

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 499 OF 1995.

Cuttack this the 27th day of May, 1995.

BIJAY KUMAR SAHU.

....

APPLICANT.

-VERSUS-

UNION OF INDIA & OTHERS.

....

RESPONDENTS.

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27-5-95

27-5-95
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 499 OF 1995.

Cuttack this the 27th day of May, 1995.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

And

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

In the matter of:-

BLJAYA KUMAR SAHU, aged about 33 years,
Son of Dandapani Sahu of village/PO.
Angarugaon, Ps. Kodala, Dist. Ganjam. ... Applicant.

By legal Practitioner :- M/s. A. Deo, B. S. Tripathy, R. Rath,
Advocates.

-versus-

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhawan, New Delhi.
2. Chief Postmaster General Orissa Circle,
At/PO. Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Posts Offices,
Berhampur (GM) East Division
Berhampur, Dist. Ganjam.
4. Kailash Chandra Sahoo, 30 years,
S/o. Bauri Bandhu Sahu of village/
PO. Angarugaon, Via. Sumandah,
Dist. Ganjam. ... Respondents.

By legal practitioner
Res. Nos. 1 to 3. Mr. U. B. Mohapatra, Additional
Standing Counsel (Central).

By legal practitioner
Res. No. 4. Mr. B. K. Panda, Advocate.

O R D E R

MR. G. NARASIMHAM, VICE-CHAIRMAN:-

In this Original application, under section 19 of the Administrative Tribunals Act, 1985 the applicant challenges the provisional selection of Respondent No. 4 for the post of EDBPM, Angarugaon Branch Post Office. Originally, the applicant approached before this Tribunal in Original Application No. 313 of 1990. This post having fallen vacant, a requisition was placed to the Employment Exchange at Chhatrapur to sponsor names for appointment to the said post. The Employment Exchange sponsored names of some persons including the name of the applicant. However, subsequently, the authorities invited applications through open advertisement. In Original Application No. 313/90, the applicant prayed for issuance of a direction to the Respondents postal Authorities to issue a letter of appointment in his favour mainly on the ground that the competent authority had recommended his name to the Chief Postmaster General. The Respondents in that application denied the averments that the name of the applicant has been recommended. Out of the three names recommended by the Employment Exchange, solvency of one candidate was not satisfactory. In order to make the field of choice wider, the competent authority invited applications from open market through an advertisement. This Tribunal

by order dated 19.12.1990 passed the following orders:-

" We were told by Mr. Aswini Kumar Mishra learned Senior Standing Counsel (CAT) that the competent authority has already called for applications from the open market and cases of all the candidates would be considered. Giving our anxious consideration to the arguments advanced by Mr. Deepak Mishra and Mr. Aswini Kumar Mishra, we feel inclined to hold that the field of choice should be wide enough for recruiting suitable candidate. In the circumstances stated above, we direct that the case of the applicant alongwith others be considered for appointment to the post of Extra Departmental Branch Post Master, Angarugaon Branch Post Office and the solvency certificate already filed by the applicant to the extent of Rs. 6,000/- and the deed of transfer effected by the father of the applicant in his favour be also considered by the competent authority and orders be passed according to law for appointment to the post of Extra Departmental Branch Post Master, Angarugaon Branch post Office. The process of selection should be completed within two months from the date of receipt of a copy of this judgment.".

Thereafter, a fresh selection was made taking into consideration the cases of all the candidates including the present applicant and Respondent No. 4. In that selection process, Respondent No. 4 was selected to that post, vide order dated 28.2.1991 of the Senior Superintendent of Post Offices, Berhampur. The applicant moved this Tribunal in MA 87/91 for implementation of the Tribunal's order dated 19.12.1990. In that application notice to show cause as to why contempt proceeding shall not be started was issued to the Respondents Postal Authorities. The Respondents referred this matter to the Senior Standing Counsel for opinion who opined that selection shall have to be confined among the

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candidates sponsored by the Employment Exchange only. Since the name of Respondent No. 4 was not sponsored by the Employment Exchange for the post, his candidate was not taken into consideration and the applicant was selected after terminating the appointment of Respondent No. 4 w.e.f. 12.9.91. Respondent No. 4 then moved this Tribunal in O.A. No. 389/91. The Tribunal in order dated 10.5.1995 interpreting the previous order dated 19.12.1990 in OA No. 313/90 passed the following orders:-

"It is thus patently clear that when selection was made after the order of this Tribunal dated 19.12.1990, the case of the applicant was not considered which was necessarily to be considered in accordance with the direction made. This has resulted in failure of justice to the applicant as rightly contended by the applicant's counsel. For the reasons aforesaid, we quash the selection made on 12.9.91 of the present Respondent No. 3 and direct the Respondents to follow the direction given in OA No. 313/90 and consider the case of the present applicant alongwith that of those sponsored by the Employment Exchange then and make a fresh selection according to Rules. It is further made clear that respondent No. 3 shall continue in the present post till a fresh selection is made which shall be made within 60 days from the date date of receipt of copy of the order and if the applicant or any other candidate is selected in pursuance of that selection, respondent no. 3 will have to make way for the candidate so selected. With these observations and directions the Original application is disposed of."

