

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

ORIGINAL APPLICATION NO. 08 of 1996

Cuttack this the 22 day of May, 1996

HIMANSU KUMAR DEEP

...

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*

N. Sahu

(N. SAHU)

22/5/96

MEMBER (ADMINISTRATIVE)

9

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 08 of 1996

Cuttack this the 22nd day of May, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

...

Himansu Kumar Deep,
Son of Late Fagunu Deep,
Ex. Extra Department Mail Carrier
of Tandigaon, Via : Tusra,
Dist: Bolangir

...

APPLICANT

By the Advocate:

Mrs. Meera Das
Mr. M. Mohanty

VERSUS

1. Union of India
represented through it's Secretary,
Department of Communication,
New Delhi - 110 001
2. Post Master General,
Sambalpur Region, Sambalpur
3. The Superintendent of Post Offices,
Bolangir Division,
Bolangir - 767001
4. Post Master (H.S.G. - 1)
Bolangir, H.O. 767001
5. Sub-Divisional Inspector (Postal)
Titilagarh Sub-Division,
Titilagarh - 767033
Dist: Bolangir

...

RESPONDENTS

By the Advocate:

Mr. Ashok Mohanty,
Sr. Standing Counsel
(Central)

...

O R D E R

MR.N. SAHU, MEMBER (ADMINISTRATIVE): Fagu Deep, the father of the applicant expired on 19.9.1993 as Extra Departmental Mail Carrier of Tandigaon Branch Office, under Bolangir Head Office. On 20.9.1993, the petitioner was permitted to work as E.D.M.C. and this appointment was spelt out in an order under Memo No.13/ED-94/93 dated 7.11.1993. It was clearly mentioned that the appointment was provisional for the period from 20.9.1993 to 31.12.1993 till a regular appointment. It is mentioned that his services will be terminated as and when a regular appointment is made. A letter was issued on 8.5.1994 extending the appointment of applicant and he was also asked to deposit the money towards A/c. F.G. Bond 1994-95. On 4.12.1995, the respondents issued a letter to the applicant that his appointment on compassionate ground has been rejected because he does not have the minimum educational qualification. It is necessary to mention here that the applicant has continued for two years and three months from 20.9.1993 to 4.12.1995 as E.D.M.C.

2. It is submitted by Smt.Meera Das, learned counsel for the applicant that the School Leaving Certificates showed the applicant to be of Class-VIII Standard and this meets with the prescribed qualification under the rules. Having put in more than two years of service, the disengagement without a show cause notice is bad in law, she submitted. It is

11

further argued that the appointment on 20.9.1993 was on compassionate ground. All the necessary documents and certificates were furnished and the respondents having been satisfied with the minimum educational qualification of the applicant, the appointment letter dated 7.11.1993 was issued. As a compassionate appointment is made to mitigate the hardship due to sudden demise of the bread-winner of the family, the termination order defeated the very purpose of appointment. The Legal Heir Certificate at Annexure-2 showed five other dependants of the applicant due to sudden demise of the bread-winner. Smt.Meera Das, learned counsel for the applicant has also placed before me for consideration a decision of the Central Administrative Tribunal, Cuttack Bench, in Original Application No.77 of 1987 dated 30.3.1988. In the case cited, the appointment as Extra Departmental Branch Post Master of the applicant was for a period of five years and he faced with sudden cancellation of his appointment on the ground that he had not gained the requisite qualification for holding the post of E.D.D.A., because he had not passed Class-VII. The Cuttack Bench quashed the order of cancellation citing in support of their stand a decision of the Calcutta Bench reported in A.T.R. 1987(2) C.A.T. 587 (Raipada Biswas vs.Union of India & Others). In that case an EDBPM was allowed to work for two years and when the

11

Department discovered that he was a non-resident, his appointment was cancelled and this was disapproved by the Calcutta Bench.

3. Learned counsel Smt. Meera Das, also cited before me AIR 1994 SC 1521 (Auditor General of India and others v. G. Ananta Rajeswara Rao). In that case it was held that provisions enabling appointment of near-relatives in addition to son/daughter or widow of deceased government employee on the ground of compassion is held to be violative of Article 16. However, provisions vis-a-vis appointment of son/daughter or widow on the ground that there is no other earning member of the family is held to be not violative of Article 16(2). In this judgment it is mentioned in para 4 that appointments made on compassionate grounds should be done in such a way that persons appointed to the post do have the essential educational and technical qualification required for the post. The Supreme Court was referring the O.M. No. 14014/1/77-Estt. (D), Government of India, dated 25.11.1978, which envisaged appointments purely on compassionate grounds enumerated therein. Para-11(a) provides that appointment be made on the grounds of compassion to such persons who have the essential educational and technical qualifications required for the post consistent with the requirement of efficiency of administration. Para-11(b) however, provides that these instructions do not restrict the appointment of sons/daughters or near relative of

deceased Group D employee to a Group D post. The learned counsel for the petitioner has brought to my notice this exception to the rule and stated that the applicant being the son of an EDMC which is essentially a Group D or even less than a Group D post, the qualification should stand waived.

