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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 300 OF 1998.

Cuttack , this the 10th day of December, 1998.

Laman Francis & Others. Applicants.

- Versus-

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-CHAIRMAN
31.12.98

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 300 OF 1998.

Cuttack this the 10th day of December, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

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IN THE MATTER OF:

1. Laman Francis, S/o. Anthoni Francis,
At. Divine Nagar, Chauliaganj,
Po. Naya Bazar, Cuttack-753004.
2. Basanta Kumar Samal, S/o. Dinabandhu Samal,
At-Arilo, Po. Pipal Madhab, Dist. Jagatsinghpur.
3. Gurubari Biswal, S/o. Bhubanananda Biswal,
At. Purusottampur, Po. Sisua, Dist. Kendrapara.
4. Bhagirathi Pati, S/o. late Bairagi Charan Pati,
C/o. Gangadhar Parida, At. Sagadia Sahi,
Cuttack GPO, Cuttack.
5. Rabi Narayan Mohanty, S/o. Purna Chandra Mohanty,
At. Bhatgram, Po. Jhankad, Dist. Jagatsinghpur.
6. Manoj Kumar Nayak, S/o. late Upendra Kumar Nayak,
At. Sikharpur, Nadikul Sahi, Po. Naya Bazar,
Cuttack-4.
7. Kailash Chandra Swain,
S/o. Purna Chandra Swain,
At. Gobindpur, Po. Panchapalli,
Dist. Jagatsinghpur.
8. Nityananda Sahoo,
S/o. Jagabandhu Sahoo,
At. Talia, Po. Rambagh, Dist. Jajpur.
9. Jairam Sahoo, S/o. Duryodhan Sahoo,
At. Balabhadrapur, Post. Sisua, Dist. Cuttack.
10. Dhirendra Kumar Shill,
S/o. late Bhramarbar Shill,
At. Khatbin Sahi, Po. Tulsipur,
Dist. Cuttack-8.

11. Sudarsan Mallick,
S/o.late Dharam Mallick,
At/Po.Kandarpur,Dist.Cuttack.
12. T.Daneya,
S/o.Late T.Tateya,
At.Gandarpur,
Po.College Square,
Cuttack-753003.
13. Udhab Charan Sahoo,
S/o.Purna Chandra Sahoo,
At.Kantapahmra,
Po.Gholapur,
Dist.Cuttack.

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APPLICANTS.

- VERSUS -

1. Union of India represented through
its Secretary,Post Dak Bhaban,
New Delhi.
2. Chief Postmaster General,
At/Po.Bhubaneswar,
Dist.Khurda.
3. Senior Superintendent R.M.S(N) Division,
Cuttack.
4. Head Record Officer,
R.M.S(N) Division,Cuttack.

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RESPONDENTS.

By Legal practitioner : M/s.Sanatan Das,J.K.Mohanty,
for applicants. Advocates.

By legal Practitioner : Mr.S.C.Samantray,Additional
for Respondents. Standing Counsel(Central).

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, Under Section
19 of the Administrative Tribunals Act,1985,13 Applicants
who have been permitted to pursue this application jointly

have prayed for quashing the order dated 8-6-1998 (Annexure-4) cancelling the selection process leading to appointment of Thirteen E.D.M.M. against the vacant posts of EDMM under Head Record Officer, RMS(N) Division, Cuttack.

