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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 389 OF 1998.

Cuttack this the 23rd day of March, 1999.

MADAN MOHAN SAHU. ...

APPLICANT.

VRS.

UNION OF INDIA & ORS. ...

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
25.3.99

23-3-99.
(G. NARASIMHAM)
MEMBER(JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 389 OF 1998.

Cuttack, this the 23rd day of March, 1999.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

....

Madan Mohan Sahu,
S/o.Krushna Chandra Sahu,
At/Po.Biripata, Ps.Mangalpur,
Dist.Jajpur.

...

Applicant.

By legal Practitioner : M/s.D.N.Lenka, O.N.Ghosh, Advocates.

- Versus -

1. Director, Postal Service,
Office of the Chief postmaster General,
Orissa, At/Po. Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices,
Cuttack Division, At/Po/Town/Dist.
Cuttack.
3. Assistant Superintendent of Post Offices,
Jajpur Sub Division, At/Po.Jajpur, Dist.Jajpur.
4. Tapan Kumar Jena, S/o. Not known,
at present working as EDMC, At.Dolagram,
Damodarpur, Branch Post Office,
Dist.Jajpur.

... Respondents.

By legal Practitioner : Mr. S.B.Jena, Additional Standing
Counsel(Central).

....

O R D E R

MR. G. NARASIMHAM, MEMBER(JUDICIAL);

This Original Application relates to selection and appointment of E.D.M.C. Damodarpur Branch Post Office. Applicant, Madan Mohan Sahu, filing this application on 31-7-1998 seeks to quash the selection and appointment of

Respondent No. 4, to quash the termination order of the Applicant w.e.f. 04-06-1998 and for declaration that the applicant is entitled to be reinstated in service with all consequential service and financial benefits.

2. Admittedly, this post of EDMC, became vacant on 21-1-1997 on superannuation of the then E.D.M.C. Shri Basanta Jena. In order to fillup the anticipated vacancy, Respondent No. 3 requested the Employment Exchange, Jajpur to nominate names of candidates on 27.1.1997. The employment Officer, in his letter dated 4-2-1997, sponsored names of 40 candidates including the name of applicant. Applicant and other candidates were intimated to submit their applications in the proforma attached to be received by 24-3-1997. Applicant and 14 others submitted applications. While the process of selection was in progress, Respondent No. 4 Tapan Kumar Jena, whose name was not sponsored by the Employment Exchange, preferred Original Application No. 344/97 before this Tribunal. Through interim order dated 2-6-1997, this Tribunal stayed the process of selection. This Original Application No. 344/97 was disposed of on 20-2-1998 with a direction to the Respondents to issue public advertisement for the post and consider the names of all those who applied in time, in response to the Advt. alongwith those whose names have been sponsored through Employment Exchange as per Rules. Accordingly, public notification was issued on 21-4-1998 (Annexure-9) inviting applications so as to reach the authority on or before 19-5-1998. Because of the stay order of this Tribunal and further direction of the Tribunal for issue of public notification and so on, the applicant was appointed on ad-hoc basis as per order dated 21-11-1997 (Annex. 3), after taking his willingness to work on that basis under

Annexure-R/5, dated 21.11.1997. Respondent No. 4 and some others submitted applications in response to the public notification. Respondent No. 4, was ultimately selected and appointed by the Respondent No. 3. Consequently, the Ad-hoc appointment of the applicant was terminated by order dated 2-6-1998 under Annexure-7.

3. These facts are not in controversy.
4. The averments of the applicant is that since his name has been sponsored through Employment Exchange, his service could not have been terminated and appointment of Respondent No. 4 is illegal and arbitrary.

Respondent No. 4, though duly noticed, had not entered appearance or filed any counter. The stand of the Departmental Respondents had already been narrated above. In their counter, they further admit that the selection and appointment of Respondent No. 4 had not been made according to the directions of this Tribunal in OA No. 344/97 inasmuch as candidates sponsored from the Employment Exchange had not been considered alongwith candidates whose applications have been received directly in response to the public notification.

In the rejoinder, the applicant urges that since it is admitted that the appointment of Respondent No. 4 is not according to law, he should be automatically appointed. Further, according to him, Respondent No. 4 was under aged i.e. 17 years 10 months and 2 days as on 23-2-1997 on which date the applications of applicant and other sponsored candidates were required to be submitted.

5. Heard learned counsels of both sides and perused the records. Since the Department themselves admit that the selection and appointment of Respondent No. 4 was irregular and

illegal and since Respondent No. 4 had not entered appearance to defend his case, we have no hesitation to quash the appointment of Respondent No. 4.

Question then arises under such circumstances, whether the applicant could be reinstated to the post with a declaration that the order of termination was bad and was not according to law. There is no dispute that this Tribunal in OA No. 344/97 issued directions to the Department to issue public notification inviting applications for the post and consider the applications so received alongwith the applications of the candidates sponsored by the Employment Exchange. In other words, the appointment of applicant on adhoc basis can not be regularised because as per the direction of the Tribunal, even his candidature, again has to be considered alongwith others, for fresh selection and appointment. This apart, the applicant himself gave in writing under Annexure-R/5 expressing his and willingness to accept the post on adhoc basis/ that he would not claim for regularisation. We, therefore, do not see any illegality or irregularity in issuing the impugned order of termination against the applicant. He can not automatically be reappointed because his candidature has to be considered alongwith others.

As earlier stated, in the rejoinder, the applicant has taken a plea that Respondent No. 4 was less than 18 years of age by 23-2-1997 the date prescribed for receipt of application from the sponsored candidates of the Employment Exchange. We would like to point it out that this particular date has no more significance because this Tribunal in order dated 20.2.98 directed the Department to issue a fresh public notification. In terms of that direction, public notification was issued on 21.4.1998 as mentioned in para 12 of the counter

and which has not been refuted in the rejoinder by the applicant. It has further been mentioned that after this notification was issued, Respondent No. 4 had applied for the post. Hence, the date for determination of age of the Res. No. 4 would be the date mentioned in the notification for receipt, to be the last date for receipt of application.

6. For the reasons discussed above, while quashing the selection and appointment of Respondent No. 4, we dismiss the other reliefs claimed by the applicant. The Departmental Respondents are directed to carry out the direction of this Tribunal passed in OA No. 344/97 on 20-2-1998 for fresh selection and appointment to the post of EDMC Damodarpur Branch Post Office, without making any fresh notification or requisitioning to the Employment Exchange.

7. In the result, with the directions made in para-6 above, the original application is disposed of. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23-3-99

23-3-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/QM.