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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 400 OF 1998
Cuttack this the 8th day of April, 2004

Ghanashyam Behera

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *79*

[Signature]
(M.R. MOHANTY) 08/04/04
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 400 OF 1998
Cuttack this the 8th day of April 7/2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

Ghanashyam Behera, aged about 27 years,
Son of Sri Gajendra Behera, was working as
E.D.B.P.M., Chak-Suliapada Branch
Permanent Address : At: Badjogibandha
PO-Chaksuliapada, Dist-Mayurbhanj, Orissa

... Applicant

By the Advocates

Mr.D.P.Dhalasamant
Mr.A.K.Mohapatra &
Mr.N.Panda

-VERSUS-

1. Union of India represented by the
Chief Post Master General, Orissa Circle,
Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda
2. Superintendent of Post Offices, Mayurbhanj
Division, Baripada, At/PO/Baripada,
Dist-Mayurbhanj

... Respondents

By the Advocates

Mr.U.B.Mohapatra, A.S.C.

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Assailing the order of
termination dated 3.7.1998 (Annexure-3) passed by Res.No.2
and seeking a direction to be issued to the Respondents
to produce all the records, after which to direct Res.Nos.
1 and 2 to reinstate him in service with all consequential
benefits, Shri Ghanashyam Behera (applicant) has approached
the Tribunal in this Original Application under Section 19
of the Administrative Tribunals Act, 1985.

2. Briefly stated the facts of the case are as follows.

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The applicant was appointed as an Extra Departmental Branch Post Master, Chaksuliapara Branch Office on retirement of the regular incumbent. Res.No.2 had taken action for regular selection for the post in question by notifying the vacancy to the District Employment Exchange, Baripada. In response thereto, the District Employment Exchange sponsored the names of eight candidates including that of the applicant. The applicant was selected for the post and was given the offer of appointment vide Respondent No.2's letter at Annexure-1 dated 16.3.1998. The applicant took charge of the said post on 25.3.1998. After putting him through training, Respondent No.2 issued an office order dated 16.4.1998 giving him formal appointment on provisional basis on the condition that this appointment would be subject to the outcome of Original Application No.101/98 pending before this Tribunal. Soon thereafter on 3.7.1998, Res.No.2 served on him a letter of termination dated 3.7.1998 under Rule-6(B) of the P & T E.D.A.(Conduct & Service) Rules, 1965. Another O.A.256/98 challenging the selection of the applicant to the post in question was also pending for disposal at that time. But before the final disposal of the said O.A. the service of the herein applicant had been terminated, which the applicant challenged in OA 256/98 as illegal and arbitrary action of the Respondents and prayed for setting aside the appointment so made.

3. The Respondents have filed their counter opposing the prayer of the applicant. While they have admitted the

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facts in the O.A., it is their case that out of eight candidates sponsored by the District Employment Exchange, six candidates including the applicant had submitted applications complete in all respects. Of these, four candidates fulfilled all the eligibility conditions and amongst one Shri Nirmal Kumar Mohanty/ them had secured the highest percentage of marks in the H.S.C. Examination. However, there was one more candidate, viz., Shri Ghanashyam Behera belonging to Scheduled Caste community, who had secured less marks in the H.S.C. Examination than Shri Nirmal Mohanty, was selected by the Respondent No. 2 on the ground that he belonged to reserved community and was entitled to preferential treatment. This appointment was challenged by one Basanta Kumar Chaudhury in O.A. 108/98 before this Tribunal. At the same time, Shri Nirmal Mohanty, who had secured the highest marks amongst all the candidates considered, had also challenged the selection of Shri Behera in O.A. 256/98 before this Tribunal. This Tribunal by its order dated 14.5.1998 as an interim measure in O.A. 256/98 had directed Res. No. 1 to complete the review of the selection process within a period of 45 days. Res. No. 4, after reviewing the matter came to the conclusion (vide Annexure-R/7) that there was short fall in representation of S.C. category in the grade of E.D.B.P.M. in Mayurbhanj Division and as such the post of E.D.B.P.M., Chaksuliapara should have been filled up by SC candidate. He also found that such a selection could not have been limited to a single SC community candidate. He, therefore, directed the

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appointing authority to cancell the selection made to the post and to take up the selection process afresh right from the state of sponsoring candidates from the Employment Exchange, as per the existing guidelines. It was in pursuance of this order passed by Res.1 in compliance of the interim order dated 14.5.1998 of the Tribunal passed in O.A.256/98 that the provisional appointment of the applicant herein was terminated vide order dated 3.7.1998 (Annexure-3) passed by Res. No. 2, which is the subject matter of challenge in this O.A.

