

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 407 OF 1999
Cuttack, this the 19th day of February, 2001

Raj Kumar Patel

....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 .

(G.NARASIMHAM)
MEMBER (JUDICIAL)

G. Narasimham
VICE-CHAIRMAN
19.2.2001

10

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ORIGINAL APPLICATION NO. 407 OF 1999
Cuttack, this the 19th day of February, 2001

CORAM:

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

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Rajkumar Patel, son of Prafulla Kumar Patel, aged about 31 years, At/PO-Turei, Via-Keshabahal, Dist.Sambalpur

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Applicant

Advocates for applicant - M/s S.K.Purohit,
P.Mohapatra
P.K.Sahoo
K.M.A.Niamat

Vrs.

1. Union of India, represented by the Chief Post Master General, Bhubaneswar, District-Khurda.
2. Regional Director of Postal Services, Sambalpur Region, Sambalpur.
3. Superintendent of Post Offices,
Sambalpur Division, Sambalpur-768 001

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Respondents

Advocate for respondents-Mr. S.B.Jena
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application, the petitioner has prayed for quashing the order dated 3.8.1999 at Annexure-2 cancelling his selection to the post of EDBPM, Turei B.O. His second rayer is for a direction to the respondents to allow the applicant to join the post of EDBPM, Turei B.O. in pursuance of the order at Annexure-1.

2. The applicant's case is that he was duly selected for the post of EDBPM, Turei B.O., and in order, dated 8.3.1999 at Annexure-1 the Superintendent of Post Offices, Sambalpur (respondent no.3) directed

the Sub-Divisional Inspector (Postal), Deogarh, to appoint him to the post observing usual formalities and after imparting him necessary training. The applicant approached the Sub-Divisional Inspector (Postal), Deogarh, after getting a copy of this letter at Annexure-1 which was endorsed to him, but he was asked to wait. Thereafter he received the order dated 3.8.1999 (Annexure-2) after five months cancelling his selection without assigning any reason. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that for filling up the post of EDBPM, Turei B.O., which fell vacant due to superannuation of the earlier incumbent, requisition was sent to Employment Exchange. But as the Employment Exchange did not sponsor any name, open notice was issued inviting applications in response to which eight persons including the petitioner applied. Amongst them, the applicant has secured highest percentage of marks in HSC Examination and that is how he was selected. Before issuing offer of appointment, the Sub-Divisional Inspector (Postal), Deogarh, verified the character and antecedent of the applicant and found that the applicant is involved in two criminal cases, GR Case No.97/98 under Sections 147, 341, 332 294, 506 and 149 IPC and TR Case No.405/98. These facts were informed to respondent no.3 in letter dated 26.3.1999 of Sub-Divisional Inspector (Postal), Deogarh. Because of this, respondent no.3 cancelled the provisional selection of the applicant, and one Suresh Chandra Majhi having highest percentage of marks next to the applicant, was selected and appointed on 13.8.1999. The respondents have stated that the letter at

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Annexure-1 is not an appointment letter. It is an intimation to Sub-Divisional Inspector (Postal) regarding the applicant's selection. On the above grounds, the respondents have opposed the prayers of the applicant.

4. We have heard Shri S.K.Purohit, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents at length. At the conclusion of hearing, we directed the learned Additional Standing Counsel to produce the selection file relating to the post, and accordingly, the learned Additional Standing Counsel produced the selection file and we have perused the same.

5. The learned counsel for the petitioner has filed a copy of the judgment of the learned Sub-Divisional Judicial Magistrate, Kuchinda in G.R. Case No 237/99 (Trial No. 583 of 1999) in which the applicant was one of the accused persons. This case was initially committed to the court of session under Sections 341, 294, 323, 324 and 506 read with Section 34 IPC and Section 3 of the SC & ST (PA) Act. The learned Special Court in his order dated 27.9.1999 found that the materials on record did not make out a case under Section 3 of the SC & ST (PA) Act and other offences being triable by Judicial Magistrate, First Class, the case was sent to the learned Sub-Divisional Judicial Magistrate, Kuchinda. From the judgment dated 19.5.2000 of the learned Sub-Divisional Judicial Magistrate, it appears that offences under Sections 341, 323, 324, 506 and 34 IPC were compoundable in nature and the complainant and the accused persons having filed a compromise petition, these offences were compounded and the accused persons including the petitioner were

