CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.98/95 and 105/95
Cuttack this the 13th day of March/2001

IN O.A. 98/95

Bishnu Prasad Dash ... Applicant

-VERSUS-

Union of India & Others ... Respondents

IN O.A.105/95

Bhimsen Swain ... Applicant

-VERSUS-

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.

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

(SOMNATH SOM)
VICE-CHAIRMAN 13.3.2001

13.3.2001.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK.

O.A.NOs. 98 of 1995 & 105 of 1995.
Cuttack, this the 13th day of March, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.).

....

O.A.NO. 98/1995.

Shri Bishnu Prasad Dash,
Aged about 30 years,
S/o. Late Artabandhu Dash,
Village-Swain Kera,
PO:Kerandipur, Ps:Chandanpur,
DIST:PURI.

... ... Petitioner.

-Versus-

1. Senior Superintendent of post Offices, Puri Division, Puri.

2. Pradipta Kumar Kar, Aged about 30 years, S/o. Arjun Kar, Vill. Swainkera, Po:Kerandipur, Ps:Chandanpur, Dist. Puri.

3. Chief Postmaster General, Orissa, Bhubaneswar.

... ... Opp. Parties.

By legal practitioner for the applicant :- Mr. R.C. Das, Advocate.

By legal practitioner for Respondent No. 2 :- M/s. S.K. Dash, B. Mohapatra, S.K. Misra, B.N. Mohapatra, Advocates.

By legal practitioner for Respondent Nos. 1&3:- Mr. A.K. Bose, Senior Standing Counsel(Central).

....

O.A.No. 105/1995.

Bhimsen Swain, Aged about 40 years, Son of Rama Swain, At/Po:Kerandipur, Via:Basudevpur, Dist :Puri.

... ... Petitioner.

By legal practitioner :- M/s.R.N.Naik,A.Deo,B.S.Tripathy,
R.Rath,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. Senior Superintendent of post Offices,Puri Division, At/Po/Dist:Puri.

4. Pradipta Kumar Kar, Son of Arjuna Kar of Swainkera, Po:Kerandipur, Via:Basudevpur, Dist:Puri.

... ... Opp.Parties.

By legal practitioner for Respondents 1&3:- Mr.A.K.Bose, Senior Standing Counsel.

By legal practitioner for Respondent No.4:- M/s.S.K.Dash,B.Mohapatra, S.K.Mishra, B.N.Mohapatra, Advocates.

O R D E R

MR. G.NARASIMHAM,MEMBER(JUDICIAL):-

In both these Original Applications,the selection and appointment of Shri Pradipta Kumar Kar (Respondent No.2 in O.A.No.98/95 and Respondent No.4 in O.A.No.105/95) to the post of Extra Departmental Branch Postmaster,Kerandipur Branch Post Office,under challenge.Though these two Original Applications were heard separately, for the convenience they are disposed of through this common order.

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Facts not in dispute are that on the superannuation of the previous incumbent, the concerned Employment Exchange Office was requested to sponsor names. As there was no response, a public notification was issued inviting applications. In response to this, 4 applications were received. These four include the selected candidate, the two applicants and another.

2. The case of the applicant in Original Application No. 98/95 i.e. Bishnu Prasad Das is that he had secured higher percentage of marks in HSC examination that the selected candidate. He has also furnished the income and solvency certificates alongwith his application to substantiate that he had adequate means of livelihood which is another requirement for appointment to the post.

The case of applicant Shri Bhimsen Swain in Original Application No. 105/95 is that he could secure higher percentage of marks in HSC examination than the selected candidate. He also filed income certificate and solvency certificate alongwith the application to establish that he had the adequate means of livelihood.

3. The selected candidate in both these applications filed counter justifying his selection and appointment and thus, prayed for dismissal of both the Original Applications.

