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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 555 of 1995
Cuttack this the 5th day of March, 1998

CORAM

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI S.K. AGARWAL, MEMBER (JUDICIAL)

Udayabhanu Praharaj ... Applicant

VERSUS


Union of India & Others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not **yes**

2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? **No**


(SOMNATH SOM)
VICE-CHAIRMAN 5/3/98


(S.K. AGARWAL) 5/3/98
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. ~~595~~ OF 1995
Cuttack, this the 5th day of ~~MARCH~~, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K. AGARWAL, MEMBER (JUDICIAL)

.....

Udayan Praharaaj,
aged about 23 years,
s/o Durga Ch. Praharaaj,
At/PO-Potanai,
Via-Rahma, Dist. Jagatsinghpur

Applicant.

By the Advocates -

M/s K.P. Misra
B.S. Tripathy &
N. Sarkar

Vrs.

1. Union of India,
represented through its
Chief Post Master General,
Orissa Circle,
Bhubaneswar.
2. Superintendent of Office.,
2. Superintendent of Post Offices,
Cuttack South Division,
Cuttack.
3. Employment Officer,
Special Employment Exchange,
At/PO-Paradeep,
Dist. Jagatsinghpur

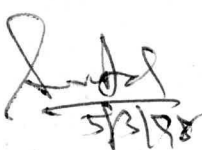
Respondents

By the Advocates -

M/s Ashok Misra
&
K.C. Mohanty

O R D E R

S.K. AGARWAL, MEMBER (J)


In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant prays
for a direction to the Respondent No. 2 to consider the
the case of the applicant for appointment to the post of Extra
Departmental Branch Post Master at Potanai Branch Office and
to declare the impugned action of Respondent No. 3 not

sponsoring the name of the applicant for the post of E.D.B.P.M., Potanai as arbitrary and discriminatory.

2. In brief the facts of the case as stated by the applicant that Res.No.2 made a requisition to Res.3 requesting him to sponsor the name of the candidates for appointment to the post of E.D.B.P.M., Potanai Branch Office. ~~Conse~~sequent upon the requisition made by Respondent No.2, Respondent No.3 ~~xxx~~ sponsored the names of 40 candidates and directed the said candidates to submit their application forms before Res.2 for appointment against the aforesaid post on or before 4.10.1995. It is stated that Respondent No.3 with an ill, improper and dishonest intention had ~~not~~ sponsored the name of the applicant though the applicant was registered with the Employment Exchange. ~~The applicant~~ The applicant thereafter, came to know that his name had not been sponsored by the Employment Exchange and therefore, he submitted a representation before Respondent No.2 praying to consider his case for appointment to the post of E.D.B. P.M., Potanai. But Respondent No.2 did not consider his case. It is stated by the applicant that in all respects he was eligible for the above post and there was no obligation for the employer that only those persons who have been sponsored by the Employment Exchange shall be considered. It is stated that the Apex Court of the country has settled the position in this regard in a case reported in A.I.R. 1987 S.C. 1227 . It is stated that the applicant is a Matriculate and has secured more than 1st class marks in the H.S.C. Examination and

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every person who fulfils the criteria is to be considered for such employment by the concerned authority, and any deviation thereof violates the fundamental rights of the applicant provided to him under Article 14, 16 and 21 of the Constitution of India. It is, therefore, prayed that a direction may be issued to Res.2 to consider the case of the applicant for the post of E.D.B.P.M., Potanai Branch Office and to declare the impugned action on the part of Res.3 not sponsoring the name of the applicant for the said post as arbitrary and discriminatory.

3. Counter has been filed on behalf of Res.1 and 2 and a separate counter has been filed on behalf of Res.3.

Respondent No.2 has denied the allegation of the applicant for not sponsoring the name of the applicant by the Employment Exchange as arbitrary and discriminatory. It is stated that on account of retirement of the then E.D.B.P.M., Potanai on 29.11.1995(Afternoon) the post of E.D.B.P.M., of the said Post office was lying vacant and in order to make appointment to the said post the selection process started by the Superintendent of Post Offices, Cuttack(S) Division (Res.2) and in a requisition Employment Officer, Paradeep was requested to sponsor the candidates. The Employment Officer, Special Employment Exchange, Paradeep(Res.3) sponsored a list of 40 candidates on 24.8.1995 which was received by Res.2 before the date fixed. It is stated that

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the applicant's name was not sponsored by the employment exchange nor he submitted any application for the said post. It is also submitted that all the candidates sponsored by the employment exchange were addressed to submit their application on or before 4.10.1995. Thereafter only 11 candidates applied within the stipulated date and selection has not been made final yet. It has also been stated in the counter that Respondents are bound to follow the rules of recruitment as per Annexure-R/1 framed by the Government of India and no scope is left to the respondents to go for open notification unless the application of the candidates sponsored by the employment exchange who applied on being addressed is disposed of. In view of this, the applicant was not entitled to any relief sought for and on the basis of averment made in the counter respondents pray to dismiss the application with costs.

