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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 550 OF 1999
Cuttack this the 28th day of November/03

Jagabandhu Rana ... Applicant(s)

VERSUS

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

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


(E.N. SOM)
VICE-CHAIRMAN


(BHARATI RAY)
MEMBER (JUDICIAL)

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CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND

THE HON'BLE MRS. BHARATI RAY, MEMBER (JUDICIAL)
...

Jagabandhu Rana, aged about 33 years,
Son of Babaji Rana, At/PO-Belpara
Dist-Balangir - at present working as
S.D.Packer at Belpara Sub Post Office
At/PO-Belpara, Dist-Balangir

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Applicant

By the Advocates

M/s. A.K. Choudhury
H.K. Panigrahi
J. Das, B. Mishra

VERSUS

1. Union of India represented through the Chief Post Master General, Orissa Circle, Bhubaneswar Dist-Khurda
2. Superintendent of Post Offices, Balangir Division, At/PO/Dist-Balangir
3. Director of Postal Services-cum-Post Master General, Region Office, At/PO/Dist-Sambalpur
4. Sub-Divisional Inspector (Postal), Patnagarh Sub Division, At/PO-Patnagarh, Dist-Balangir
5. Jayadev Sahu, son of Natabar Sahu, At/PO-Khunta Samalai, PS-Patnagarh, Dist-Balangir

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Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.

ORDER

MRS. BHARATI RAY, MEMBER (JUDICIAL): This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant (Shri Jagabandhu Rana) questioning the validity of order dated 5.10.1999 passed by the Superintendent

of Post Offices, Balangir Division (Res.No.2) vide Annexure-10 treating the applicant's appointment to the Post of E.D. Packer, Belpara cancelled and thereby appointing Shri Jayadev Sahu (Respondent No.5) to the said post of Packer in pursuance of the above stated order dated 5.10.1999 (supra) and consequently, he has prayed to quash the appointment of Respondent No. 5 as E.D.Packer and to direct the Respondents-Department to regularise him in the post of E.D.Packer, Belpara.

2. Briefly stated the undisputed facts of the case are that in order to fill up the ^{vacant} post of E.D.Packer, Belpara S.O. the Sub Divisional Inspector (Postal), Patnagarh (Respondent No.4) requested the Employment Officer to sponsor names of eligible candidates for the said post, in response to which the Employment Exchange sponsored a list of 40 candidates vide its letter No.189 dated 9.5.1997. Thereafter all the candidates including the applicant were called upon to submit their applications in the prescribed forms along with requisite documents for verification. After scrutiny of the applications received by the Respondents, the applicant was selected as E.D.Packer, Belpara S.O. on provisional basis. The applicant joined the said post accordingly, on 14.8.1997. From the letter of appointment dated 8.8.1997 issued by the S.D.I(P), Patnagarh vide Annexure-3 to the O.A. we notice, it has been clearly stipulated that the selection of the applicant was provisional subject to satisfactory result of verification of character and antecedents

and also satisfactory result of review by the Reviewing Committee. While the applicant was continuing as such, he was issued with impugned letter dated 20.12.1997 vide Annexure-5 by the Sub Divisional Inspector (Postal), that informing him that as it was not possible to make regular appointment immediately to the post of E.D.Packer, Belpara the S.D.I. (P) (Res.No.4) had decided to make provisional appointment to the said post for a period from 14.8.1997 to 31.1.1998 or till regular appointment was made whichever was shorter. However, the service of the applicant was extended from time to time on the same terms and conditions. While the matter stood thus, the Superintendent of Post Offices, Balangir Division (Res.No.2) issued the impugned order dated 5.10.1999 (Annexure-10) treating the said appointment of the applicant cancelled and thereby appointing Jayadev Sahu (Respondent No.5) against the said post. Being aggrieved by the said action on the part of the Respondents-Department, the applicant has approached this Tribunal seeking the reliefs as aforesaid.

