

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.670 OF 1999
CUTTACK THIS THE 24th DAY OF May 2001

K.Bhaskar Rao Applicant(s)

- Vrs -

Union of India & Others Respondents

For Instructions

1. Whether it be referred to reporters or not ? yes.
2. Whether it be circulated to all the Benches of no. the Central Administrative Tribunal or not ?

Somnath Som
 (SOMNATH SOM)
 VICE CHAIRMAN
24.5.01

24.5.01
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

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CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

.....

1. Shri K.Bhaskar Rao,
aged about 28 years,
S/o. Sri K.Lingaraju,
Vill. G.Rampa,
P.O. Garabandha,
Via. Parlakhemundi,
Dist. Gajapati.

By the Advocates

..... Applicant
Mr.P.V.Ramdas
&
Mr.P.V.B.Rao

-Versus-

1. Union of India,
represented by the
Chief Postmaster General,
Orissa Circle,
Bhubaneswar - 751 001.

2. Senior Superintendent of Post Offices,
Berhampur Division,
At/P.O. Berhampur,
Dist-Ganjam.
PIN. 760 001.

3. P.Hemachal Rao,
S/o. Not known
At/P.O.G.Rampa,
Via.Garabandha,
Dist. Gajapati.

By the Advocates

..... Respondents

Mr.J.K.Nayak
A.S.C

&
M/s C.A.Rao &
S. K.Behera(for R-3)

.....

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): The main point involved in this Original Application, claiming appointment ^{to} the post of EDBPM of Village G.Rampa in preference to the Respondent No.3 who was selected and appointed, is whether higher percentage of marks secured in H.S.C/Matric Examination through compartmental pass should be preferred to lesser percentage of marks secured in H.S.C/Matric pass in one chance.

2. Applicant K.Bhaskar Rao, Respondent No.3 P.Hemachal Rao, one Biswanath Samal and two others were candidates for selection to the post of EDBPM, G.Rampa. Applications of the two others were rejected as they were not complete in all respects. While Biswanath Samal and applicant K.Bhaskar Rao, passed H.S.C Examination conducted by the Board of Secondary Education, Andrapradesh in compartmental, Respondent No.3 P.Hemachal Rao passed such examination in one chance. While applicant K.Bhaskar Rao secured 56.6% the other two secured 42.4% each. Applicant was not preferred for the appointment on the ground that a candidate passing in one chance is to be preferred to a compartmental pass candidate, though securing higher percentage of marks.

3. The case of the applicant is that his father was previously serving as EDBPM, G.Rampa. During the absence of his father he had served as a substitute for 205 days from 1995 to 1997 and has gained substantial experience and this

experience should not have been ignored while making the selection. Even, otherwise he having secured higher percentage of marks in H.S.C Examination, though in compartmental pass has better claim for the post than Respondent No.3.

4. Before going to be the version of the Respondents it is better to take note of the fact that Biswonath Samal in fact preferred O.A.236/98 for quashing the appointment of Respondent No.3 P.Hemachal Rao on the ground that he is more meritorious than him. This Original Application was dismissed on merits on 18.9.2000. This fact was brought to our notice during hearing ~~to~~ of the Present Original Application. Though counter in O.A.236/98 was filed by the departmental Respondents on 18.8.98, strangely counter in the present application filed on 27.6.2000 by the departmental Respondents is conspicuously silent about the earlier Original Application. Be that as it may, for better appreciation of the present Original Application we called for record O.A.236/98 and perused the same.

5. Respondents(department) in their counter opposing the prayer of the applicant take stand that substitute experience under the existing recruitments Rules carries no extra-weightage. They justify that selection and appointment of Respondent No.3 in view of the decision of this Bench in O.A.481/94 (Vermandanda Panigrahi Vrs. U.O.I), holding that a candidate

passing the H.S.C in one chance has to be preferred to a compartmental pass candidate securing higher percentage of marks.

6. Respondent No.3 filed separate counter on 21.11.2000 after the disposal of the earlier O.A.236/98 taking the stand that in this earlier Original Application this Bench held that a candidate passing H.S.C in one chance is more meritorious than a compartmental pass candidate. Further he has taken plea that this Original Application filed on 28.12.99 is barred by limitation.

7. No rejoinder has been filed.

8. We have heard Shri P.V.Ramdas, learned counsel for the applicant, Shri J.K.Nayak, learned Additional Counsel and C.A. Rao, the learned counsel for the private Respondent No.3 and also perused the records O.A.481/94, O.A.669/98 and O.A.631/97(since disposed of) by this Bench dealing with identical points.

