

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 547 OF 1995.

Cuttack this the 24th day of April, 1998.

SATRUGHAN PRUSTY.

...  
-versus.-

APPLICANT.

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  
24/4/98

*S. K. Agarwal*  
(S. K. AGARWAL)  
MEMBER (JUDICIAL)

24/4/98

10

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 547 of 1995.

Cuttack this the 24th day of April, 1995.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN,

&

THE HONOURABLE MR. S. K. AGARWAL, MEMBER (JUDICIAL)

In the matter of:

Shri Satrughan Prusty, aged about 32 years,  
Son of late Narayan Chandra Prusty,  
Village and PO: Nalgira, Via. Barapada,  
District-Bhadrak.

...

APPLICANT.

By legal practitioner : M/s. Jayanta Rath, P. K. Das, J. P. Pati,  
B. N. Sarangi, Advocates.

- 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,  
Bhadrak Division, At/PO/Dist. Bhadrak.
4. Sub-Divisional Inspector (Postal),  
At/PO/Dist. Bhadrak.
5. Shri Purna Chandra Behera, aged about 35 years, ~~RESPONDENTS.~~  
Son of Babaji Charan Behera, At/PO. Lalgarh,  
PS/Dist. Bhadrak.

.. ..

RESPONDENTS.

By legal practitioner : Mr. Ashok Mishra, Senior Standing  
(Res. Nos. 1 to 4) Counsel (Central).

By legal practitioner  
for Res. Nos. 5-intervenor: Mr. T. Rath, Advocate.

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24/4/95

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O R D E R

MR. S. K. AGARWAL, MEMBER(JUDICIAL):-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that the order at Annexure-4 be quashed and Respondent No. 3 be directed to issue appointment order in favour of the applicant for the post of E.D.B.P.M. Nalgira Branch Post Office in account with Barapada Sub Office pursuant to the order vide Annexure-3.

2. In brief, the facts of this case, as stated by the applicant, are that in the month of April, 1995, the applicant was communicated with a letter bearing No. B/E-253, dated 10.4.1995 by the Respondent No. 3 calling upon him to apply for the post of Extra Departmental Branch Post Master in the prescribed proforma attached to the letter, for the post of Extra Departmental Branch Post Master, Nalgira Branch Post Office, as the name of the applicant was sponsored by the local Employment Exchange. In pursuant to the said letter, applicant applied for the post in question in the prescribed form attached to the letter alongwith the requisite documents as asked for by the Respondent No. 3, in time. Thereafter, the applicant was communicated vide letter bearing No. B/E-253 (sub) dated 4-9-1995 by the Respondent No. 3 intimating therein that he has been selected provisionally for the post of EDBPM,

*S. K. Agarwal*  
24/4/98

12

Nalgira Branch Post Office and he was called upon to submit the required documents and also submit his letter of acceptance of the job assigned to him which is at Annexure-3. Pursuant to that letter, the applicant, submitted his willingness in time. But in the meantime, before the said willingness/consent letter of the applicant could reach the Respondent No. 3, respondent no. 3 vide his letter No. B/E-253(sub), dated 8.9.1995 in a cryptic and capricious manner cancelled the selection of the applicant without assigning any reason thereof. It is stated that the post of E.D.B.P.M., Nalgira Branch Post Office, is still lying vacant and nobody has yet been posted or joined in the said post till date. It is, therefore, stated, by the applicant that the order vide Annexure-4, issued by Respondent No. 3 is illegal, arbitrary and contrary to the sound principle of law. Applicant was duly selected by the respondents for the post of EDBPM, Nalgira, Branch Post Office from among the total number of candidates as sponsored by the Employment Exchange and was called upon to submit his willingness regarding acceptance of the offer of appointment and in turn he had also submitted his willingness, the respondent no. 3 should not have passed an order of cancellation of the provisional appointment given to the applicant without assigning any reason or without giving an opportunity of personal hearing to the applicant and as such, the impugned order is vitiated in the eye of law and is liable to be quashed.