3. Respondents-Department by filing a detailed counter-reply have contested the application. It is the case of the Respondents-Department that the applicant, on the basis of marks secured by him in one class examination, was selected to the post in question. They have further stated that subsequently a complaint was lodged by Shri Jayadev Sahu (Res. No.5) with regard to irregular selection of the applicant as E.D.Packer, Belpara S.O., whereupon the Superintendent of Post Offices, Balangir Division, being the reviewing authority,

called for the Selection File and found that there was irregularity in the selection of E.D.Packer of Belpara S.O. It is the further case of the Respondents that while reviewing the matter, the Superintendent of Post Offices (Res.No.2) found that although the applicant and Respondent No.5 failed in the H.S.C. Examination, while the applicant secured 159 marks Respondent No.5 secured 229 marks in the said Examination and it is under this situation, Respondent No.2 issued ^{show cause} notice to the applicant vide his letter of even No. dated 7.6.1999 by Regd.Post as to why his services should not be terminated on the ground of wrong selection and directed him to submit his representation by 20.6.1999. It is stated by the Respondents that in pursuance of the said notice the applicant in his representation dated 18.6.1999 (received by the Respondents on 21.6.1999) instead of submitting the original documents as sought for in support of his selection kept silent and maintained that he had already submitted certificates to the Divisional Office and the selection made by the then SDI(P) Patnagarh was correct and accordingly he be allowed to continue as E.D.Packer, Belpara S.O. It is therefore, contended that there being a mistake committed by the Respondents in selecting the applicant by ignoring the case of Respondent No.5 who had secured higher marks than the applicant, and the applicant's appointment being on provisional basis, they had no other alternative but to rectify their own mistake by issuing notice to

the applicant, as aforesaid. It has been submitted by the Respondents that in consideration of his representation dated 18.6.1999, the reviewing authority cancelled the appointment of the applicant by appointing Res.No. 5 as E.D.Packer, Belpara S.O. and this being the position, there has been no irregularity committed on the part of the Respondents-Department in issuing the order dated 5.10.1999 (Annexure-10). Lastly they have submitted that the C.A. filed by the applicant being devoid of any merit is liable to be dismissed.

4. When the matter was called none appeared for the applicant. None also represented Respondent No. 5 as well. However, learned Senior Standing Counsel Shri A.K.Bose was present and with his aid and assistance we perused the materials available on record and also heard him.

5. It is the specific case of the applicant that he was appointed regularly and therefore, the Respondents-Department could not have issued either cancelling or terminating his service as E.D.Packer, Belpara, without giving him an opportunity of being heard. It is the contention of the applicant that the said action of the Respondents-Department being illegal and arbitrary is violative of Articles 14 and 16 of the Constitution of India and therefore, the impugned order dated 5.10.1999 under Annexure-10 is liable to be quashed/set aside.

6. On going through the materials placed before us, we find that the essential qualification for the post of E.D.Packer is Class-VIII pass or equivalent.

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It is provided in the Recruitment Rules (Page-32 to the counter) that 'preference may be given to the candidates with Matriculation qualifications'. It is also mentioned in the Recruitment Rules that the candidates should have sufficient working knowledge of the regional language and simple arithmetics so as to ^{be} able to discharge their duties satisfactorily. Therefore, it is evident that the qualification prescribed for E.D.Packer is 8th Standard/Class-VIII pass. It is not in dispute that both applicant and Respondent No.5 are plucked matriculates. The minimum essential qualification for the post in question being Class-VIII pass one is required to attain the said qualification in order to become eligible for the said post. It is also not the case of the Respondents that they have not received any candidate with the qualification of 8th standard. As per the recruitment rules, only preference is to be given to matriculate candidates. That being the position, the Respondents-Department made irregular selection by considering the case of the applicant as well as Res.No.5, when admittedly there were plucked matriculates and the candidates with essential qualification of 8th standard *are to be considered*.

7. In view of the above facts and circumstances, we are of the considered view that the selection of the applicant as well as private Res.No.5 has been done in an irregular manner and therefore, the same is liable to be quashed/set aside. Ordered accordingly.

8. In view of our observations as made above, we direct the Respondents-Department to consider all

applications received by them at the relevant point ^{including applicant and respondent nos} of time, and consider the candidature of all the candidates afresh on the basis of marks secured by each of them in Class-VIII ^{Bharati} and select the most suitable candidate as per rules and procedures laid down and pass appropriate orders within a period of two months from the date of receipt of copies of this order. Till such time (the direction as given above is complied with by the Respondents-Department) the Respondents may continue with temporary arrangement in carrying out the work of E.D.Packer.

9. Having regard to what has been discussed above, this Original Application is disposed of, leaving the parties to bear their own costs.


(B.N. SOM)
VICE-CHAIRMAN


(BHARATI RAY)
MEMBER (JUDICIAL)

Bjy/