

3
X
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 101 OF 1995
Cuttack this the 12th day of January/2001

P.K. Biswal ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(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 Tribunal or not ? No.

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

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
12.1.2001

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 101 OF 1995
Cuttack this the 12th day of January/2001

CORAM:

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

Pradipta Kishore Biswal,
aged about 28 years,
S/o. Late Dinabandhu Biswal,
At/PO : Tulanga
PS: Tritol, District-Jagatsinghpur

...

Applicant

By the Advocates

Mr. A. Kgnungo

.versus.

1. Chief Post Master General,
Orissa Circle,
Bhubaneswar-751001
2. Superintendent of Post Offices,
Cuttack (South) Division,
Cuttack-1
3. Sanatan Gochhayat,
S/o. Govinda Gochhayat,
At: Tanra, PO: Tulanga,
Via-Tirana, PS: Tritol
District-Jagatsinghpur

...

Respondents

By the Advocates

Mr. A.K. Bose,
Sr. Standing Counsel
(Res. 1 and 2)

Mr. D.P. Dhalasamant
(Res. 3)

O R D E R

S Som

MR. SOMNATH SOM, VICE-CHAIRMAN : Aggrieved by his non selection for the post of Extra Departmental Branch Post Master, Tulanga Branch Office, the applicant has approached this Tribunal with a prayer for quashing the appointment of Respondent No.3 to the post of E.D.B.P.M. and for a direction to the departmental authorities to appoint him to that post. The departmental respondents have filed their counter opposing the prayer of the applicant.

Selected candidate (Shri Sanatan Gochhayat) Respondent No.3 though appeared through his counsel has not chosen to file any counter.

2. Learned counsels have been abstaining from attending Court since more than a month and there is no indication when they will return to Court work. Therefore, the matter cannot be adjourned. The Hon'ble Supreme Court has deprecated the action of the Courts in adjourning the cases on the ground of abstaining from Court work by the learned counsels. We have, therefore, perused the record. Because of absence of learned counsels for the parties, we did not have the benefit of hearing their arguments.

3. The facts of this case are not in controversy. The departmental respondents have stated that six persons including the applicant and Respondent No.3 were considered for the post of E.D.B.P.M., Tulanga B.O. The applicant has got 338 marks in the H.S.C. Examination whereas Respondent No.3 has got 355 marks. Respondents have further stated that the applicant has got 338 marks out of 700 whereas Respondent No.3 has got 355 marks out of 800. They have also admitted that the applicant has got higher percentage of marks than Respondent No.3. But they have stated that they have gone by the total marks secured by Respondent No.3 and not by percentage of marks. This approach is entirely erroneous. Instructions of D.G.Posts clearly lay down that amongst the eligible candidates, the person securing highest percentage of marks in the H.S.C. or equivalent Examination has to be considered the most meritorious, and therefore, the action of the departmental respondents in taking into account the total marks obtained by Respondent No. 3 out

SJOM

of 800 and thereby selecting him to the post in question is obviously incorrect. It is obviously illogical to decide comparative merit of two candidates on the basis of marks obtained out of unequal total marks which are different in two cases. In such case comparison has to be necessarily made by converting the marks in terms of percentage, so that the merit becomes comparable. The departmental respondents have stated that selection of E.D.B.P.M. is not only done on the basis of marks, but also subject to certain other condition. It is stated that against the applicant there were may personal and verbal allegations. It is alleged that the applicant was taking part in active politics and was contesting for the office of the Secretary, Youth Congress. This was enquired into by S.D.I.(P) who in his report dated 5.12.1995 (Annexure-R/1) has mentioned that the applicant took part in active politics and involved in several village disputes. The departmental respondents have also stated that applicant has obstructed the postal work as per report at Annexure-3. But we find that that report has been given by Private Res.3 and therefore, it cannot be relied on. Under Rule-18 of E.D. of Swamy's Compilation of Service Rules for Postal E.D. Staff (Seventh Edition) no employee shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics nor shall he take part, in, subscribe in aid of, or assist in any other manner, any political movement or activity. It is for the departmental authorities, who have every right not to select any such person. Averment of the departmental respondents in their counter that the petitioner was involved in active politics

J. Som

has not been denied by the applicant by filing any rejoinder. The departmental authorities are within their right not to selection a person who is involved in politics. Therefore, we do not see any reason to interfere with the action of the Department in selecting and appointing Respondent No.3 to the post of E.D.B.P.M., Tuanga B.O. even though the applicant has got higher percentage of marks than Res.3. Original Application is, therefore, held to be without any merit and the same is rejected, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN Q.D.O.

B.K.SAHOO//