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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 277 OF 1996

Cuttack, this the 21st day of May, 1997

Shri Abhimanyu Lenka

....

Applicant

Vrs.

Union of India and 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 Admistrative Tribunal or not? No.

Somnath Sam
(S.SOM)
VICE-CHAIRMAN 21.5.97

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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ORIGINAL APPLICATION NO. 277 OF 1996
Cuttack, this the 21st day of May, 1997

CORAM:

HON'BLE SRI S. SOM, VICE-CHAIRMAN

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Shri Abhimanyu Lenka,
aged about 47 years,
son of late Raghunath Lenka,
Vill: Kuanrpur,
PO: Bhera, Via: Moude, Dist. Cuttack,
at present working as E.D.B.P.M.,
Bhera B.O, Dist. Cuttack

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Applicant

-versus-

1. Union of India, represented by
its Secretary, Department of Posts,
Dak Bhawan, New Delhi
2. Superintendent of Post Offices, Cuttack
South Division, Cuttack-1.
3. Chief Post Master General,
Orissa Circle, Bhubaneswar

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Respondents


Advocates for applicant - M/s Shashikhusan Jena, S.K. Das,
J. Sengupta, P.K. Mishra &
S. Behera.

Advocate for respondents - Mr. Ashok Mohanty.

O R D E R

SOM, VICE-CHAIRMAN

In this application under Section 19 of the Administrative
Tribunals Act, 1985, the applicant has prayed for a direction to
respondent no. 2 to accept his Hindi Prabeshika Certificate as equivalent
to High School Certificate and to dispose of his representation
expeditiously and place his Hindi Prabeshika Certificate before the
Circle Relaxation Committee for consideration. For appreciating the
facts and issues raised in this application, it will be necessary to
refer to some earlier litigation between the parties before this Tribunal.

2.  In O.A.No. 78 of 1995 the applicant challenged the termination order of his provisional appointment on the ground that he did not possess the requisite qualification for the post of Extra-Departmental Branch Post Master (for short, E.D.B.P.M.). In course of hearing of O.A.No.78 of 1995, the order of removal was stayed. From the order dated 8.3.1996 disposing of the earlier O.A., it appears that the applicant's father was E.D.B.P.M, Bhera Branch Office. He had applied for leave from 16.3.1994 to 31.3.1994 during which period he gave his son (the present applicant) as his substitute. While on leave, the father died on 19.3.1994 and because of the persistent demand of the local people and others for the retention of the applicant, the applicant could not be relieved of his substitute duties. The applicant applied for compassionate appointment and was allowed to continue as E.D.B.P.M., Bhera B.O. till the orders of the Circle Relaxation Committee are received. In the meantime, it was found that the applicant is not a Matriculate. The minimum educational qualification for appointment as E.D.B.P.M. being Matriculation, his provisional appointment was sought to be terminated. This order was stayed. After adjudication of O.A.No.78 of 1995, the Tribunal ordered that by 1.4.1996 the applicant should show proof of his having qualified in Matriculation examination or its equivalent examination and apply to Superintendent of Post Offices, Cuttack South Division. In case he had qualified himself as a Matriculate by that date, the Circle Relaxation Committee should reconsider him for appointment to the post of E.D.B.P.M, Bhera B.O. It was further laid down that if he had not qualified himself for the post of E.D.B.P.M., the Circle Relaxation Committee should consider him for some other suitable E.D.post in accordance with his qualification.

3. In the present application, the applicant has come up with a case that he has passed Hindi Prabeshika Parikshya in the

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year 1994. According to him, in the letter dated 23.1.1976 of Joint Director of Public Instruction (School), Orissa, to Director of Employment, Orissa, Prabeshika has been held equivalent to High School Certificate standard in Hindi and therefore, he claims that he should be appointed as E.D.B.P.M, Bhera B.O., on compassionate ground, by holding that he possesses the minimum educational qualification. He further states that on 30.3.1996 he submitted a representation to respondent no.2 informing him that he has passed Hindi Prabeshika Parikshya and this should be taken as equivalent to Matriculation. Copy of the certificate was also enclosed by him. This certificate is dated 19.7.1994. The respondents have submitted that from Annexure-2 filed by the applicant it is clear that this Hindi Prabeshika Parikshya is not equivalent to Matriculation and as such, they have opposed granting of the prayer made in this application. It is relevant to note that when ^{the} application was admitted on 10.4.1996, an order was passed that no coercive action should be taken against the applicant till 30.4.1996. Subsequently stay has been continued and till date the applicant is continuing as provisional E.D.B.P.M, Bhera B.O.

