

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.293 OF 1998

Cuttack, this the 12th day of November, 1998

Birendranath Mohanta ..... 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 Administrative Tribunal or not? No

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

(SOMNATH SOM)  
VICE-CHASIRMAN

1  
CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.293 OF 1998  
Cuttack, this the 12th day of November, 1998

CORAM:

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

.....

Birendranath Mohanta,  
s/o Srihari Mohanta,  
At/PO-Tukpalasia,  
Via-Nalagaja,  
Dist.Mayurbhanj.

.....

Applicant

By the Advocate - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through  
its Secretary, Department of Posts,  
Dak Bhawan,  
New Delhi-110 001.
2. Chief Postmaster General,  
Orissa Circle,  
Bhubaneswar-751 001.
3. Superintendent of Post Offices,  
Mayurbhanj Division,  
At/PO-Baripada,  
Dist.Mayurbhanj.

.....

Respondents

By the Advocate - Mr.U.B.Mohapatra,  
Addl.C.G.S.C.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

J. Som .  
In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the notice dated 13.3.1998 (Annexure-2) issued by Superintendent of Post Offices, Mayurbhanj Division, Baripada, calling for applications for the post of Extra-Departmental Branch Post Master (EDBPM), Tulpalasia. The second prayer is for a direction to the respondents to finalise the selection for the post

of EDBPM, Tukpalasia, confining the same to the candidates who were under consideration in the year 1992.

2. Over this selection there has been earlier litigation before the Tribunal. The applicant had earlier filed OA No.622 of 1992 praying for quashing the appointment of one Madhusudan Mohanta who was appointed as E.D.B.P.M, Tukpalasia B.O. and to appoint the applicant in his place. During pendency of that application, the departmental authorities terminated the service of Madhusudan Mohanta who came up before the Tribunal in OA No. 469 of 1993 praying for reinstating him in the post of EDBPM, Tukpalasia B.O. These two O.A.Nos.622/92 and 469/93 were heard together and were disposed of in order dated 21.1.1998 (Annexure-1). The Tribunal held that Madhusudan Mohanta, the applicant in OA No. 469/93 has not been able to make out a case for his reinstatement as EDBPM, Tukpalasia. As regards the prayer of the present applicant in OA No. 622/92, the Tribunal held that his first prayer for quashing the appointment of Madhusudan Mohanta has become infructuous as the selection of Madhusudan Mohanta had been set aside by the departmental authorities. As regards his prayer for giving him appointment in the post of EDBPM, Tukpalasia, the Tribunal held that it would not be correct to consider this prayer because there were other candidates in the field and they have not come up before the Tribunal. In view of this, both the Original Applications were rejected. Apparently, after rejection of the two earlier O.As. in order dated 21.1.1998, the departmental authorities have issued public notice dated 13.3.1998 (Annexure-2) asking for applications for the post of EDBPM, Tukpalasia. It is seen from <sup>the</sup> not-clear copy

J. J. M.

9  
of Annexure-2 that the last date of submission of application was 6.4.1998. The applicant has stated that issuing of fresh notice calling for applications by respondent no.3 is illegal as the Tribunal had not directed in their order dated 21.1.1998 the departmental authorities to call for fresh applications through fresh public notice. That is why the applicant has come up with the prayer for quashing Annexure-2 and for a direction to keep the selection confined to the candidates who were being considered in 1992.

3. Respondents in their counter have pointed out that the post of EDBPM, Tukpalasia B.O. fell vacant in July 1992 on superannuation of the existing incumbent. Initially, the District Employment Officer, Baripada, was asked to sponsor names. Eleven names were sponsored and those persons were asked to submit applications in prescribed form with necessary documentation. Only four candidates applied but applications of all the four candidates were found to be not in order. Thereafter public notice was issued calling for names from the open market. In response to this notice, six candidates including the applicant and one Madhusudan Mohanta applied. Madhusudan Mohanta was selected and he joined on 1.2.1993 after completion of training. Later on, the selection of Madhusudan Mohanta was cancelled under orders of Chief Post Master General who after enquiry found that the selection was irregular. Accordingly, Madhusudan Mohanta was relieved from the post on 5.6.1993. The present applicant filed OA No.622 of 1992 challenging the selection of Madhusudan Mohanta. Madhusudan Mohanta also filed OA No.469/93 after he was relieved from the post of EDBPM, Tukpalasia, praying for his reinstatement. These two O.As. were heard together and