4. The Department in their counter take the plea that Bhimsen Swain, applicant in O.A.No. 105/95 had not submitted documents standing properties in his name alongwith the application. The Income and Solvency certificates (Annexures-R/5 and R/6) submitted by him alongwith the application stand

in the name of his father. His application was received on the last date of receipt of applications. Thereafter, through Annx. 7 he submitted his Income certificate and solvency certificate and by then the last date of receipt of application was long over and hence these were not taken into consideration. Since his Original Application was not complete in all respect, he was not selected for appointment to the post of E.D.B.P.M. Kerandipur Branch post Office.

5. Regarding Original Application No. 98/95 filed by Shri B.P.Das, the stand of the Department is that some villagers intimated to the Department in writing that Shri Das was serving as a Clerk in Surajmahalsaha College, Puri and he is involved in many offences (Annexures-R/4 and R/5). These applications were referred to the officer incharge, Chandanpur Police Station under Annexure-R/6 for report. The Officer incharge, Chandpur Police Station in his report at Annexure-R/7, intimated that though Shri Das's name does not find place in any of the entries in the P.S. records, enquiry at the Village level reveals that his character is not out of suspicion. On the basis of this report, of the Officer incharge, he was not selected for the post in question. The remaining i.e. the fourth candidate is also out of picture as his application was not complete in all respect.

6. No rejoinder filed.

7. The checklist of the selection (enclosed in both the cases) reveals that while Bhimsen Swain, applicant in O.A. No. 105/95 secured 41%, Shri Bishnu Pr. Das, applicant in O.A. No. 98/95 secured 40.57% and Shri Pradeepta Kumar Kar, the selected candidate secured only 35.88% in the H.S.C. examn. Since no rejoinder has been filed by Bhimsen Swain in OA

No.105/95,we accept the stand of the Department that along with his application he had not submitted his own Income or Solvency Certificates.This is also clear from his application under Annexure-R/7 submitted much after the closing date of receipt of applications.We,therefore, do not see any illegality committed by the Department in not considering his case for selection and appointment to the post of Extra Departmental Branch Postmaster,Kerandipur Branch Post Office.

8. So far as applicant im Original Application No.98/95 is concerned,his application was complete in all respect.He has also secured higher percentage of marks than the selected candidate.The income certificate and Solvency certificate received alongwith his application would undoubtedly establish that he has adequate means of livelihood.The only reason for his non-selection is that some villagers compltained against him,that he was serving in a private College and involved in many offences.In the printed application form under Annexure-1 there is no column to indicate that as to the service in a Private College.Under Column No.4 there is a querry if he holds any Government post to which the applicant answered 'NO'.Even his service in a private college has not been confirmed by the OIC in his report.There are also no entries in the police registers against him at the concerned Police station in regard to his involvement in any of the offences. Simply because the OIC gave a report after some enquiry at the village level that his character was under suspicion,the Department did not find him suitable for appointment.If this will be the criterion to be adopted by the Department,then any candidate to such a selection would be tempted to set up some

persons or himself can write giving out some fictitious names making all sort of allegations against his opponent meritorious candidate in order to make room for himself. Suspicion ~~is no amount~~ cannot take the place of proof. Hence on the basis of this report of the OIC, the Department was not legally right in not selecting Shri B.P.Das, applicant in OA No.98 of 1995.

9. For the reasons discussed above, we are of the view that the selection and appointment of Shri P.K.Kar to the post in question was not legally justified in preference to Shri B.P.Das, applicant in O.A.No.98/95. While dismissing Original Application No.105/95 we allow Original Application No.98/95 and quash the selection and appointment of Shri P.K.Kar to the post of EDBPM, Kerandipur Branch Post Office. The Departmental Respondents are directed to reconsider the case of Shri B.P.das, applicant in OA No.98/95 on the basis of materials available with them to the post of EDBPM, Kerandipur Branch Post Office, within a period of 60 days from the date of receipt of a copy of this order. There shall be no order as to costs.

Somnath Som 13.3.2001

(SOMNATH SOM)
VICE-CHAIRMAN

13.3.2001.

(S.NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.