4. We have heard the learned counsel for the parties and also perused the records placed before us. On a reference to the file dealing with O.A.256/98, we find that the applicant in that O.A. (Shri N.K.Mohanty) who had challenged the selection of the applicant of this O.A. had withdrawn his O.A. as infructuous consequent upon cancellation of appointment of Res. No.4(applicant herein) to the post. So far as O.A.101/98 is concerned, we find that one Basant Kumar Chaudhury (applicant therein) who was holding the post of E.D.B.D.M., Chaksuliapara B.O. since May, 1966 approached this Tribunal on the ground that his date of birth was wrongly mentioned in the Service record had also withdrawn his O.A. on 15.3.2002 with liberty to file a fresh one on the same cause of action, and accordingly that O.A. was dismissed as withdrawn.

Thus the question which remains to be answered in this O.A. is whether the termination of appointment of the applicant, who is a candidate belonging to S.C. community and had all the requisite qualifications for

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the post in question is sustainable in the eye of law. The Respondents have submitted that the selection for the post of EDBPM, Chaksulia-para B.O. made by Res.No.2 was reviewed by Res.No.1 as a part of administrative policy. This position of the matter was submitted by the Respondents before this Tribunal in O.A.256/98 and the Tribunal in its order dated 14.5.1998 after considering the submissions made by the learned counsel for the Respondents had directed the Department to take up the administrative review, if it was so required and to complete the process of review of the selection in question within a period of 45 days from the date of receipt of copy of that order. It is in this background, the review of the selection to the post of EDBPM, Chaksuliapara B.O. was undertaken, as a result of which the earlier selection was held null and void on the ground that the Employment Exchange was not informed by Res.2 that the post was reserved for S.C. category and therefore, the Employment Officer had no opportunity to sponsor the names of SC candidates according to rules. That apart, as per the departmental instructions, in case an E.D.Post is earmarked for any reserved community, the selection cannot be made unless there are minimum number of three candidates are available in the zone of consideration. In the aptness of things, the relevant instructions of the D.G.Posts are quoted hereunder.

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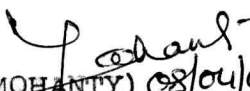
"... In the notification it should be specifically mentioned that in case the minimum number of 3 eligible candidates belonging to the particular reserved community are not nominated or do not offer their candidatures, the vacancy in question will be treated as unreserved and offered to the candidates belonging to other reserved category to be specified for which the representation may happen to be deficient or other community candidates, as the case may be. This will further enable the Employment Exchange to nominate candidates belonging to the other reserved category or OC community, as the case may be in the order indicated in the notification".

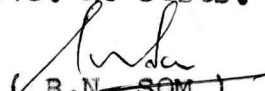
It is because of this procedural irregularity the selection made earlier was annulled and the appointment of the applicant was cancelled. The learned counsel for the applicant drawing out notice to the decision rendered in O.A.487/01 dated 21.2.2003 argued that the higher authority has no power to review the selection and appointment of an E.D. Agent as the same is not available in the rules. There is no doubt that we are bound by the precedents otherwise we would be failing to maintain uniformity, certainty and consistency in the administration of justice. However the fact of the matter in the instant case is distinguishable to the one we had dealt with in O.A.487/2001. In the earlier case, we had intervened because we had found traces of exercising arbitrary power. But the instant case is distinguishable, because the question of reviewing the selection made did arise in pursuance of the direction of this Tribunal in the aforesaid O.A., wherein the applicant was a party and had an opportunity to give his view point. It was after hearing the both parties, we had allowed

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the Respondents to complete the process of review according to rules governing the selection for the post. In the circumstances, our decision in O.A.487/01 is of little help to the applicant. It is not disputed that the Respondents had earmarked the vacancy as reserved ~~one~~ and therefore, adequate number of candidates from the said community were not available for fair selection. In the circumstances, we see no reason for us to intervene in the matter and to quash the order passed by Res.2 under Annexure-3. To this extent the O.A. fails. However as the applicant belongs to S.C. community and the post is earmarked for S.C. candidate, his candidature should also be considered along with the fresh names to be sponsored by the Employment Exchange, if the selection to the post in question has not yet been over and none has been appointed to that post regularly.

The O.A. is disposed of as above. No costs.


(M.R. MOHANTY) 08/04/04
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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