

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 284 OF 1996.

Cuttack, this the 2nd day of ~~February~~^{March}, 1999.

Ajaya Kumar Dash.

...

Applicant.

VERSUS.

UNION OF INDIA & 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 Administrative Tribunal or not? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2.3.99

2.3.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

b

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 284 of 1996.

Cuttack, this the 2nd day of ^{March} ~~February~~, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

....

Ajay Kumar Dash, S/o. Hadibandhu Dash,
of Purana Odapada, Ps./D ist. Jagatsinghpur. ... Applicant.

By legal practitioner : M/s. A. Rautray, B. Swain and P. K. Padhi,
Advocates.

versus.

1. Union of India represented through
Chief Post Master General, Orissa
Bhubaneswar.

2. Superintendent of Post Offices,
Cuttack South Division, Cuttack.

3. Jagdish Ch. Dash, S/o. Kshirod Ch. Dash,
E.D.D.A., Puranodapada Branch Post Office,
Via: Raghunathpur, Dist. Jagatsinghpur.

... Respondents.

By legal practitioner : Mr. Akhaya Kumar Mishra, Additional
(For Res. Nos. 1 & 2). Standing Counsel (Central).

By legal practitioner: M/s. R. K. Pattnaik, M. B. K. Rao, Advocates.
(For Res. No. 3).

....

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) :

In this Original Application for cancellation of appointment of Respondent No. 3 to the Post of Extra Departmental Branch Post Master, Puran Odapada Branch Post Office in account with Raghunathpur Sub Office and consequential selection of the applicant to that post has been prayed by the applicant. Uncontroverted facts are that the Respondent No. 2 in order to fillup the vacant post, called for names from employment exchange which sponsored the name of applicant and others. On receipt intimation from Respondent No. 2, in letter dated 26-8-1994, applicant submitted application alongwith required documents. However, Respondent No. 3, who was working as E.D.D.A., had applied to Respondent No. 2 to the post and ultimately, he was selected and appointed to that post, even though his name was not sponsored by the Employment Exchange.

The case of the applicant is that he secured more marks than Respondent No. 3 in matriculation examination i.e. while he secured '329' marks, Respondent No. 3 secured only '314' marks. Under Rule-2, of Sec. ^{III} ~~3~~ of the Service Rules for the ED Staff, selection for the Post of EDBPM/EDSPM, shall have to be based on the marks secured in the Matriculation or equivalenet examination and no weightage need be given for any qualification higher than Matriculation. Since he secured more marks than Respondent No. 3, in matriculation, selection and appointment of Respondent No. 3, according to the applicant, is illegal and is liable to be quashed.

2. Departmental Respondents and Respondent No. 3 filed separate written statement. There is no denial in these written statements as to the higher marks secured by the applicant than Respondent No. 3 in matriculation examn. However, their stand is that in view of the instructions issued by the Director General of Posts in letter No. 43-27/85-Pen. (ED & Trg.) dated 12-9-1988, Respondent No. 3 having fulfilled all the required conditions found suitable, was selected even though he is not a sponsored candidate of Employment Exchange. Besides, the applicant, five others also applied for the post within the stipulated date. Further stand of the Respondent No. 3 is that he belongs to post village and has adequate source of livelihood and had functioned as EDDA in that Office from 11.8.1993 till his appointment as EDBPM. Moreover, his father has let out the premises, where the post office is running on free of rent. He being an ED Agent, stands in a preferential category and his name need not be sponsored by the Employment Exchange. The sum and substance of the stand of the Respondents is that an ED Agent having requisite qualification, has a preferential right to the appointment of EDBPM, without his name being sponsored by the Employment Exchange. On the other hand, the stand of the applicant is that even though the name of an ED Agent need not be sponsored by the Employment Exchange, he has no preferential right to the appointment of EDBPM in the event of his securing lower marks in matriculation than the other candidates sponsored by the Employment Exchange for the post.

4. We have heard Shri A. Routray, learned Counsel for the Applicant, Shri Akhaya Kumar Mishra, learned Additional Standing Counsel (Central) for the Respondents 1&2 and Shri R.K. Pattnaik, learned counsel appearing for the Respondent No. 3 and have taken note of their submissions as also perused the records.

5. As earlier observed, there is no dispute that the matriculation mark of Respondent No. 3 is not highest among the candidates considered for selection to this post of Extra Departmental Branch Post Master. Normally, a candidate securing higher and better marks in the matriculation examination than other candidates, in a process of selection, having adequate means of livelihood and in a position to provide accommodation in the Post Village for the Post Office, should be considered for appointment. It is not the case of the Respondents, that the applicant has not adequate means of livelihood nor he is in a position to provide accommodation for running the post office in the concerned village. The only ground urged by the Respondents for the selection of Respondent No. 3 is that in view of the instructions provided in the Circular, Respondent No. 3 being an ED Agent having the requisite qualification of matriculation and fulfilling other required conditions, was preferred and selected. It has, however, been urged from the side of the applicant that this circular does not specifically say so and can not be interpreted to that extent.