S. Sm.

dismissed by a common order dated 21.1.1998. Thereafter Superintendent of Post Offices, Mayurbhanj Division, Baripda, requested District Employment Officer, Baripada, on 9.2.1998 to sponsor SC candidates for the post. The District Employment Officer, Baripada, informed in his letter dated 9.3.1998 that no SC candidates having minimum HSC pass qualification and belonging to the jurisdiction of Tukpalasia B.P.O. were available in the Live Register of the Employment Exchange. Thereafter respondent no.3 issued the impugned notice dated 13.3.1998 calling for applications for filling up of the vacant post. Seven applications were received and while the process of selection was going on, Madhusudan Mohanta filed OJC No. 6589 of 1998 in the Hon'ble High Court of Orissa. The Hon'ble High Court in their order dated 15.5.1998 in Misc. Case No. 6111 of 1998 directed that if the post is filled up, the same shall be subject to the result of the writ petition and the petitioner in that writ application, i.e., Madhusudan Mohanta shall be permitted to appear at the interview but his result shall not be declared without leave of the Hon'ble High Court. This order of the Hon'ble High Court is at Annexure-R/1. The present applicant, who was earlier applicant in OA No. 622 of 1992/<sup>had</sup>prayed in this application, by way of interim relief, that the selection process pursuant to the notice dated 13.3.1998 should be stayed. In order dated 29.5.1998, after hearing the learned counsel for both sides, the above prayer was rejected. It was ordered that any selection made should be subject to the result of this OA and this condition should be specifically mentioned in the appointment order of the person so selected and appointed. The respondents have stated that the selection process for the vacant post is

J. Jam.

in progress and appointment of the selected candidate shall be made as per the direction received from the Hon'ble High Court vide Annexure-R/1 and of the Tribunal in their order dated 29.5.1998. The respondents have stated that OA No.622/92 earlier filed by the applicant was dismissed and no direction was issued to the respondents to proceed with the selection confining it to the candidates who were under consideration in 1992. The respondents have also stated that in the 1992 selection the departmental instructions then in force were followed. Now to have a fair selection, notice inviting applications was made. On the above grounds, the respondents have opposed the prayers of the applicant.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents, and have also perused the records.

5. The first prayer of the applicant is for quashing the public notice dated 13.3.1998 at Annexure-2 calling for applications for filling up of the post of EDBPM, Tukpalasia. The learned counsel for the petitioner has prayed for quashing this notice on the ground that the Tribunal while disposing of OA Nos.622/92 and 469 of 1993 in their order dated 21.1.1998 did not direct the departmental authorities to call for fresh applications. To our mind, this cannot be a ground for quashing the notification. Originally the selection was taken up in 1992 and because of litigations by the applicant and also by Madhusudan Mohanta, the other claimant for the post, six years have passed and it would not be correct to continue the process which was initiated six years ago. Moreover, at the time of original selection, the minimum qualification for the post of EDBPM

was Class VIII pass and the rules provided at that time for giving preference to Matriculates. The rules also provided at that time that no preference should be given for any educational qualification above matriculation. At present, the minimum qualification for the post of EDBPM is Matriculation. As the qualification has been changed and as appointment is to be made now, it would not be correct to go by the earlier qualification of Class VIII pass and for adopting the new qualification of Matriculation fresh names have to be invited. Secondly it has been submitted by the learned Additional Standing Counsel, Shri U.B.Mohapatra that the post has to be filled up by SC candidate and the District Employment Officer, Baripada, was requested to sponsor names of SC candidates for the post. The District Employment Officer had reported that in his Register there is no SC candidate having minimum HSC pass qualification and belonging to the jurisdiction of Tukpalasia B.O. That is also the reason why the respondents have called for names from open market through the notice at Annexure-2. From the pleadings of the parties, it is not clear whether this post has been reserved for SC candidate or it has merely been indicated that while filling up the post, preference will be given to SC candidate. Whatever it may be, it is open for the Department to reserve a post for SC candidate or to indicate that preference will be given to a SC candidate and since this has been the decision now, fresh applications have to be called for because this condition was apparently not there in 1992 selection. Lastly, another person Madhusudan Mohanta, who was a candidate in 1992 selection had gone to the Hon'ble High Court with similar prayer as the applicant in this case for quashing the process of selection in pursuance of Annexure-2. The

P. J. M.

Hon'ble High Court in their order dated 15.5.1998 has not stayed the process of selection. Their Lordships have allowed the selection to go on in pursuance of Annexure-2. They have also allowed Madhusudan Mohanta to participate in the selection, but have directed that his result should not be published without leave of the Hon'ble Court. Thus, the process of selection has to go on in accordance with the order of the Hon'ble High Court of Orissa. This order is binding on us and therefore, we cannot quash Annexure-2 and thereby upset the process of selection in pursuance of Annexure-2 when the same has been allowed by the Hon'ble High Court. This prayer of the applicant is, therefore, held to be without any merit and is rejected.

6. The second prayer of the applicant is to keep the selection confined to the original candidates who were under consideration in 1992 selection. If Annexure-2 is not quashed and the process of selection is taken up in accordance with Annexure-2, the second prayer of the applicant must necessarily be rejected. We have also noted that the original selection was initiated six years ago. In the meantime, the minimum educational qualification has been increased. It has also been indicated that preference will be given to SC candidates or the post is reserved for SC candidate. Moreover, simply by applying for a post, a candidate does not acquire any right to the post. He has only the right to be considered. In view of the change in circumstances relating to the post mentioned by us earlier, we hold that the applicant has no case for claiming that the selection should be confined to the candidates in 1992 selection.

S. Som.

7. In the result, therefore, the application is held to be without any merit and is rejected but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 12.11.98