13

acquitted of these Sections. The alleged offence under Section 294 IPC being non-compoundable in nature, the trial continued and in the judgment, dated 18.5.2000, the accused persons including the applicant were acquitted. From the judgment of the learned Sub-Divisional Judicial Magistrate, it appears that in this case FIR was filed by the complainant on 12.8.1998. In the second case the FIR was filed against the accused persons including the applicant by the Secretary of Babunikhtimal Gram Panchayat on 11.4.1998 and was registered under Sections 148, 341, 332, 452, 294, 506 and 149 IPC. From this it appears that in both these cases FIRs were lodged much after the petitioner filed his application on 3.2.1998 in which he had truthfully given a declaration that he is not involved in criminal case. From the selection file it further appears that the selection was done on 5.3.1999 after which the order dated 8.3.1999 at Annexure-1 was issued. From this, it is clear that the two criminal cases were filed after the last date of receipt of applications which was fixed to 9.2.1998. FIRs in both the criminal cases were filed much after this date. Instructions are clear that the eligibility of a candidate is to be considered as on the last date of receipt of applications. Instructions provide that a candidate who has not filed a necessary document, which he is required to file along with his original application, can file it before the last date of receipt of applications and in such a case his application cannot be rejected on the ground that he has not filed the required document along with the application but has filed the same afterwards but within the last date for receipt of

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applications. The point for consideration, therefore, is whether on the basis of filing of two criminal cases by private persons against the petitioner after the last date for making applications, his candidature is liable to be rejected. The relevant instruction with regard to enquiry regarding character is laid down in Chapter I, Vol.IV, paragraph 3 of P&T Manual. It is not necessary quote the entire paragraph but the relevant portion is quoted below:

"3. Before appointing or nominating persons to vacancies in the Department, or employing as extra-departmental agents persons who do not hold Government or quasi-Government posts or who are not Government pensioners, careful enquiry must be made regarding their character and antecedents, and no one may be employed in the Department who is unable to furnish satisfactory references. No person who has been dismissed for misconduct from any Government post may be employed....."

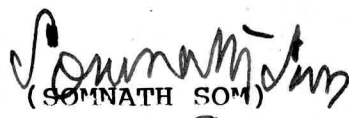
J. Jones Along with the original application the petitioner has submitted two character certificates from two Government officers as required. Thus, he furnished satisfactory references. Filing of a criminal case by a private person does not mean that the applicant is guilty of a criminal act or omission. In a criminal case an accused is always presumed to be innocent till he is proved guilty. In one of the cases, the learned Special Judge found that there was no material to proceed against the accused persons in respect of one section. Some other sections being compoundable were compromised and Section 294 IPC being non-compoundable in nature, the trial continued and the accused persons including the applicant were acquitted. In the other case, presumably the trial is still continuing because there is no material that the applicant has been either convicted or acquitted. As these cases have been

15
filed after the last date for receipt of applications, it would not be reasonable to hold that because of filing of these two cases, the applicant has become ineligible to be given appointment to the post of EDBPM, Turei EDBO. If that be the case, then it would always be possible for an unsuccessful candidate to foist a criminal case against the successful one and thereby thwart the appointment of the person who has been found to be most meritorious. It is also the position that if an ED Agent is convicted in a criminal case, then he is to be dismissed from service. In view of the above, we have no hesitation in holding that the applicant has been illegally deprived of his appointment as EDBPM, Turei EDBO even though he was found to be most meritorious amongst all the candidates. We, therefore, quash the order dated 3.8.1999 (Annexure-2) cancelling the selection of the applicant for the post of EDBPM, Turei EDBO. The respondents are directed to give appointment to the applicant within a period of 60 (sixty) days from the date of receipt of copy of this order.

6. In the result, therefore, the Original Application is allowed. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)
19.2.2001
VICE-CHAIRMAN

February 19, 2001/AN/PS