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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 627 OF 1998
Cuttack, this the 24th day of December 1999

Sri Pradeep Kumar Mohapatra 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 .

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.12.99

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 627 OF 1998
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CORAM:

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

Sri Pradeep Kumar Mohapatra, aged about 26 years, son of
late Bansidhara Mohapatra, At-Kanigarpada, P.O-Talcher,
District-Angul..... Applicant

Advocates for applicant - M/s
R.N.Misra-II
S.K.Das
N.R.Misra-I

Vrs.

1. Union of India, represented through the Chief Post
Master General, Orissa Circle, At/PO Bhubaneswar,
District-Khurda.
2. Director, Postal Services, Sambalpur Region,
Sambalpur, At/PO/District-Sambalpur.
3. Superintendent of Post Offices, Dhenkanal Division,
At/PO/PS/Dist.Dhenkanal.
4. Inspector of Post Offices, Talcher Sub-Division,
At/PO-Talcher, District-Angul
5. Aditya Rout, Extra-Departmental Mail Carrier,
Talcher Dera Line, At/PO-Talcher, District-Angul
..... Respondents

Advocates for respondents - Mr.B.Dash
A.C.S.C.for
respondent
nos.1 to 5
and
Mr.P.K.Padhi
for R-5.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this petition under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the appointment of Aditya Rout
(respondent no.5) to the post of EDMC, Talcher Dera Line
and for a direction to the departmental respondents to
issue appointment order in favour of the petitioner.

9

2. The applicant's case is that for filling up of the post of EDMC, Talcher-Dera Line, the departmental authorities issued a notice on 7.10.1997 (Annexure-1) inviting applications in the prescribed proforma for the post. The applicant has stated that the proforma was nowhere attached. ^{Because} ~~in spite of~~ ^{of this} the applicant was unable to get hold of the proforma in which he was to submit the application. Therefore, he made an application within time furnishing all informations as required under Annexure-1. On enquiry the applicant came to learn that there were four candidates for the post and even though he was the most eligible candidate amongst them he was not selected. Respondent no.5 was earlier continuing against the post of EDMC on daily wage basis. Respondent no.5 is not a matriculate whereas the petitioner is a matriculate and the rules provide for giving preference to matriculates. But in spite of this respondent no.5 was selected for the post. The applicant filed a representation before the Director of Postal Services (respondent no.2) and according to his information a departmental vigilance enquiry was made into the matter. The applicant has stated that he also attended this enquiry but no final result was communicated to him and in the meantime respondent no.5 is illegally continuing in the post and that is why the petitioner has come up with the prayers referred to earlier.

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3. Respondent no.5 in his counter has stated that the applicant was not a candidate for consideration for the post of EDMC and therefore he has no locus standi to challenge the selection of respondent

no.5. It is stated by respondent no.5 that he applied for the post in the prescribed proforma along with all required documents within the stipulated period in response to the first notification as well as the second notification and was found suitable amongst all candidates. It is further stated that the petitioner did not apply in response to the second notification and in response to the first notification he did not submit application in proper form. On the above grounds, respondent no.5 has opposed the prayers of the applicant.

4. The departmental respondents in their counter have stated that the post of EDMC, Talcher Dera Line became vacant due to the retirement of the existing incumbent Dukhabandhu Rout. The Employment Officer was asked to sponsor suitable candidates. The Employment Officer did not sponsor any candidate within the stipulated period. Thereafter the departmental authorities issued public notice at Annexure-1 inviting applications by 22.10.1997 in response to which only two candidates, the applicant and respondent no.5 applied for the post. The petitioner did not submit application in the prescribed proforma. He submitted a plain paper application which has been enclosed at Annexure-R/1. As there were two candidates, respondent no.4 issued a fresh notification on 3.2.1998 inviting applications from the intending candidates. In response to the second notice three candidates submitted applications for the post. Out of the three candidates, respondent no.4 selected respondent no.5 and appointed him on 10.3.1998. The candidature of the applicant was not considered as he did not apply for the post against the

J. Som.

second notification. It is further stated by the departmental respondents that against the selection the petitioner submitted allegation petition and respondent no.2 got an enquiry conducted through Assistant Superintendent of Post Offices (Vigilance) and forwarded the selection file to respondent no.3 for review of the selection. On review several procedural irregularities were found and it was decided to take action to issue show cause notice to respondent no.5 for cancellation of the selection and to order selection afresh making re-notification to the Employment Exchange. The departmental respondents have stated that respondent no.4 did not follow proper procedure regarding residence condition and preference to be given to reserved communities while making requisition to the Employment Exchange and also while notifying the vacancies inviting applications. As such the entire selection has been decided to be quashed. The departmental respondents have stated that the petitioner did not apply in response to the second notification and therefore his case could not be considered and on the above grounds they have opposed the prayers of the applicant.