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24/4/2020

-4-

It is further stated that the Respondent No.3 has passed the impugned order of cancellation of the appointment/selection of the applicant, at Annexure-4 on extraneous consideration and Respondent No.3 wants to appoint a person of his choice as EDBPM, Nalgira Branch Post Office and for this reason, this impugned order has been passed which is illegal and arbitrary and is liable to be quashed. It is therefore, requested that the impugned order at Annexure-4 be quashed and respondent no.3 be directed to issue appointment order in favour of the applicant for the post of EDBPM, Nalgira Branch Post Office.

3. Intervention petition was filed by one Shri Purna Chandra Behera on 3.11.1997 alleging that this intervenor petitioner had also submitted application for the post of EDBPM, Nalgira Branch Post Office after his name being sponsored by the Employment Exchange and the intervenor applicant and one Shri Ananta Kishore Majhi, had secured more marks than the petitioner Shri Satrughan Prusty, but illegally, Shri Prusty was selected as EDBPM, Nalgira provisionally. Therefore, this intervenor applicant made a verbal complaint before the respondent no.3 regarding the irregularity committed in the matter of selection. Shri Ananta Kishore Majhi also made a written complaint before the respondent no.3 and in pursuant to which respondent no.3 after giving due opportunity to the applicant, cancelled his appointment order on 8.9.1995. This

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24/11/98

14  
14  
Intervention petition was allowed and the intervenor -applicant was allowed to be impleaded as Respondent No.5 to the Original application.

4. Counter was filed by the Respondents. In the counter, it has been stated that consequent upon the resignation of the regular EPM, Nalgira Branch Post Office, the Post of ~~extra~~ Departmental Branch Post Master was fallen vacant. The local Employment Exchange Officer was addressed alongwith the prescribed requisition form to sponsor the names of candidates for the post of EDEPM Nalgira. The employment Exchange Officer, forwarded a list containing the names of 17 candidates for selection to the said post in which the name of Shri Satrughna Prusty, applicant, was enlisted. As per the provisions prescribed, application form were supplied to the candidates and ten applications including the application of the present applicant were received. A check list for selection of candidates for the Post of EDEPM, Nalgira was prepared. Among other things, a candidate securing higher percentage of mark in the matriculation examination is given preference over the candidate securing less percentage of marks. While preparing the check list and working out the percentage of marks, secured by the candidates, the marks secured by Shri Ananta Kishore Majhi in extra-optional was taken as 30 inadvertently instead of 42 marks and percentage of marks was calculated as 43.37 instead of 44.87. The percentage

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24/4/78

15

VS

-6-

of mark of the applicant, Shri Satrughna Prusty was correctly calculated as 44.37. Since percentage of mark of Shri Prusty (applicant) was worked out 44.37, he was provisionally selected for the post and he was accordingly informed. After this was done, one unsuccessful candidate Shri Ananta Kishore Majhi pointed out the error orally and subsequently in writing vide his application dated 9.9.1995. Since it was an honest error the selection of the applicant was immediately cancelled. Respondent No 3 has a right to cancel the selection without assigning any reason to the applicant. Further also it is submitted that the selection of the applicant was cancelled after a genuine and honest error was pointed out and as such, there is nothing wrong in cancellation of the provisional selection of the applicant. Besides this, it is stated that before the order of cancellation was passed by the Respondent no. 3 the applicant was granted a personal interview on 11.9.95 in this regard and the circumstances under which the selection was cancelled was clearly explained to the applicant. Therefore, the respondents have prayed that the application has no merit and the same is liable to be dismissed with cost.

5. We have heard Mr. Jayanta Rath, learned counsel for the applicant, Mr. Ashok Mishra, learned Senior Standing Counsel appearing on behalf of the Departmental Respondents and also Mr. T. Rath, learned counsel appearing on behalf of the intervenor-respondent No.5.

