

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Ref order dt. 6.12.00

For admission

Bench

Revised
11/12

or. NO. 13

For Admission.

Bench

19/12

For Admission

18/1/01

Bench

On verification of
as found that the rejoinder
tagged on to this OA, belongs
to OA 87/95.

No rejoinder in
OA 87/99 has been filed.

18/1/01.

S. Som

14. 20.12.2000

Lawyers have abstained from Court work
Adjourned to 19.01.2001.

vice-Chairman
20/12

M. Kumar (J),

15. Order dated 19.01.2001

In this application the applicant has
prayed for quashing notice dated 1.12.1998 at
Annexure-3, inviting applications for filling
up of the post of E.D.B.P.M., Manjuri Branch
Post Office. His second prayer is for direction
to Respondents to consider his case for the
post of E.D.B.P.M., Manjuri Branch Office.
Respondents have filed their counter opposing
the prayer of the applicant. No rejoinder has
been filed.

Counsels have been abstaining from Court
work since more than a month and there is no
indication as to when they will be returning to
Court work. Hon'ble Supreme Court in the case of
Raymon Services (P) Ltd. vs. Subhash Kapoor reported
in 2000 AIRSCW 4093 have deprecated the practice
of the Courts in adjourning cases whenever there is
abstention from Court work by the Lawyers. Even
their Lordships have observed that by adjourning
cases under such circumstances, the defaulting
Courts would be contributory to contempt of the
Hon'ble Supreme Court. In view of the law laid
down by the Hon'ble Supreme Court we are not inclined
to adjourn the matter.

Petitioner is not present when called nor
was there any representation from the side of
the Respondents. In view of this we have perused
the records.

For the purpose of considering this
petition it is not necessary to go into too many
facts of this case. The admitted position is that
the applicant worked as E.D.B.P.M., Manjuri B.O.

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in two spells against put off duty vacancy of the regular incumbent one Shri Ananta Kishore Nayak & for the period from 12.12.1983 to 21.1.1988 and again from 18.8.1992 to 11.1.1994. After joining of the regular incumbent the applicant approached the Tribunal in O.A.32/94 disposed of in order dated 28.1.1994 with the direction that the case of the petitioner should be considered along with others for appointment as E.D.B.P.M. of the said Post Office and the experience gained by the petitioner should be taken into consideration. Applicant has stated that as no action was taken he approached the Tribunal in O.A.3/97 and the Tribunal in their order dated 3.1.1997 (Annexure-2) directed consideration of the case of the petitioner. Thereafter in letter dated 25.2.1997 (Annexure-3) applicant was directed to apply in the prescribed form which he did along with necessary documents on 19.3.1997. He was called upon on 1.11.1997 to the Office of the S.D.I.(P) Bhadrak for verification of documents, but before any action was taken on 1.12.1998, the departmental authorities issued notification at Annexure-3, inviting applications from general public for filling up of the post of E.D.B.P.M., Manjuri, what is why the applicant has come up in this petition with the prayers referred to earlier.

Respondents in their counter have stated that the regular incumbent Shri Ananta Kishore Nayak was put under off duty for the third time on 26.9.97 and therefore, employment exchange was asked to sponsor names for the post. The employment exchange sponsored 40 names and all the candidates were asked to submit detailed application with necessary documentation. Five persons including the applicant submitted their applications. The petitioner, in his application applied for the post as a retrenched candidate by virtue of the order of the Hon'ble Tribunal in O.A.3/97. At the time of verification of documents the applicant took the stand that he had passed H.S.C. Examination in 1972 from Baladev Jew High School and the certificates and marksheet had been deposited by him at the time of his initial

Sdm.