9. Before entering into discussion on merits we may as well deal with the point of limitation urged by the private No.3. It is the specific case of the Respondent No.3 that he was appointed to that post on 9.5.98. Section 21 of the Administrative Tribunal Act deals with the period of limitation. Under Section 21(1)(a), limitation period is one year from the date when a final order has been made on any appeal or representation which right is available to an applicant either under a statute or under Departmental Rules. Under Sub - Section (1) (b) the period of

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limitation is one year from the date of expiry of period of 6 months, where no order is passed by the competent authority on such appeal or representation. When there is no provision as in the present case for making any appeal or representation, limitation period is three years U/s 21(2)(a) of the Act. This would be also clear from the decision of the Apex Court in Jaidev Gupta Vrs. State of Madhya Pradesh reported in 1998 SCC (L & S) 1987 where differential salary from 1971 onwards claimed before Central Tribunal in May, 1989 was allowed only from May 1986 onwards. ~~even if Section 21(1)(a) is applicable still then it is not barred because he came~~ the averment that representation made under Annexure-2 dtd.16.10.98 was not disposed of, has not been denied in counters. Thus the plea of limitation urged by Respondent No.3 fails.

10. As to the substitute experience, law is well settled that it carries no extra weight. Shri P.V. Ramadas learned counsel has also not pressed this point.

11. Coming to the main point, we cannot but observe that averment of Respondent No.3 in his counter that this Bench in O.A.236/98 held that a candidate passing H.S.C in first chance is more meritorious than a compartmental pass. candidate is nothing with misleading. In earlier O.A.236 of 98 the applicant Biswanath Samal passing the H.S.C Examination compartmentally secured 212 marks out of total 500 marks, whereas the private Respondent No.3 (Respondent 5 in the application) while passing the H.S.C Examination in first

chance also secured 212 marks out of total marks of 500.

As the marks were equal we held the candidate passing in one chance ~~is~~ more meritorious. It would not mean that we had observed that a compartmental pass candidate even if secures higher percentage of marks will be less meritorious than the candidate passing in one chance securing lesser percentage of marks.

12. One of the criteria for selection to the post of a EDBPM is the marks secured in the matriculation or the equivalent Examination, as mentioned in the method of recruitment under Section 4, page 75, Swamy's Compilation Service Rules Postal ED Staffs, 1999 Edition. In other words, among the candidates who secures higher percentage of marks in matriculation or equivalent Examination (among candidates) should be adjudged as more meritorious. This is the considered view of this Bench as well as other Benches of C.A.T. There is no mention ~~is~~ in these instructions that a compartmental pass should be considered less meritorious.

13. It is true that in O.A.481/91 disposed of on 6.12.94 then Division Bench held that a candidate passing H.S.C Examination in one attempt has to be preferred than a candidate securing higher percentage of marks in compartmental examination. This was taken into consideration because ^{there in} the dispute ~~centerd~~ round the selection to the post of Extra-departmental packer for which the minimum educational

qualification is class 8 only. Keeping this in mind the Divisional Bench appeared to have held so. In fact, this decision has been clearly distinguished by us in O.A.666/98 disposed of on 19.10.99, wherein the appointment of private Respondent to the post of EDBPM was under challenge. That Private Respondent secured higher percentage of marks in H.S.C Examination passing compartmentally than the applicant who passed the same examination in one chance securing the lesser percentage of marks. In that case the department defended the selection of private Respondent on the ground that though he is a compartmental pass secured higher percentage of marks in H.S.C Examination. This was ultimately upheld by us by distinguishing the decision of the Divisional Bench in O.A.481 of 1994. Again in O.A.631/91 disposed of by us on 11.1.99, We reiterated the same by taking note of the decision in O.A.481/94.

14. Thus the consistent view of this Bench in regard selection and appointment of EDBPM is that a compartmental pass candidate securing higher percentage of marks in H.S.C Examination is more meritorious than a candidate passing that same examination in one chance securing lesser percentage of marks. No rule or circular of the department that a compartmental pass with higher percentage of marks should be considered less meritorious than a pass in ^{one chance} persons securing less percentage of marks in selection to the post of EDEPM has been placed before us.

15. Admittedly, the applicant K.Bhaskar Rao secured higher percentage of marks than Respondent No.3 and as such in view of own discussion above we consider him to be more meritorious than Respondent No.3. At this stage it should not be overlooked that in O.A 236/98. We sustained the selection and appointment of the Respondent No.3 as against Biswonath Samal the applicant in that case who was considered less meritorious and not that the Respondent No.3 was more meritorious among all the candidates ^{as} ~~as~~ this was not the issue involved in that case.

16. Thus we have no hesitation to hold that selection and appointment of Respondent No.3 the post of EDBPM G.Rampa overlooking the claim of the applicant cannot be sustained. We accordingly quash the selection and appointment of Respondent No.3. We further direct the Respondent No.1+2 to consider the case of the applicant for the said post within a period of 30 days from the date of receipt of copy of this order.

17. The Original Application is allowed but without costs.

SOMNATH SOM.
SOMNATH SOM
VICE-CHAIRMAN
24.5.2001.

24.5.2001
(G.NARASIMHAM)
MEMBER (J)