  
Mr. Jayanta Rath

6. Learned counsel for the applicant has submitted that Respondent No. 3 appointed the applicant provisionally vide order Annexure-3, dated 4.9.95. But all of a sudden, the appointment of the applicant was cancelled by order at Annexure-4, dated 8.9.1995. He further stated that no reason was given in the impugned order of cancellation vide Annexure-4 nor opportunity of hearing was given to the applicant before passing the impugned order at Annexure-4. Therefore, such order of cancellation of the appointment of the applicant, at Annexure-4 is illegal and is in violation of the principles of natural justice. It is also stated that the applicant had secured more mark than Shri Majhi and his income is also more in comparison to Mr. Majhi. Therefore, impugned order of cancellation is liable to be set aside.

On the other hand, learned counsel for the Respondents has submitted that there was a bona-fide clerical error in calculating the percentage of marks of the applicant vis-a-vis others and in such circumstances, pre-decisional hearing is not necessary before cancellation of the order of appointment. Learned counsel appearing for the Respondent No. 5 has submitted a written note of submission and while supporting the plea of the Departmental Respondents, contended that the appointment of the applicant was rightly cancelled because the applicant did not secure the highest percentage of mark

  
24/4/98

in the matriculation examination. He has further stated that no personal hearing was necessary before the cancellation of the impugned order.

7. We have given thoughtful consideration to the contentions of the both parties and perused the written submission filed by the Respondent No.5 (intervenor).

8. On the direction of the Tribunal, learned Senior Standing Counsel has produced the file dealing with the selection of the post in question. On the perusal of the pleadings as well as the concerned file produced before us, it appears that the applicant has secured only '325' marks in High School Examination whereas Shri Anata Kishore Majhi has secured '329' marks in the High School Examination. This clearly means that while selecting the applicant, there has been a bona fide clerical error which was noticed on complaint and the provisional appointment of the applicant was cancelled by the Respondents vide Annexure-4. No evidence has been produced before us by the learned counsel for the applicant to show what percentage of marks the applicant has secured in the matriculation examination. On perusal of the records, it becomes abundantly clear that the selection of the applicant was irregular and in case of such irregular appointment/selection, the applicant has no right to the post.

24/4/28

It is also abundantly clear on perusal of record that the applicant did not join the post but even if he has joined the post, the irregular appointment made can be terminated as per the provisions given under rule-6 of E.D. Agents (Conduct and Service) Rules, 1964 and no show cause notice or pre-decisional hearing or opportunity of hearing is necessary in such case as has been held by the Bangalore Bench, Central Administrative Tribunal, reported in DODDASIDHAIH . VRS. UNION OF INDIA AND OTHERS reported in (1993) 6 SLR 474 that in case of termination of an irregular appointment under rule-6 of ED Agents (Conduct and Service) Rules, 1964, there was no need of giving an opportunity of hearing. The term of the appointment was provisional one and in case of provisional appointment which was held irregular, in our considered, view, no show cause notice or opportunity of hearing was necessary.

9. Learned counsel appearing on behalf of the Intervenor respondent has submitted that the intervenor-respondent, in this case, has established his case for appointment of EDEPM, Nalgira. Therefore, he should be appointed. We have heard learned Senior Standing Counsel on this point. On perusal of whole records, it appears that this respondent (intervenor) also did not secure the highest marks and the prayer of the intervenor respondent was that he should be impleaded as respondent no. 5 and he should be given an opportunity to file

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24/4/98

19  
-10-

counter and opportunity of hearing. From the order sheet dated 24.11.1997, it appears that this intervenor-respondent, did not file separate counter but he has stated that the intervention petition may be treated as counter. Therefore, in view of the averments and prayer made in the intervention petition, we are not inclined to decide whether the intervenor respondent has a case for appointment to the post of EDBPM, Nalgira BO. In view of the discussion made above, we are of the considered opinion that the applicant fails to establish his case and therefore, he is not entitled to any relief sought for.

10. In the result, the Original application is dismissed leaving the parties to bear their own costs.

Somnath Som.  
(SOMNATH SOM)  
VICE-CHAIRMAN  
1998

S.K. Agarwal  
(S.K. AGARWAL) 24/10/98  
MEMBER (JUDICIAL)

KNM/CM.