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5. The applicant has filed a rejoinder to the counter filed by the departmental respondents. Besides reiterating the points made in his OA, in his rejoinder he has mentioned that the departmental authorities have not indicated from which date the post was lying vacant and from which day respondent no.5 was appointed against the post on ad hoc basis. It is stated that the renotification was made by the departmental authorities only to give appointment to respondent no.5

who is not a matriculate. It is also stated that even though a second notification was made the petitioner was not required to apply afresh and his application submitted in response to the first notice at Annexure-1 should have been taken into consideration by the departmental authorities. On the above grounds, the applicant has reiterated his prayers in the rejoinder.

6. The departmental authorities have filed counter to the rejoinder in which they have stated that on the post of EDMC, Talcher Dera Line falling vacant on 30.6.1995 due to retirement of Dukhabandhu Rout, respondent no.5 was appointed to the post with effect from 1.7.1995 to 3.8.1998 purely on temporary and ad hoc basis. They have also stated that the first notification was duly published in the offices of different authorities including Municipality, Police Station, Post Offices, etc. They have also stated that the prescribed proforma was enclosed to Annexure-1 and in any case the petitioner should have collected the prescribed proforma from respondent no.4. It is also stated that as the petitioner did not furnish the application in the prescribed proforma in response to the open notification issued for the second time on 3.2.1998 at Annexure-R/2 his application could not be taken into consideration.

7. We have heard Shri R.N.Misra-2, the learned counsel for the petitioner, Shri B.Dash, the learned Additional Standing Counsel for the departmental respondents, and Shri P.K.Padhi, the learned counsel for respondent no.5 and have also perused the records. The learned Additional Standing Counsel has produced the

selection file which has also been perused.

8. The first prayer of the applicant is for quashing the appointment made in favour of respondent no.5 in the post of EDMC, Talcher Dera Line. The departmental respondents in their counter have made the following averment:

"The applicant submitted allegation regarding selection for the post to the Respondent no.2 who conducted an inquiry through the Asst. Supdt. of Post Offices (Vigilance) and forwarded the selection file to Respondent No.3 for review of the selection. The Respondent no.3 on review of the case found many procedural irregularities in the selection and take action to issue show cause to Respondent no.5 for cancellation of the selection and to order selection afresh making re-notification to the Employment Exchange."

From the above it appears that on enquiry certain irregularities have been found in the appointment of respondent no.5 and the departmental authorities are taking action to issue showcause to respondent no.5 for cancellation of the selection and to order fresh selection making re-notification to the Employment Exchange. As the matter regarding selection of respondent no.5 to the post of EDMC, Dera, is under consideration of the departmental authorities, we would not like to pass any order in this regard except directing the departmental authorities to take such action as they deem proper in pursuance of their above averment in the counter with regard to appointment of respondent no.5. Such action should be taken by them within a period of sixty days from the date of receipt of copy of this order. The first prayer of the applicant is accordingly disposed of.

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9. The second prayer of the applicant is for a direction to the departmental authorities to appoint the applicant to the post. The departmental authorities have opposed the prayer on the ground that in response to the first advertisement the petitioner did not submit his application in the prescribed proforma and in response to the second advertisement he did not apply at all and therefore his case could not be considered. In any case in response to the first advertisement only two candidates, i.e., the applicant and respondent no.5 applied for the post. Had the applicant submitted his application in the prescribed proforma, even then selection could not have taken place on the basis of only two applications because instructions of Director General, Posts, provide that for one post there should at least be three candidates. As such the departmental authorities have rightly re-notified the vacancy for the second time. But in response to the second notice the petitioner did not apply and his case was not considered. It is therefore not possible to issue a direction to the departmental authorities to give appointment to the applicant to the post. Moreover, the departmental respondents have stated that they are going to re-notify the vacancy to the Employment Exchange. According to recent instructions of Director-General, Posts, while notifying the vacancy to the Employment Exchange, they have to simultaneously call for applications from open market. The applicant, if he is so advised, may also apply in response to such public notice. The departmental authorities should consider all the applications received and names

forwarded by the Employment Exchange and select the best candidate amongst them.

10. In the result, therefore, the Original Application is disposed of in terms of the observation and direction given above but without any order as to costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN

24.12.99