tribunal. As there was no response, he sent another application on 20.5.1995 by Regd. Post to the Inspector which was duly received by him on 22.5.1995. Despite receipt of this letter, the then Postal Inspector, Shri Sukla refused to consider his case and appointed Damodar Biswal illegally. At this stage it is relevant to peruse the report submitted by the Chief Post Master General, Orissa Circle in response to the order passed in O.A.339/95. This report which forms part of the record in O.A.339/95 finds mention in the order (supra) of the Hon'ble Apex Court. The report reveals that the then Postal Inspector Shri Sukla received application of Gopal Prasad Panda on 22.5.1995 and without considering the application of Shri

Panda along with other candidates, Shri Sukla selected Damodar Biswal for appointment to the post of EDDA on 25.5.1995 on which day Shri Sukla relinquished the charge of the post he was holding. The C.P.M.G. opined that Shri Sukla committed grave misconduct by violating the direction of this Tribunal and a disciplinary action has been contemplated against him. Thus it is clear that the application of Shri Gopal Prasad Panda along with required documents was in receipt of the then Postal Inspector on 22.5.1995 on which day the selection process was not completed. Shri Sukla made the selection on 22.5.1995 and gave appointment to Shri Damodar Biswal on the day just before relinquishing the charge. In other words selection of Shri Damodar Biswal without considering the application of Shri Gopal Prasad Panda was clearly in violation of the direction of this Tribunal passed in O.A.220/95 and as such was illegal. As earlier discussed Shri Gopal Prasad Panda secured more in Matriculation than Shri Damodar Biswal and other candidates and as such his appointment to that post cannot be legally questioned. The relief prayed for in O.A.339/95 for quashing the appointment of Shri Damodar Biswal and consequently to appoint the petitioner Shri Gopal Prasad Panda has since been rightly complied by the department. Since the department has already initiated a proceeding against Shri S.C.Sukla, then then SDI(P)(Res.3), there is no necessity of awarding cost to Shri Gopal Prasad Panda.

In the result while O.A.339/95 succeeds,
O.A.495/97 stands dismissed as without merit. There is,
however, no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO, C.M.

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