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appointment in 1994 against put off duty vacancy. On verification of the office records in the Personal File of the applicant these could be located and it was found that according to certificate applicant was reading in Class-XI at the time of his initial recruitment in 1988 against the put off duty vacancy. As the applicant did not pass H.S.C. examination and did not have the minimum qualifications for the post of EDBPM, his case could not be considered and one Shri B.C. Sahoo was selected. The selected candidate, however, intimated in writing that he was not interested to join the post of E.D.B.P.M., Manjuri Road and because of this in the notice at Annexure-3 dated 21.12.1998 applications were invited reserving the post for S.T. candidates. It was also mentioned that if S.T. candidates would not be available preference would be given to the candidates belonging to O.B.C. failing which to general community candidate. As no application was received from any candidates belonging to S.T. community, the case of the six O.B.C. candidates were taken and on verification of records one Shri S.C.Das one of the O.B.C. candidates who was found most meritorious was appointed. Respondents have stated that as the applicant did not have the minimum qualification for being appointed to the post of E.D.B.P.M., i.e. H.S.C. pass, he could not be considered for appointment to that post. On the above grounds respondents have opposed the prayer of the applicant.

J.M.

From the above recital of facts it is clear that the admitted position is that applicant worked for more than seven years as E.D.B.P.M., Manjuri against the Put off duty vacancy of the regular incumbent Shri A.K.Nayak. It is also established that the applicant has not passed H.S.C. Examination. Respondents have enclosed along with their counter School Leaving Certificate of the Applicant showing that at the time of leaving School, he was reading in Class-XI and this has not been denied by the applicant. It is also the admitted position that originally minimum qualification prescribed for the post of E.D.B.P.M. was

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Class-VIII pass and it was provided that preference would be given to matriculates. This position was changed in March, 1993 and the amended rules provided that for the post of E.D.B.P.M. the minimum educational qualification would be H.S.C. Pass. Therefore, at the time of initial appointment of the applicant against the put off duty vacancy in 1983 the applicant had the minimum educational qualification for being appointed to the post of EDBPM, because at that time the minimum qualification prescribed was Class-VIII pass and the applicant had that qualification. Instructions also provided that when service of an E.D. Agent is dispensed with on the ground of the becoming surplus and such disengagement is unconnected with any deficiency in his work as E.D. Agent, then they should be provided any other E.D. Jobs if they are suitable and willing. The applicant has approached the Tribunal in several other O.A.s in the past for getting such an adjustment as provided in the above instructions. The gist of this instructions have been ~~provided~~ printed at Page-92 of Swamy's Compilation of E.D. Rules (7th Edition). Therefore, the question which arises for consideration is whether the applicant is entitled to be considered for appointment as EDBPM even though he does not have the minimum qualification for that post on the ground that at the time of his initial appointment he did have the minimum educational qualification which was required by then. We have considered this aspect carefully. Giving another engagement to a surplus E.D. Agent is by providing him a fresh appointment. Any such fresh appointment has to be done in terms of the recruitment rules which ~~was~~ ^{is} in force in respect of that post at the time of such recruitment. As the relevant rules were changed in March/93, and the applicant is seeking appointment in the Department after March/93, only ~~the requirement~~ ^{the requirement} of his case has to be considered on the basis of the present recruitment rules. In view of this he could not have been appointed to the post of E.D.B.P.M., Manjuri Road when he applied for the post. The departmental respondents are therefore, justified in issuing

J. Am.

CA-87/99

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fresh notification at Annexure-3 inviting applications for filling up of the post of EDBPM and therefore, the prayer of the applicant for quashing the notice at Annexure-3 is held to be without any merit and the same is, therefore, rejected.

The other aspect of the matter is that applicant had worked for almost eight years as EDBPM against put off duty vacancy. He continued as EDBPM ~~xxxx~~ provisionally even after the recruitment rules were changed. The instructions provided that surplus ED Agents will have to be offered alternative employment if they are willing and suitable. In view of this we direct that the departmental authorities should consider the case of the applicant in case he applies for any E.D. Post other than E.D.B.P.M. and provide him with such appointment in terms of the circular referred to above.

O.A. is disposed of accordingly, but without any order as to costs.

MEMBER (JUDICIAL)

VICE-CHAIRMAN

[Signature]
19/11

Free aspects of
final order
dt. 19.1.2001 given
to both sides.

DS
24.1.01

[Signature]
S.O.C.T.