

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

ORIGINAL APPLICATION NO. 6 OF 1999
Cuttack this the 31st day of May, 1999

(PRONOUNCED IN THE OPEN COURT)

Bikash Kuanr ... Applicant(s)

- Versus -

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

(FOR INSTRUCTIONS)

1. Whether it be referred to 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)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31/5/99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 6 OF 1999
Cuttack this the 31st day of May, 1999

CORAM:

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

...

Sri Bikash Kuanr,
aged about 27 years,
S/o.Bidyadhar Kuanr,
At: Narayan Gachha,
PO: Ahias,
Dist: Jajpur

at present - Extra Departmental
Delivery Agent,
Office of the Asst.Superintendent
of Post Offices I/c.
Jajpur Sub-Division
Jajpur - 755 001

...

Applicant

By the Advocates : M/s.Rajashree Banal,
T.Das,
A.K.Biswal

...-Versus-

1. Union of India represented by the
Secretary, Department of Posts,
Dak Bhawan, New Delhi-110001
2. Chief Post Master General,
Orissa, Bhubaneswar-751001
3. Superintendent of Post Offices
Cuttack North Division
Cuttack-753001
4. Asst.Superintendent of Post Offices I/c.,
Jajpur Sub-Division
Jajpur - 755 001

By the Advocates

Mr.J.K.Nayak,
Addl.Standing Counsel

Respondents

O R D E R

MR. SOMNATH SOM, V.C: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 31.12.1998 at Annexure-2 and also for a direction to respondents to allow him to continue in the post of Extra Departmental Delivery Agent, Narayan Gachha. By way of interim relief it was prayed that respondents be directed to allow the applicant to continue in the post of E.D.D.A.

2. On the date of admission of this Original Application on 8.1.1999 it was ordered that respondents should allow the applicant to continue in the present post till 25.1.1999 in case his services have not already been terminated. This interim order was vacated in order dated 15.2.1999 after hearing the learned counsel for both sides and after perusing the show cause filed by the respondents and rejoinder to show cause filed by the applicant. It was indicated in the order dated 15.2.1999 that applicant has been prima facie selected and appointed and it was stated that in case after review the services of the applicant are terminated and that too illegally, he would be free to approach the Tribunal. With the above observation the interim order was accordingly vacated in order dated 15.2.1999.

3. Pleadings in this case have been completed. To-day the learned counsel for the petitioner has filed a Misc.Application after serving copy thereof on the learned Addl. Standing Counsel praying for a direction to respondents to allow the applicant to continue in the post of E.D.D.A. as his services as E.D.D.A. have been terminated. As pleadings in this case are complete and the matter is posted for final disposal at the admission stage, we heard the Original Application and Misc.Application altogether for final disposal.

4. According to petitioner, his father was working as E.D.D.A., Narayan Gachha. On his superannuation vacancy arose in the post and the petitioner applied for the same. In the process of selection he came out on the top of the merit list and was appointed to that post in order dated 2.7.1998 at Annexure-1. Accordingly the applicant joined the post on and had been working. Suddenly on 2.1.1999 the applicant received letter dated 31.12.1998 vide Annexure-1 indicating to him that his

selection and appointment has been reviewed and it has been observed that while selecting the applicant, candidatures of better and more meritorious persons have been rejected on flimsy grounds. Accordingly it has been intimated to the applicant that his appointment is being considered for cancellation and the applicant has been asked to submit representation, if any. The applicant, in response to Annexure-2 submitted a representation and approached the Tribunal with the prayers referred to earlier.

5. Respondents in their counter have stated that for filling up of the post of E.D.D.A., Narayan Gachhada, Employment Officer, Jajpur was addressed to sponsor names, but no name was sponsored by him. Accordingly an open advertisement was issued in response to which the petitioner and two others applied for the post. The respondents have pointed out that Res.4 did not send the requisition to Employment Officer through Regd. Post and did not check up if the same had actually been received by the Employment Officer. In response to public notice, three persons including the applicant applied. There was one Pitambar Majhi, who secured 348 marks in the Matriculation Examination as against 298 marks secured by the petitioner. But his candidature was rejected on frivolous grounds that one of his character certificates was wanting. Candidature of another person, viz., Shri Sahadev Bark was also similarly rejected on an untenable ground. From the above act of the appointing authority, the higher authority in the Department came to the conclusion that ~~the matter as the~~ Res.4 was determined to select and give appointment on regular basis to the petitioner who had been earlier given appointment on provisional basis and accordingly the illegal appointment order of the applicant was cancelled.

6. We have heard Ms. Rajashree Bahal, learned counsel for the petitioner and Shri J.K.Nayak, learned Addl.Standing Counsel appearing for the respondents and also perused the records. It is submitted by the learned counsel for the petitioner that the minimum required qualification for the post of E.D.D.A. is Class-VIII with the stipulation that Matriculates should be preferred. There is no provision that amongst the candidates acquiring Matriculation, selection for the post of E.D.D.A. should be made on the basis of highest percentage of marks

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secured by / candidate. We are unable to accept this contention of the learned counsel for the petitioner because in this case both the applicant and the other candidate Shri Pitambar Majhi are Matriculates and for selecting one out of them, percentage of marks secured by each of them in the Matriculation should be the determining factor. In case of E.D.B.P.M. also amongst the eligible candidates highest percentage of marks is the determining factor according to Circular of D.G.(Posts). It is submitted by the learned counsel for the petitioner that in the public notice issued inviting applications from the intending candidates there was no mention that selection would be made on the basis of highest percentage of marks secured in the Matriculation Examination, and therefore, the selection made is not illegal. We are also unable to accept this contention of learned counsel for the petitioner, because this is the norm which is applied to all such cases by the Department and this is not a departure in the case of the applicant. More over, in the advertisement itself which is Annexure-3 to rejoinder, it has been mentioned that Matriculates or equivalent will be preferred. Lastly it is submitted by the learned counsel for the petitioner that the applicant having been appointed and served the Department for about more than six months, the respondents are estopped on the ground of promisory estoppel to cancel his appointment. This contention of the learned counsel for the petitioner is without any basis, because on a review the departmental authorities came to conclusion that ^{selecting applicant,} while / candidatures of more meritorious persons have been rejected on flimsy grounds and such an irregularity should be not allowed to perpetuate in the Department ^{therefore,} and / issued notice to the applicant to represent if any, with regard to canceling his appointment. More over, the Department have not given any commitment to the applicant and in accordance to this the applicant has changed his position to his detriment by accepting the job of E.D.D.A. In this case the applicant's selection and appointment to the post of E.D.D.A. was on provisional basis, which on a review was found irregular. In view of this promisory estoppel does not arise in this case.

J Som

7. In view of the above discussions, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for in this application which is accordingly dismissed, but without any order as to costs.

In view of the O.A. ^{being} held to be without any merit and dismissed, Misc. Application filed by the learned counsel for the petitioner is also disposed of accordingly.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *5.99*

B.K.SAHOO