2. On the basis of this order, a fresh selection

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was made by the competent authority. Considering the cases of Respondent No. 4 alongwith candidates sponsored by the Employment Exchange then, Respondent No. 4 was selected and appointment order was issued in his favour under Annexure-3, which is now under challenge in this Original Application.

3. These facts are borne out from the records, in O.A. No. 313/90 and 389/91 and this record which have been perused.

4. In this application, the main plea of the applicant is that in OA No. 389/91, his advocate did not take any step in the matter as a result of which the order was passed ex parte in his absence and as such, he has a right to be heard in the matter. Though Annexure-3 was issued in favour of Respondent No. 4, he is still continuing as such and not yet handed over the charge and he is continuing in the Department since 1991. The selection under Annexure-3, in favour of Respondent No. 4 is illegal and arbitrary.

5. Respondents- Postal Authorities, in their counter stated that both the applicant and Respondent No. 4 were in the field of selection. The Education qualification of the applicant is non-matric whereas respondent No. 4 was a matriculate, and as per rules, a matriculate comes under preferential category and as such respondent no. 4 was selected for the post in question. There is no illegality or arbitrariness in the selection of the Respondent No. 4 Respondent No. 4 in his

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counter urged the plea of res-judicata inasmuch as interpretation of relevant order dated 19.12.1990 in OA No. 313/90 was made in order dated 10.5.1995 in OA No. 389/91 and this order being final, is not open for the applicant to re-agitate the same because on the basis of the order in OA No. 389/91, a fresh selection was made and respondent no. 4 was duly selected. Further according to this Respondent, applicant preferred OA No. 411/95 on the very self same ground of the present O.A. and that OA was disposed of on 27.7.95 as dismissed on withdrawal. Though interim stay was granted in the present O.A. on 31.8.95 in regard to operation of Annexure-3 that order was vacated on 22.11.1995 with a direction that in case the applicant would succeed, in this application, Respondent No. 4 would make way for him.

6. It would be, thus, clear that the main grievance of the applicant that OA No. 389/91 was held, in his absence and that order is an exparte order as against him and admittedly, he has not preferred any appeal against that order. He had also not preferred any application within 30 days from the date of the order to set aside the so called exparte order against him under rule 16 of the CAT (Procedure) Rules, 1987. He, even, did not take recourse to rule 17 of the CAT (Procedure) Rules, 1987 in preferring review within 30 days. Thus, the final order dated 10.5.95 in OA No. 389/91 has become ^{then} final. In view of ^{the} this matter, the present application is not maintainable inasmuch as the applicant indirectly wants

to reopen the issue decided in OA No. 389/91 on the basis of which decision, fresh selection was made, and selection order under Annexure-3 has been issued in favour of Respondent No. 4 by alleging that he was not heard in OA No. 389/91 and that was case was held *ex parte* as against him. Even otherwise, on merits, we are of the view that the applicant has no case for quashing the Annexure-3. It is not his *case*, in this Original application that he is more qualified than Respondent No. 4 to be appointed to the post in question. There is no specific averments in his application that he is a matriculate. Stand of the Respondents-Postal Authorities taken in the counter that he is a non-matriculate has not been refuted through any rejoinder. Educational qualification for ED Sub Postmaster and ED Branch Postmaster is matriculation and selection should be based on the marks secured in the matriculation or equivalent examination as mentioned in the *swamy's compilation of service rules* for ED Staffs. Even assuming that the applicant is a matriculate, there is no averment in the Original application that he has secured more or better marks than Respondent No. 4.

7. For the reasons discussed above, we are of the considered view that there is **no** merit in this application which stands dismissed leaving the parties to bear their own costs.

Somnath C.M.
SOMNATH SOM
27/5/95
VICE-CHAIRMAN

KNM/C.M.

27-5-95
(G.NARASIMHAM)
MEMBER (JUDICIAL)