

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 26 OF 1999
Cuttack this the 21st day of December, 1999**

Rasmiranjan Mohapatra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM
VICE-CHIEF JUDGE)
21.12.99

21.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.26 OF 1999
Cuttack this the 21st day of December, 1999

CORAM:

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

...

Rasmiranjan Mohapatra
aged about 23 years,
S/o. Late Lokanath Mohapatra
At/Po: Kulashree, Via: Kasarda
P.S.Niali, District : Cuttack

...

Applicant

By the Advocates : Mr.S.K.Mohapatra

-Versus-

1. Union of India represented by
the Chief Post Master General,
Orissa, At/Po: Bhubaneswar
Dist: Khurda
2. Superintendent of Post Offices
Cuttack City Division,
At/Po/District: Cuttack-I
3. Sub-Divisional Inspector (Postal)
Cuttack Western Sub-division
At/Po: Cuttack-2, Dist: Cuttack
4. Abhina Das, aged about 37 years
S/o. Bhimasen Das,
Vill: Rahamba, PO: Postal
PS: Govindpur, Dist: Cuttack

...

Respondents

By the Advocates : MR.S.B.Jena
Addl. Standing Counsel(Central)
(For Res. 1 to 3)

M/s.B.S.Tripathy and
M.K.Rath (For Res.4)

...

ORDER

9

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Rasmiranjan Mohapatra, a candidate for the post of Extra Departmental Mail Carrier, French, in account with Kasarda S.O. in this application seeks quashing of appointment of Res.⁴ to that post or alternatively for direction to respondents to consider the case of the applicant in future vacancy under them. According to applicant, he has passed Matriculation Examination in the year 1990 in 2nd Division securing total marks of 373 (Annexure-?). Besides he has acquired experience in serving as E.D.Agent as he worked as substitute E.D.Agent in place of his brother as Branch Post Master for about 4 days during 1994, 6 days during 1995 and for about 3 months in 1997-98. Yet Res.⁴, who is less meritorious than him was selected and appointed. Hence this application.

2. Respondents 1 to 3 representing the Department filed counter, ~~so~~ also Res.⁴.

In the counter filed by the Department there is no denial that Res.⁴ secured less marks than the applicant in the Matriculation Examination. In fact in para-4 of the counter of the Department it is even admitted that among all the candidates for the post in question 16 Matriculate candidates secured more marks than Res.⁴. However, Res.⁴ was selected and appointed because of the direction of this Tribunal in judgment dated 17.11.1995 in O.A.824/94, to the effect that Department shall take into consideration the circumstances which are on the favour of Res.⁴ in preference to others equally qualified while making a selection to the post of E.D.M.C., French and few more

marks obtained by a particular candidate should not negative the claim of Res.⁴, as he has already worked with due devotion to the Department and gained some experience in different posts and as such he should get a mileage over others. This Original Application 824/94 was filed by Res.⁴.

Applicant has not filed any rejoinder.

3. We have heard Shri S.K.Mohapatra, learned counsel for the applicant, Shri S.B.Jena, learned Addl. Standing Counsel for Res. 1 to 3 and Shri B.S.Tripathy, learned counsel appearing for Res.⁴. Also perused the records.

As per recruitment rules for the post of F.D.M.C. though the minimum educational qualification is 8th standard passed, preference would be given to the candidates with Matriculation qualification and no weightage should be given for any qualification higher than the Matriculation. There is no dispute that Res.⁴ has secured less number of marks in the Matriculation than 16 other candidates including that of the applicant applied for the post. Hence in normal course Res.⁴ would not have been selected and appointed. But the stand of the Department is that he was selected and appointed because of the direction of the then Bench of this Tribunal in O.A.824/94. It is, however, contended on behalf of the applicant that there is no direction to appoint Res.⁴ to that post. Hence in order to understand the import of the direction of this Bench, it is worthwhile to quote the relevant portion of the direction as hereunder :

"...Considering the undisputed fact that the petitioner had put in some days' service in the Department, i.e. 43 days, we direct that respondents shall take into consideration this

circumstance which is in his favour in preference to others equally qualified while making selection to the post of E.D.M.C., Franch and a few marks more obtained by a particular candidate should not negative his claim as he has already worked with devotion in the Department and gained some experiences in different posts. At any time this should get a mileage over others. With this observation we dispose of the Original Application. No order as to cost".

It will be seen the then Division Bench of this Tribunal observed that Res.⁴ shall get preference because of his 43 days' service in the Department and that he would get preference over others who are even though equally qualified securing a few marks more than him. There is no direction that Res.⁴, even if secured far less marks than a candidate and having less experience than others in the service of the Department shall have to be appointed. On the other hand a clear reading of the judgment in O.A.824/94 (Annexure-6) reveals that such direction was given because Res.3, whose selection was challenged in that application secured only 9 marks more than Res.⁴ in this application, i.e., while Res.3 in O.A.824/94 secured 271 marks, Res.⁴ in the present application secures only 262 marks and Res.3 had no previous experience.

In the case before us there is no mention in the counters of the Original Application as to the marks obtained by Res.⁴ and other candidates. It is, however, clear from the pleadings that the applicant had secured 373 marks in the Matriculation Examination and had put in more than three months of service in the Department and gained experience. In the judgment in O.A.824/94, it reveals that Res.⁴ had secured only 262 marks in the Matriculation examination. Thus it is clear that the

applicant has secured 111 marks more than Res.4 in the Matriculation Examination and gained more than three months' experience in the Department, whereas Res.4 has only 43 days' experience in the Department. As already indicated, direction of the then Bench of this Tribunal in O.A.824/94 was not to ignore the cases of candidates securing far more marks than Res.4 in the Matriculation or having far more experience in the Department than him.

4. For the reasons discussed above, we are of the view that selection and appointment of Res.4 to the post of E.D.M.C., Franch cannot be sustained under law, even after taking into consideration the direction of the then Division Bench of this Tribunal in O.A.824/94. Accordingly we quash appointment of Res.4 (Abhina Das) to the post of E.D.M.C., Franch Branch Office. Respondents 1 to 3 are directed to again reconsider the cases of other candidates including that of applicant and Res.4, who were earlier within the zone of consideration for the post of E.D.M.C., Franch and finalise the selection process within a period of 60(sixty) days from the date of receipt of this order.

In the result, the application is allowed, but without any order as to costs.

Somnath Somy
21/12/99
VICE-CHAIRMAN

B.K. SAHOO

21.12.94
(G. NARASIMHAM)
MEMBER (JUDICIAL)