4. I have considered the submissions of the learned counsels for both sides carefully. The learned lawyer for the applicant has stated that the letter dated 4.5.1996 (Annexure-R-1) from Deputy Secretary (Administration), Board of Secondary Education, Orissa, Cuttack, to the office of Chief Post Master General, Orissa Circle, Bhubaneswar, stating that Hindi Prabeshika Examination conducted by Hindi Shikshya Samiti has not been considered equivalent to High School Certificate Examination of Board of Secondary Education, Orissa, cannot be relied upon because it is for the Government of Orissa in the Education Department and not the Board of Secondary Education, Orissa, to declare the equivalence. The learned lawyer for

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the applicant has relied upon letter ^{dated} 23.1.1976 (Annexure-2) which has been referred to earlier. I find that vide Annexure-2 the different Hindi Examinations of Hindi Sikshya Samiti, Orissa, have been declared equivalent to different standards in Hindi, and Prabeshika Examination conducted by Hindi Sikshya Samiti, Orissa, has been declared equivalent to High School Certificate standard in Hindi. This equivalence has also been done for a period of one year with effect from 16.7.1975. From this, it is clear that Hindi Prabeshika Parikshya conducted by Hindi Shikshya Samiti, Orissa, is equivalent to High School Certificate standard in Hindi for one year from 16.7.1975. This does not make the Prabeshika Examination equivalent to High School Certificate Examination. Moreover, this letter at Annexure-2 gives equivalence only for one year from 16.7.1975. The learned lawyer for the applicant has not produced any other order in which this equivalence has been further extended beyond 16.7.1976. In any case, I hold for reasons indicated earlier that Annexure-2 does not make the Prabeshika Examination equivalent to High School Certificate Examination. As regards the second point that Annexure-R/1 issued by Deputy Secretary (Administration), Board of Secondary Education, cannot be relied upon, this contention must be rejected, because it is the Board of Secondary Education which conducts High School Certificate Examination and it is for them to declare equivalence. In the face of the clear intimation by the Board of Secondary Education that Hindi Prabeshika Parikshya is not equivalent to High School Certificate Examination of the Board, it cannot be held by any stretch of examination that the applicant possesses the Matriculation qualification. Moreover, according to the averments of the applicant himself, he obtained the Hindi Prabeshika Examination certificate on 19.7.1994. Had it been equivalent to Matriculation examination, then in O.A.No.78 of 1995 he would have raised this point because that O.A. was disposed of only on 8.3.1996, i.e.,

almost two years after he obtained the Hindi Prabeshika certificate.

It is submitted by the learned lawyer for the applicant that this point was raised by the applicant before the Tribunal in OA No.78/95.

In that event, since the Tribunal had not accepted this as equivalent to Matriculation examination and had directed him to qualify himself as a Matriculate by 1.4.1996, this matter already stands concluded and the applicant cannot agitate the same point again. Lastly, in order dated 8.3.1996 time was allowed to the applicant till 1.4.1996 to qualify himself as a Matriculate. It was also indicated that the applicant ~~should~~ stand removed from the post of E.D.B.P.M, Bhera B.O., if he failed to qualify himself as a Matriculate. But because of the stay order, he is continuing. In the order of the Tribunal passed on 8.3.1996 there is some reference that there was persistent demand of the local people and others for his retention and the departmental authorities in the face of such demand, allowed him to continue. But in terms of the order dated 8.3.1996 passed in O.A.No.78 of 1995, he has not qualified himself and there is no reason for him to continue.

5. It was submitted by the learned lawyer for the applicant that the applicant has appeared at the last Matriculation examination and he has reportedly done well and therefore, the dateline 1.4.1996 should be extended till 1.6.1997 and in case he does not qualify himself as a Matriculate by that time, then he will have no such claim for appointment. To allow this would be to modify the order dated 8.3.1996 passed in O.A.No.78/95. On the ground of equity, there is no reason why the above order should be modified. It has to be noted that the basic claim of the applicant is that of compassionate appointment. The applicant himself is aged 47 years and as ascertained during hearing from the learned lawyer for the applicant, he has his own family. Just because his father died while in service as E.D.B.P.M., Bhera B.O., he cannot claim compassionate appointment and that too,

at the age of 47 years. As such, while making no comment regarding his eligibility to be considered for some other E.D. post on compassionate ground for which orders have been passed by the Tribunal on 8.3.1996, I do not find any reason in equity to allow the applicant further time to acquire the minimum educational qualification for appointment to the post of E.D.B.P.M. on compassionate ground.

6. In the result, I hold that the application is without any merit and the same is rejected, but under the circumstances, without any order as to costs.

Soumitra Singh
(S.SOM)
VICE-CHAIRMAN 21.5.97