

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

PRONOUNCED IN THE OPEN COURT

ORIGINAL APPLICATION NO.266 OF 1996
Cuttack this the 21st day of May, 1998

Rushinath Mallik

Applicant(s)

-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
Tribunal or not ?

No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.266 OF 1996
Cuttack this the 21st day of May, 1998

CORAM:

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

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Rushinath Mallik
Son of Late Magu Charan Mallik
At/Po: Jaakadeipur,
Via: Borikina
Dist: Jagatsinghpur

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Applicant

By the Advocate:

Mr. Ullash Ch.
Mohanty

-Versus-

1. Union of India
represented through Chief
Post Master General,
Orissa, At/PO: Bhubaneswar
Dist: Khurda
2. Superintendent of Post Offices,
South Division, Cuttack

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Respondents

By the Advocate:

Mr. Akhaya
Mishra, Addl. Sta
-nding Counsel
(Central)

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ORDER

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MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to Respondent No. 2, viz., Superintendent of Post Offices, South Division, Cuttack, not to issue appointment letter to any other person for the post of Extra Departmental Branch Post

Master(E.D.B.P.M.), Gadabishnupur, without considering his case as per direction of the Hon'ble Tribunal on 20.12.1995.

This matter has been dragging on indefinitely because of absence of learned counsel for the petitioner. Earlier an amendment petition filed by the learned counsel for the petitioner was allowed in order dated 27.6.1997, but the amendment was not carried out in accordance with C.A.T.(Procedure) Rules and as such in order dated 28.6.1995, the order allowing amendment was recalled. Thereafter also several adjournments have been given to the learned counsel for the petitioner for hearing of the matter, but in his absence the matter has been adjourned from time to time. On 17.11.1997 it was indicated that in the absence of learned counsel from either side the matter will be disposed of on the basis of materials available on record. Again on the last occasion on 13.5.1998 the matter was posted to to-day at the instance of learned counsel for the petitioner, but to-day he is not present when called. In view of this it is not possible to give further time to learned counsel for the petitioner for adjudication of the dispute. We have, therefore, taken up the matter and heard the learned Addl. Standig Counsel Shri Akhaya Mishra on merit of the case.

2. The facts of the case in brief are that the petitioner was originally selected for the post of E.D.B.P.M., Janakadeipur Post Office on 28.10.1991 and continued as such till 8.2.1994. One of the unsuccessful candidates challenged his selection in Original

Application No.493/91. The order dated 18.1.1994 disposing of the said Original Application is at Annexure-2 to the application. It is not necessary to go into the facts of that case except to note that in the said order the Division Bench of the Tribunal was pleased to hold the candidatures of the petitioner in that case Shri Umesh Kumar Jenamani Samant and Respondent No.3 Shri Rushinath Mallik, the present applicant in this O.A. should not be considered at any point of time for appointment to the post of Extra Departmental Branch Post Master, Janakadeipur Post Office. In the present application the prayer of the petitioner is with regard to appointment to the post of Extra Departmental Branch Post Master, Gadabishnupur Post Office. It has been mentioned in the application that in spite of the order dated 20.10.1995 of the Tribunal in O.A.761/95 directing the departmental authorities to take into consideration the past services rendered by the applicant while selecting the candidate for the post of EDBPM, Gadabishnupur Post Office, the departmental authorities have not taken his past experience into consideration and they have not selected him. The petitioner also submits that the order of the Tribunal in O.A.493/91 directing that he should not be considered for future appointment is not a direction, but only an observation. In the context of the above submissions the petitioner has come up with the prayers referred to earlier.

4. The respondents have filed their counter in which they have indicated that the post of Extra Departmental

Branch Post Master, Gadabishnupur became vacant with effect from 17.12.1995 and the Employment Exchange sponsored a list of 40 candidates for the said post by 28.8.1995 which was within the stipulated date, i.e. 31.8.1995. The sponsored candidates were addressed by the departmental authorities to send their applications in prescribed form with all the necessary documents by 4.10.1995. In response to this some of the candidates whose names were sponsored by the Employment Exchange sent their applications. The present petitioner filed an application dated 17.11.1995 for the post of E.D.B.P.M., Gadabishnupur and also moved the Tribunal in O.A.761/95 in which the Tribunal noted "it is stated that under the rules there is a provision of grant of weightage for the past experience/services while considering the person like applicant for the E.D. Post. The 2nd respondent is accordingly directed to grant weightage to which the applicant is entitled for his past services when his case is being considered for selection". The respondents further state that in the light of the judgment in O.A.761/95 and the direction of the Tribunal quoted above, the applicant's case was considered and was rejected because his name was not sponsored by the Employment Exchange and his application was also not received by the stipulated date, i.e. 4.10.1995. The respondents have further stated that his application was received without income certificate and the applicant did not also submit his mark-sheet of Higher Secondary Education. In view of the above the respondents have opposed the prayer of the

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of the petitioner in this Original Application.

5. We have heard the learned Addl. Standing Counsel Shri Akhaya Mishra, appearing on behalf of the respondents and have also perused the record. As we have noted the direction of the Tribunal in O.A.493/91 is that the applicant should not be considered in future for the post of E.D.B.P.M., Janakadeipur Post Office. No doubt the Tribunal in the concluding portion/^{of} (Para-5) of their order dated 18.1.1994 in O.A.493/91 have mentioned that the cases of the present applicant and one Shri Umesh Kumar Jenamani Samant should not be considered for appointment to any government service. But going by the operative portion of the judgment in para-7 of the above order, it is clear that the Tribunal directed not to consider the cases of the present applicant and Shri Umesh Kumar Jenamani Samant/_{petitioner} in that O.A. for the post of E.D.B.P.M., Jnakadeipur Post Office. In O.A.761/95 the Tribunal had ordered for consideration of the case of the petitioner for the post of EDBPM, Gadabishnupur and had also directed that in case there is rule to that effect as stated, his past experience should be taken into consideration. According to circular of D.G.(Posts) the persons selected to the post of EDBPM should have independent means of livelihood and should not depend upon the E.D. allowance which he is entitled to get on being appointed. Because of this along with application a candidate is required to provide income certificate and also the documents indicating landed property held in his own name. In this case the applicant has applied for the post of EDBPM,

J. V. Samant

Gadabishnupur after the last date of receipt of applications was over. He also did not furnish the income certificate. There are also instructions of D.G.(Posts) that while selecting the candidate, the person who has secured highest percentage of marks in the Matriculation Examination should be selected. In this case the petitioner did not furnish copy of mark-sheet in the Matriculation Examination and therefore, there was no scope for the departmental authorities to know as to what was his percentage of marks in the Matriculation Examination. We also note from the averments of the respondents that the candidate finally selected is one Shri Krishna Chandra Swain, who has passed H. S. C. in second Division whereas the applicant of his own admission has passed H.S.C. Examination in third Division. In view of this we find that the case of the petitioner was considered by the departmental authorities for the post of EDBPM, Janakadeipur, but he was not selected, firstly, because of his lapse in not providing complete documentation and secondly, because of merits having less percentage of marks in the H.S.C.Examination than the selected candidate. Therefore, he could not have any claim to be selected for the post of EDBPM, Gadabishnupur Post Office.

6. In consideration of the above we find no merit in this application. Therefore, the same is rejected leaving the parties to bear their own costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.Sahoo, C.M.


(SOMNATH SOM)
VICE-CHAIRMAN