4. In the counter-affidavit, the learned Senior Standing Counsel Shri Ashok Mohanty has drawn my attention to Annexure - R/1, according to which the Department is competent to relax the educational qualification for a period of two years only in exceptional circumstances for a Group D post. During the said two years of relaxation, the applicant should have passed Class-VIII which he did not do. All the necessary documents were in the meanwhile sent to the Circle Relaxation Committee. The C.R.C. noticed that it has no discretion to relax the minimum age and educational qualification. The applicant had enough opportunity to pass Class-VIII examination for a period of two years, but he did not do so. It is mentioned that under Annexures 5 and 6 the conditions for termination were spelt out. As the appointment order was purely provisional, the right to termination could also be unilaterally exercised. The learned Senior Standing Counsel Shri Ashok Mohanty emphasised the fact that though the applicant was appointed on the ground of the loss of the sole bread-winner, it was not necessarily a compassionate appointment and no one can appoint a person even on compassionate grounds violating

the existing rules and regulations. He cited the decision of the Supreme Court in the case of Asha Ramachandra Ambekar and Another (J.T. 1994 (2) S.C. 183) which supported the stand of the respondents.

5. I have carefully considered the rival submissions. The rules for compassionate appointment are clear. Eligible persons suitable for a post in all respects will be considered for compassionate appointment against direct recruitment quota. It is stated that where a widow is appointed on the ground of compassion, she will be exempted from educational qualification and examination provided she can perform the duties of the post satisfactorily. But with regard to sons and daughters, the Department can relax temporarily the educational qualification, in suitable cases upto a period of two years. The learned Senior Standing Counsel urged that having not qualified himself even after he got a chance in the last two years, he cannot continue as an EDMC. Smt. Das, learned counsel for the petitioner has brought to my notice the educational qualification for this post : "EDAs 8th Standard. Preference may be given to the candidates passing Matriculation. No weight should be given for any higher qualification and should have sufficient working knowledge of the regional language of simple arithmetic so as to be able to discharge their duties satisfactorily." Smt. Das emphasised the last qualification which according to her, the applicant

possesses and he has discharged the duties for the last two years satisfactorily, and therefore, cancellation of the applicant's appointment is unjust.

6. The fact remains that the applicant had worked for over two years and three months as E.D.M.C. While his appointment was not openly termed as compassionate appointment, yet he was considered for appointment only on compassionate grounds, because as the counter-affidavit admits his case papers were submitted for consideration. No doubt the applicant studied 8th Class, but there is no evidence that he passed 8th Class. The qualification is that he should have passed 8th Class. The claim of the respondents that in two years time the applicant should have cleared the 8th Class examination is no doubt technically correct, but there is no evidence that the Department intimated the applicant that he should pass the 8th Class examination within the period of two years. This contention is an after-thought. The Respondents had extended the term of the applicant by spells and intervals. They have not intimated to him at any time that he is going to be retained for a full period of two years and he shall qualify himself for 8th Standard. Failure to do so, would be at the peril of his job. I, therefore, hold that, without such intimation, to argue that he was given an opportunity of two years to qualify himself is a facile after-thought. Although the original circular dated November, 25, 1978, exempted sons of Group D for Group D posts from even minimum

educational qualification, I hold that the respondents having framed comprehensive rules on the subject, they are bound to give effect to the same. If they insist on 8th Class pass, as the minimum qualification and the applicant does not have the said qualification, his services can be terminated. But as I held above he never had any notice and the relaxation, if any, was a unilateral decision uncommunicated to the applicant. The applicant had discharged his duties properly. With five dependants, it is a classic case of distress and deserves consideration. As I hold that the eligibility of educational qualification cannot be waived, the applicant shall pass the 8th Standard examination from a recognised School/Institution within a prescribed time-frame. He may pass even an equivalent recognised 8th Standard examination. He shall complete this exercise before 31.5.1997. Smt. Das has repeatedly emphasised at the Bar that the post of EDMC, Tandigaon in Account with Tusra Sub-Office under Bolangir Head Office is vacant. I direct the respondents to continue to re-engage the applicant within a month of the receipt of this order and this engagement shall continue till 31.5.1997. The applicant is informed that on or before the date fixed, he shall submit a Certificate from the recognised School/Institution to the effect that he qualifies the Class-VIII whereupon he shall

regularised as Extra Departmental Mail Carrier on
compassionate grounds.

The application is disposed of with the
above directions. Parties to bear their own costs.

Narasimhan
(N. SAHU) 22/5/96
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//