2. Facts of this case, according to applicants are that they were working as Casual Labourer under the Head Record Officer, R.M.S'N' Division, Cuttack (Res.No.4) for about 15 years continuously. They had filed Original Applications bearing O.A. Nos. 53/92, 60/92, 61/92 and 69/92 before this Tribunal for regularisation of their services against the vacant posts of E.D.Mailman. This Tribunal disposed of the Original Applications by a common order dated 7-3-1997 with a direction to the Respondents in that O.As to consider the suitability of the Applicants for regularisation ⁱⁿ the posts of E.D.M.M. in accordance with the Rules, subject to giving them relaxation of age, if necessary to the extent of the service rendered by them in the Department previously, against the vacant posts which they propose to fill on regular basis. This order dated 7-3-1997 is at Annexure-1. Applicants further state that Respondents after careful consideration, invited applications from general public. The present applicants also applied in pursuant to the advertisement, and after scrutiny, Respondent No.4 issued appointment letters in favour of 13(thirteen)

J. Am.

Applicants. A copy of the appointment letter dated 19.11.1997 is at Annexure-2. Accordingly, these Applicants joined their posts on 21st and 22nd of November, 1997 and since then, they have been working with due diligence and sincerity. Senior Superintendent R.M.S 'N' Division, Cuttack, (Respondent No.3) has passed impugned order dated 8.6.1998 declaring the selection of the Applicants as null and void. In the impugned order, it has also been mentioned that Respondent No.3 has directed Respondent No.4 to take up the selection process afresh for filling up of the 13(thirteen) vacant posts. Applicants state that the order at Annexure-4 has been issued arbitrarily and this will take away the legitimate rights of the Applicants which they are enjoying for more than six months. In view of this, applicants have come up in this petition with the prayers referred to earlier.

On 9-6-1998, on the date of admission of the Original Application, operation of order dated 8-6-1998, at Annexure-4 was stayed till 22-6-1998 and this Interim order has been continued till today.

2. Respondents, in their counter, have denied the assertions of the Applicants that they have been working as Casual Labourer under Respondent No.4 continuously for last fifteen years. Respondents

have indicated that Applicants are neither Casual Labourers nor have they worked continuously for 15 (fifteen) years. Applicants have worked as substitutes against the leave vacancy of regular EDMM who arranged their own substitutes while going on leave. Besides that they had also worked as Mazdoors against clear vacancies for shorter period pending recruitment. It is further stated that the selection process held by the Respondent No.4 was reviewed by Respondent No.3 and it was noticed that there has been gross irregularities, omissions and commissions in the selection process. As such, the selection process and the appointments of 13 (Thirteen) Applicants, as a result of such selection were declared null and void and Respondent No.3 directed Respondent No.4 to take up selection process afresh strictly in accordance with the Recruitment Rules. It is submitted that the details of irregularities and illegalities have been mentioned in the order dated 5.6.1998 which is at Annexure-R/3. It has also been stated by the Respondents that according to the Deptt. of Posts letter dated 13.11.1997 (Annexure-R/2), the Authority who is higher than the appointing Authority has the supervisory powers to revise the administrative orders of the subordinate authorities for good and sufficient reasons and pass remedial orders after following the required procedures. It is in exercise of that power, Respondent No.3 had revised the selection

J. Jom

process and found gross irregularities. In view of this, the impugned order, cancelling the Selection process and appointments of 13 Applicants has been passed. It is also stated that Respondent No.4 has been directed to redo the selection process and in course of fresh selection, cases of the applicants will be considered in accordance with Rules. It is further submitted that there is no provision to issue show cause notice to the Applicants before passing of impugned order by Respondent No.3 but there is a provision for giving one month's notice to the Applicants by Respondent No.4. Accordingly, Respondent No.4 on receipt of order of Respondent No.3, on 8.6.1998 prepared the notice to all the Applicants but it could not be served due to receipt of interim order dated 9.6.1998 of this Tribunal. It is also stated that the appointment orders issued to the 13 applicants, at Annexure-2 clearly stipulates that the appointment is provisional and can be terminated at any time by giving one month's notice or payment of one month's allowance in lieu thereof without assigning any reason. As such, termination of the appointment of the applicants made in pursuance of the selection procedure which was illegal, is in accordance with the terms of their appointment orders. On the above grounds, Respondents have opposed the prayer of the Applicants.

