

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.216 OF 1998  
Cuttack this the 26<sup>th</sup> day of July, 1999

Smt. Ahalya Jena

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.

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
26.7.99

26.7.99  
(G.NARASIMHAM)  
MEMBER(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 216 OF 1998  
Cuttack this the 26<sup>th</sup> day of July, 1999

**CORAM:**

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

...

Smt. Ahalya Jena,  
D/o. Sri Ramakanta Jena  
Village-Rebada, PO: Simulia(Pin-765045)  
P.S. Soro, District : Balasore  
(Present Address:-  
C/o. S.K.Das, Advocate  
"Neela Kumuda" Keonjhar Colony  
Cuttack-753008) ...

...

Applicant

By the Advocates : M/s.S.K.Das  
P.K.Samantsinghar

-Versus-

1. Union of India represented through  
Post Master General,  
Orissa, Bhubaneswar  
District: Khurda
2. Superintendent of Post Offices,  
Balasore Division, Balasore  
Pin-756001
3. Sri Ashis Kumar Dalei,  
S/o. Iswar Dalei  
At/PO: Makhanpur  
Dist: Balasore

...

Respondents

By the Advocates : Mr.A.K.Bose  
Sr.Standing Counsel  
(Res. 1 and 2)  
  
M/s.S.K.Das  
R.N.Mishra-II  
M.R.Mishra  
(Res.3)

...

ORDER

9

MR.G.NARASIMHAM, MEMBER(J): Smt. Ahalya Jena, a candidate for the post of Extra Departmental Branch Post Master, Makhanpur Branch Office in account with Turigaria S.O. seeks to quash selection and appointment of Res.3, viz., Ashis Kumar Dalei and also for direction to Res. 1 and 2 to appoint her in that post.

2. The post of E.D.B.P.M., Makhanpur became vacant on 25.5.1997 due to retirement of the incumbent on superannuation. At first the District Employment Officer, Balasore was addressed in letter dated 19.3.1997 to sponsor candidates for the said post within 30 days. Out of 40 candidates sponsored by the District Employment Officer, only 10 applied for the post. Out of these 10 candidates only two were found eligible. Even then subsequently these two candidates were not considered, because, the documents filed by them were found to be forged. Thereafter, a departmental notification dated 2.8.1997(Annexure-1) was issued inviting applications for the post. 10 candidates including applicant and Res.3 applied for the post in time. These facts are not in controversy.

The case of the applicant is that she gave undertaking, after taking consent from different persons who were inclined to let their houses free of rent, to Res.2 that on being selected she would accommodate the Branch Office in village Makhanpur. These persons are : Gouranga Charan Nayak, Bijaya Kumar Das and Prasana Kumar Das of village Makhanpur. She had also secured better percentage of marks in H.S.C./Matriculation Examination

10  
 than Rs.3, Ashis Kumar Dalei. She also belongs to O.B.C. and as such she should have been preferred to the post than Res.3 as per rules. This selection of Res.3 to the post in question is arbitrary and illegal.

3. Respondent 3 though entered appearance and had taken time to file counter, ultimately, did not file any counter. However, his counsel was heard during hearing.

4. Respondents 1 and 2 in their counter take the stand that out of 10 applications received in response to notification under Annexure-1, only seven candidates including applicant and Res.3, viz., Ashis Kumar Dalei, who are under Sl. Nos. 1, 3, 4, 5, 6, 7 and 8 of the check list under Annexure-R/1 came within the zone of eligibility for the post. The applicant is a permanent resident of village Reoda under Post Office, Sumulia in account with Soro S.O. which is a distance of 20 kms. from Makhanpur Post Office. The house of Gouranga Charan Nayak agreed to be provided by her for accommodation of the Post Office is situated in Village Soundia, which is not within the revenue village of Makhanpur. The house of Prasana Kumar Das was inspected by the Postal Inspector, Soro Sub-division and was found to be not suitable as it was in a dilapidated condition. She has not furnished any undertaking to provide the house of Bijay Kumar Das of Makhanpur. As she could not provide any house, her candidature for the post was rejected. Shri Karunakar Jena, candidate at Sl. No.4 of the check list, though belongs to S.C. category could not provide any accommodation in the post village and also expressed that he could not take up the residence in the post village. Hence his candidature was also rejected. Then there remained five candidates belonging to other categories,

viz., Pradip Kumar Das under Sl. No.1, Smt. Kabita Das, under Sl. No.3, Nabakishora Das under Sl.5 and Raghunath Mishra under Sl. 8 and S.C. candidate Ashis Kumar Dalai at Sl. No.6 for consideration. Since there was short fall of S.C. candidates, Res.3 being the only S.C. candidate was accordingly selected and appointed.