4. 3. Respondent No.3 in his counter has stated that the applicant is registered his name in Special Employment Exchange, Paradeep as +2 Science candidate on 22.2.1994 and not as a matriculate candidate. It is stated that requisition was received from the Superintendent of Post Offices, Cuttack(S) Division for sponsoring the name of 10 candidates having Matriculation or equivalent qualification for one post of E.D.B.P.M., Potanai Branch Office. In the said requisition it was also mentioned that the sponsoring candidates must be resident of post-village. It is stated that as per Government circular of Labour & Employment Department, Respondent No.3 also followed

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the instructions of Government to send the names as per ratio keeping in view the seniority of candidates in the category of annual list maintained by the employment exchange. It is further submitted that in the instant case Res.3 sponsored names of 40 candidates who registered their names upto 1983 and not beyond that year as the requisition had given sufficiently higher upper age limit. It is specifically mentioned in the counter of Res.3 that the petitioner has registered his name only in the year 1994 and the name of the applicant may be sponsored when his turn will come on that basis. It is further stated that while sponsoring the names, eligibility criteria for the candidates mentioned in the requisition has been fully complied with and the allegations of violation of Article 14,16 and 300(a) of the Constitution of India is not attracted in this case. It is further submitted that under the rules, employment exchange is not bound to sponsor the name of all the candidates who have been registered with the employment exchange. It was, therefore, requested that the Original Application filed by the applicant is not maintainable against the Respondent No.3.

5. We have heard the learned counsel for the petitioner, learned Senior counsel Shri Ashok Mishra appearing on behalf of Res. 1 and 2 and Shri K.C.Mohanthy, learned Government Advocate for Res. 3 and perused the whole record.

The main argument of the learned counsel for the applicant that Res.3, the Employment Officer has

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committed serious illegality in not sponsoring the name of the applicant for the post of E.D.B.P.M., Potanai Branch Office. He has also argued that the employment exchange was bound to sponsor the name of all the eligible candidates registered with employment exchange for the said post. He further argued that Res1 and 2 must have considered the case of the applicant for the ~~xxx~~ appointment against the aforesaid post.

6. On the other hand learned senior counsel on behalf of Res.1 and 2 has opposed the above argument and submitted that as per requisition, employment exchange sponsored the names of 40 eligible candidates who have registered their names earlier in order of registration ~~25.4.88~~ and it was not obligatory on the part of the employment exchange to sponsor the name of all the eligible candidates who have been registered with the employment exchange on the date of sponsoring the names. He further argued that applicant did not submit any application for the selection of the post of E.D.B.P.M., Potanai. Hence the question of considering the name of the applicant for the said post does not arise.

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7. In this connection following are the instructions for recruitment of E.D.Agents:

(13) Recruitment of E.D.Agents through Employment Exchange

The question of recruitment of E.D.Agents through Employment Exchange has been under consideration of the Government for some time past.

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It has not been decided that the employment of E.D.Agents should be made through Employment exchanges. For this purpose the concerned recruiting authority should send a requisition to the local employment exchanges, having jurisdiction over the area, requesting nomination of suitable candidates for the post, having prescribed qualification, within a period of thirty days from the date of sending requisition to the employment exchange for nomination of candidates, to the concerned authority. While placing requisition on the employment exchange, the concerned competent recruiting authority should make a special mention of the following points:-

(a) Persons seeking employment as E.D.Subpostmasters/Branch P.M.s must be permanent residents of the village where the post office is located or proposed to be located. The applicants must have adequate means of income from an independent source of livelihood and they should also be able to offer suitable accommodation for the purpose of functioning of the PO.

(b) Persons seeking employment to other categories of E.D.Agents should satisfy the condition of residence as specified in Instruction(i) above.

3. The competent recruiting authority should while sending the requisition to the employment exchange, indicate the names of the Villages or localities from which the candidates are required to be nominated.

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The Director of Employment vide its letter No.Ex.P.I./92/2000(80)/DE. Dated the 7.3.1992 issued the following executive instructions for sponsoring the names of the candidates by the Employment Exchanges(Annexure-R/3/3)

It is therefore decided that in accordance with the provision contained in para 9.16, Part.I of the NES Manual, Vol.I, the ratio of submission would be limited to 1:40 instead of 1:20 with effect from the date of issue of this instruction

You are therefore requested that the above instruction may be followed scrupulously until further ordeers.

8. It has not been established that Res.3 , the Employment Officer did not sponsor the name of the applicant with malice or dishonest intention or with ulterior motive. It has also not been established that Res.3 sponsored the names of the candidates junior to the applicant. Therefore, we are unable to accept the contention of the applicant that the Employment Exchange should have sponsored the names of all the eligible candidates registered with the employment exchange on the date on which the names have been sponsored by the employment of exchange in view of the instructions issued by the Director of Employment It has also not been very clear that the applicant has not submitted any application for the selection to the post of E.D.B.P.M.,Potanai. The name of the appliant could not sponsored as per instructions of Director of Employment. The appliant himself has admitted that he has filed the representation to Res.1 and 2 to consider his case for selection to the said post of E.D.B.P.M. Annexure-4 is the copy of the application filed by the applicant. In the Annexure-4 the applicant has only requested to supply a set of departmental application form to apply for the said post. Hence on the basis of Annexure-4 it cannot be said that the applicant has submitted an application to Res.1 for consideration to the post of

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E.D.B.P.M., Potanai. Therefore, the applicant has ~~has~~ failed to make out any case and he is not entitled to any relief sought for. We, therefore, reject this application with no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(S.K. AGARWAL) 5/3/98
MEMBER (JUDICIAL)

B.K. SAHOO/C.M.