J. Jm

4. Applicants, in their rejoinder, have stated that the selection file was earlier submitted to the Respondent No.3 who had sent the same to the Respondent No.2. Respondent No.2 returned the file to Respondent No.3 and this, according to applicants, meant implied approval of the action of Respondent No.4 by Respondent No.2. It is submitted by the applicants that Respondent No.2 being the higher authority than of Respondent No.3, having approved the action of Res.No.4 Respondent No.3 should not have interfered in the selection made by Respondent No.4 in his impugned order. It is also submitted that the Review report dated 5.6.1998 at Annexure-R/3 is a fabricated one and is without any basis and has been prepared without any application of mind. The other averments in the rejoinder, is with regard to some of the findings in the review report and it is not necessary to mention those averments as these will be taken up when ^{the} review report is discussed. *A.J.M.*

S.J.M.
5. We have heard Shri Sanatan Das, learned Counsel for the Applicants and Shri S.C. Samantray, learned Additional Standing Counsel (Central) appearing on behalf of the Respondents and have also perused the records. Learned counsels for both sides have also filed written note of submission with copy to each other, which has also been taken note of.

6. The first point made by the learned counsel

is
for the Applicants/that EDMM Recruitment Rules do not provide for review and Respondents have wrongly relied on the circular dated 13.11.1997 which was circulated only on 9.12.1997 whereas the selection process was initiated much before that. Therefore, the Circular can not have retrospective effect. We are not inclined to accept the above submission because if there is gross irregularity or illegality in the process of selection, then obviously the concerned authority himself or his higher authority would have every right to cancel the selection process and appointments made in pursuance thereof and order for fresh selection otherwise, selection and recruitment process will be a mockery if irregularities/illegalities are allowed to stand only because of the fact that there is no provision for review, in the Recruitment Rules. It is also to be noted that any administrative order is always capable of being reviewed by the higher authority. In view of the above, this contention of the learned counsel for the applicants is held to be without any merit.

7. The main contention of the Respondents in support of the impugned order is that this order of cancellation has been issued because of gross irregularities in the process of selection through which thirteen applicants have been appointed. We have looked

into the Review note dated 8.6.1998 which is at Annexure-R/3. From this, it appears that candidature of one matriculate candidate Shri Upendra Kumar Sahu was rejected as his educational certificate was attested by the Headmaster, Ranihat High School. The candidature of Shri Sahu was rejected on the ground that the Headmaster of Ranihat High School is not in the gazetted rank. It is, however observed during enquiry by Respondent No.3 that the Headmaster, Ranihat High School, Cuttack is a gazetted Post and attestation of certificate by the Headmaster, Ranihat High School is legitimate. Learned counsel for the applicants has tried to argue that at the time the certificate was given, the Headmaster of the School in question, was not of gazetted rank. But he has not produced any document in support of the above contention. Even if, it is taken to be correct for argument sake, even then the candidature of Shri Sahu should not have been rejected on the above ground. He should have been asked to produce the original of his matriculation certificate. Thus, the conclusion of the Reviewing Officer that the candidature of Shri Sahu was illegally rejected in order to provide scope to persons like some of the applicants with lesser qualification than Shri Sahu, can not simply be brushed aside. Another Matriculate candidate Shri Biswaranjan

J.M.

Singh's candidature has been rejected because the Photocopy of his character certificates were attested by the Headmaster of P.M. Academy, Cuttack and it is stated that the Post of Headmaster of P.M. Academy, Cuttack is not a gazetted Post. The Reviewing Officer has found during the course of enquiry that the Headmaster of P.M. Academy, Cuttack is a gazetted Post and the rejection of the candidature of Shri Singh, on the above ground has been rightly held to be illegal. Amongst the selected candidates, Applicant No. 10, Shri Dhirendra Kumar Sill has not submitted OBC Certificate but has furnished a certificate belonging to S.E.B.C. but he has been selected as an OBC candidate. His educational qualification is also Class IX but he has been selected whereas another OBC candidate who is matriculate and whose name is Gokulananda Prusty, has been rejected on the ground of non-attestation of documents. In any case, Shri Sill was not eligible to be selected against an OBC quota.