The applicant filed rejoinder stating that Res.3 has a criminal background though acquitted in judgment dated 8.1.1998 (Annexure-R/8) and as such he could not have been selected. Moreover, the notification under Annexure-1 nowhere mentions that S.C. candidate would be preferred. Enquiry by S.D.I.(P) under Annexure-R/7 is uncalled for and has been done with a <sup>in order to</sup> mala fide intention/disqualifying her candidature and to accommodate Res.3. Moreover, such enquiry was conducted behind her back and without even notice to the house owner Shri Prasana Kumar Das. It is, therefore, doubtful whether the S.D.I.(P) had inspected the correct house.

5. We have heard learned counsel of both sides and also perused the records.

As per the recruitment rules applicable to E.D.B.P.M., highest percentage of marks secured in H.S.C./Matriculation Examination is one of the criteria, besides other qualifications. In other words, a candidate securing highest percentage of marks in H.S.C./Matriculation Examination will have to be selected in case he/she fulfills other conditions by providing rent free accommodation for the running of the post office and having adequate means of livelihood and so on. A perusal of Annexure-R/1( check list ) reveals that out of

the seven candidates in the zone of consideration, i.e., Sl. Nos. 1, 3, 4, 5, 6, 7 and 8, Respondent 3, viz., Ashis Kumar Dalei secured 35.57% marks in H.S.C. examination. This is the ~~lest~~ percentage of marks in comparison to other six candidates. Applicant, Ahalya Jena under Sl. No.7 secured 42.55%. Pradipta Kumar Das under Sl. No.1 secured 53.75% and Smt. Kabita Das at Sl. No.3 secured 42.57%, ~~and so and~~, <sup>se</sup> higher percentage of marks than the applicant. The basis for selection of Res.3, Ashis Kumar Dalai as claimed by the department is that though he secured ~~lest~~ percentage of marks, he being the Scheduled Caste candidate has to be selected as there was short fall in representation of S.C. candidates in the post of E.D.B.P.M. While mentioning so, the Department had not come up with the relevant figures in order to apprise this Bench whether there was actually any short fall in representation of S.C. candidates in holding the post of E.D.B.P.M. Moreover, in the notification under Annexure-1 there was no mention whatsoever, that either the post was reserved for S.C. candidate or preference would be given to S.C. candidates. Evidently there was no short fall in representation of S.C. candidates in holding the post of E.D.B.P.M. at the time when vacancy to the post in question arose on account of retirement of the incumbent. Had there been such short fall at that time, the notification under Annexure-1 would in normal course have contained a clause that preference would be given to S.C. candidates. This being the position the Department could not have side tracked other eligible candidates at the time of selection with a view to accommodate Rs.3, who is a candidate belonging to S.C. We have therefore, no

13

hesitation to hold that selection and consequent appointment of Res.3 to the post of E.D.B.P.M. is contrary to law and cannot be sustained.

Then comes the question whether rejection of candidature of the applicant on the ground that she could not provide a house for running the Branch Office in the post village can be sustained. Learned counsel for the applicant Shri Das contended that necessity for providing accommodation for running the Post Office will arise only after a candidate is selected. In other words, his contention is that the selecting authority cannot enquire as to whether any candidate, if selected would be in a position to provide <sup>a</sup> house free of rent for running the Post Office, prior to the actual selection. He places reliance at Para-3 (ii) of letter dated 6.12.1993 of the Ministry of Communications (Annexure-R/2) in this connection. It runs as follows :

"iii) The Board also decided that having regard to the judgment of the C.A.T., it may be clarified that while making selections for appointment to E.D. posts, permanent residence in the village/delivery jurisdiction of the E.D. Post Office need not be insisted upon as a pre-condition for appointment. However, it should be laid down as a condition for appointment that any candidate who is selected, must before appointment to the post take up his residence in the village/delivery jurisdiction of the ED Post Office as the case may be".