This circular at Annexure-R/1, finds incorporated in Clause-6(2) of Method of Recruitment in Section III of Service Rules for Extra Departmental Staff (Swamy's Compilation at page-85). This has also been quoted in para 4(v) of the Original Application. The relevant portion runs as follows:

"(i) When an ED post falls vacant in the same Office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the employment exchange, provided he is suitable for the other post and fulfills all the required conditions".

This decision was taken because normally, the Employment Exchange does not register/sponsor the names of persons already in employment except in the cases for appointment to higher posts. A proposal that EDAs may, therefore, be considered in a limited manner for appointment in other ED posts without coming through the agency of Employment Exchange in exceptional cases was considered in DG posts letter No. 43-27/85-Pen., (EDC & TRG.) dated the 12th September, 1988 quoted in pages 84 & 85 of Swamy's Compilation (supra). Before issuing the aforesaid instruction (Annexure-R/1), the facts as quoted in Swamy's compilation referred to above, that normally, the Employment Exchange does not register/sponsor the names of persons already in employment except in cases for appointment to higher posts and a proposal that EDAs may, therefore, be considered in a limited manner for appointment in other ED posts without coming through the agency of Employment Exchange in exceptional cases has been examined.

In other words, the Circular under Annexure-R/1 which forms part of the DG posts' letter dated 12.9.88 (supra) is only an ~~exceptional~~ to this extent that an ED Agent can straightaway apply to the post of EDBPM without his name being sponsored through Employment Exchange - provided that he has the requisite qualification for the post and fulfills all the required conditions. This should not be ~~that~~ ^{mean} that such ED Agent can straightaway be appointed if he has got qualification for the post, even if he is less meritorious than the candidates sponsored through Employment Exchange.

Annexure-R/1, is only an ~~exceptional~~ that name of an ED Agent need not be sponsored through Employment Exchange for selection to the post of EDBPM. It is well settled by the Hon'ble Apex Court that an ~~exceptional~~ can not subsume the main provision to which it is an ~~exceptional~~ and thereby ~~nullify~~ ^{mean} the main provision by taking away completely the right conferred by the main provision (vide para-8 of Director of Education Vrs. Puspendra Kumar reported in 1998 Labour & Industrial Cases 2123 (2127)).

Thus, it is clear that an ED Agent aspiring for the post of Extra Departmental Branch Post Master must be qualified for the post and must be in a position to fulfil all the required conditions, even though his name need not be sponsored through Employment Exchange.

6. A question arises what are the required conditions in this particular case. The required conditions in this particular case, as earlier discussed center round clause-2 of Method of Recruitment in Section-III. This clause relates to the selection, which shall be based on the marks secured in the Matriculation Examination or equivalent Examinations. In other words, it would mean that among the candidates eligible for consideration for selection, the candidate who secures better and higher marks in matriculation examination than the other candidates will be qualified for appointment. If higher mark in matriculation examination, not the criterion to be judged in a selection where an ED Agent is also a candidate, then there would not be any necessity to call for names from the Employment Exchange for such selection because if an ED Agent secures the minimum pass marks in the matriculation examination and expresses his intention to be selected and appointed as E.D.B.P.M., he can as well be appointed to that post straightway and the Department in that event would be free from botheration of calling for applications from the general public or calling for names from the Employment Exchange and again corresponding with them with instruction to file applications and so on. This does not appear to be the intention of the Authorities who issued this instruction. If indeed, it was the intention of the

Director General of Posts, who issued this Circular than an ED Agent securing lesser pass mark in the matriculation examination shall have the prior claim to the post of EDBPM then the circular could have been to this effect that before moving the Employment Exchange or issuing public notice for the candidates for selection to the post, the authorities shall have to seek options from the existing ED Agents of that area, as to whether any ^{one} of them has got the requisite qualification for appointment as EDBPM and wants to be considered for appointment and in the event of receiving no such options, request can be made to the Employment Exchange and/or Public notice inviting applications for the Post.

7. Thus, the contention advanced in support of the selection and appointment of Respondent No. 3 on the basis of the Circular at Annexure-R/1 despite ~~he~~ not securing higher or better mark in matriculation examination than the other candidates in the fray, is not legally tenable. Thus, selection and appointment of Respondent No. 3 to this post of EDBPM being not according to law, can not be allowed to stand. This does not mean that the applicant would be automatically selected and appointed to that post. The selection and appointment will have to depend on the particulars of all the candidates available with the Department because in the absence of particulars of other candidates, it can not be assumed that the applicant is more meritorious.

-9-

8. In the result, the appointment of Respondent No. 3, Shri Jagdish Ch. Dash, to the post of EDBPM, Puran Odapada Branch Post Office in order dated 08-04-1996 (Annexure-1) is hereby quashed. Departmental Respondents shall, once again verify/scrutinise the applications pending before them at the time of appointment of Res. No. 3, including the application of Respondent No. 3 and select one among them to the post, according to law within a period of thirty days from today.

9. Thus, the Original Application is allowed but in the circumstances, there shall be no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2.3.99

2-3-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.