8. As regards applicant No. 4 Shri Bhagirathi Pati, in the review note it has been mentioned that copy of the educational certificate furnished alongwith his application shows that he has been promoted to next higher class from class X but he has not passed HSC Examination. The address of the High School which issued such a impracticable certificate is illegible in

the copy. Thus, there is prima facie case for suspecting the genuineness of the certificate but without verifying the genuineness of the certificate, Shri Pati has been selected and appointed. In respect of Shri Nityananda Sahu (Applicant No.8), who has been selected as an OBC candidate, the Reviewing Officer, has noted that the Class in which he was reading has been overwritten and corrected but the genuineness of such certificate has not been ~~verified~~ but he has been selected and appointed. With regard to Shri Sudarsan Mallik, Applicant No.11, it has been noted that his application was received on 22.8.1997. The date of attestation of the certificate was originally as 23.8.1997 which was later on corrected to 22.8.1997 giving rise to the suspicion that the documents were initially filed without attestation and later on the mistakes were corrected with back date. It is further noticed that ^{the candidature of} / two ST candidates namely Shri Niranjan Behera and Shri Sashadhar Dehuri were rejected on the ground that they did not possess the minimum educational qualification of Class VIII but as per copy of certificate furnished by both of the candidates, they have passed class VIII. Therefore, they have the minimum qualification but inspite of this, their candidatures were rejected and two ST Posts were filled up by two general candidates. There are a large number of similar gross irregularities and it is not necessary to go over each one of them.

S. Jm

From a reading of Annexure-3, it is clear as the conclusion rightly drawn by Respondent No.3 is that Respondent No.4 had applied two separate standard one for the Applicants who had come before this Tribunal and the other for the outsiders whose applications were rejected by giving some reason or the other, even though the same were not tenable in most cases and the applications of petitioners were accepted inspite of some of them not having done the necessary documentations. In consideration of the above, we find that the order of cancellation of the selection and appointments at Annexure-4 is fully justified.

9. Respondents in their written submissions have pointed out that Respondent No.4 considered fifty candidates from outside and 23 candidates out of 25 applicants in the earlier OAs and 13 applicants were selected. Against the Selection two OAs 703/97 and 725/97 were filed challenging the said appointments. While preparing counter in those two OAs, serious irregularities came to the notice and as such, the selection was set aside.

10. Applicants, in their written note of submission, have taken the point that when four persons have filed OAs 703/97 and 725/97, challenging the selection, on filing of those OAs, as per Section 19 proviso (4) of the Administrative Tribunals Act, all

Sd/m.

proceedings under the relevant service rule will abate and therefore, after filing of the Original Applications 703/97 and 725/97, the impugned order should not have been passed. This contention is absolutely without any merit. If a selection process is riddled with irregularity, favouritism and in the process some eligible candidates are screened out for no fault of ^{thems} ~~them~~ and certain other candidates are considered and selected, even without necessary documentation, then the Departmental Authorities have every right to cancel the process of selection. After all, in the impugned order itself, Respondent No.3 has directed Respondent No.4 to re-do the selection and in the process of fresh selection cases of the present applicants will be considered strictly in accordance with Recruitment Rules. In view of this, we find no merit in this Original Application and we reject the same but without any order as to costs.

11. It is, however, ordered that before taking up fresh selection, Respondents should give a fresh opportunity to all the 73 candidates to submit complete documents. The impugned order also provides that after the fresh selection is made and before issue of appointment order, the file has to be submitted by Respondent No.4 to Respondent No.3. This is also a well-come step and should be followed strictly.

8. With the above observations and directions,
the Original Application is rejected. Stay order
also stands vacated.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

10.12.98

KNM/CM.