We are of the view that this instruction is not in regard to accommodation to be provided for running the post office. This instruction is only applicable in case of selected candidate, who does not reside in the Post village shall take up his/her residence in that village/delivery jurisdiction, after selection, but

before appointment. On the other hand, a reading of instruction, in letter dated 6.2.1973 of D.G.(P&T) as mentioned in D.G.(P&T) letters dated 30.1.1981, 29.3.1981, 6.6.1988 and 12.3.1993, <sup>and</sup> published at Pages 68 and 69 of Swamy's Compilation of the Service Rules for E.D.Staff(6th Edition) would make it clear that a candidate, who is in a position to provide rent free accommodation for running the Post Office has to be preferred than other candidates. In other words, it would mean that at the time of selection, the selecting authority must see whether a candidate can provide suitable accommodation for running the Post Office and not after selection as contended by the learned counsel for the applicant.

In this case Annexure-R/1, the check list dated 30.3.1998 reveals that since the applicant could not provide suitable accommodation for running the Post Office, her candidature was rejected. The applicant's averment in the Original Application that she had also given an undertaking from one Bijay Kumar Das that his house also can be provided for running the Post office <sup>of</sup> cannot be taken note of because, the specific denial by the Department in the counter and which denial has not been refuted in the rejoinder. Even in regard to house of Gouranga Ch. Nayak, the version in the counter that the house does not come within the jurisdiction of the revenue village Makhanpur has not been refuted in the rejoinder. Under Annexure-R/5, dated 25.3.1998, the applicant intimated the Department that Prasana Kumar Das was willing to spare his house for running the Post

15

office and enclosed the undertaking dated 5.2.1998 of Prasana Kumar Das to that intimation. As earlier stated, it is the case of the Department that S.D.I.(P) of Soro inspected the house and submitted a report on 29.3.1998 under Annexure-R/7, certifying that the house is in a dilapidated condition and not suitable for housing the Post Office. It is true, in the rejoinder, the applicant has taken a stand that the inspection was made behind her back and even without intimation to the house owner, who admittedly does not stay there and that there is no guarantee that the inspection related to the very same house. We are not impressed with this stand of the applicant, because, inspection was made by an authority having jurisdiction over the post-village and it cannot be conceived that he would not be in a position to locate the house of Prasana Kumar Das. Hence, non selection of the applicant for not being able to provide a suitable accommodation for running the Post Office was not unjustified. This apart, even if the selection and appointment of Res.3, Ashis Kumar Dalei is quashed, she would not be automatically appointed to the post, because as per the check list under Annexure-R/1, Shri P.K.Das and Smt.Kabita Das, securing higher percentage of marks in Matriculation Examination than the applicant would have a preferential claim over that post, if any one of them would be in a position to provide rent free accommodation for running, the post office.

As we have already held that selection of Res.3 is not legally sustainable, Respondents(Department) have to reassess selection among other candidates, viz.P.K.Das, Smt.Kabita Das, Nabakishore Das, Raghunath

*16*  
 Mishra and the applicant, in order of their merit and their fulfilling other conditions. Before reassessing these candidates for selection the Department shall once again ascertain whether they are in a position, fulfil other conditions as required under the rules.

6. In the result, while quashing the selection and appointment of Ashis Kumar Dalei (Res.3) to the post of E.D.B.P.M., Makhanpur B.O., we disallow the claim of the applicant as to her automatic selectiofn to that post. The Department shall again reassess the candidature of Shri P.K.Das, Smt.Kabita Das, Nabakishore Das, Raghunath Mishra and Smt.Ahalya Jena(applicant) after giving them a chance to fulfil the conditions as required under the rules and complete the entire process of selection within 120 days from the date of receipt of this order.

Application is allowed in part, but without any order as to costs.

*Somnath Som*  
 (SOMNATH SOM)  
 VICE-CHAIRMAN

*26.7.93*  
 B.K.SAHOO

*26.7.93*  
 (G.NARASIMHAM)  
 MEMBER (JUDICIAL)