

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 8 OF 1999
Cuttack, this the 9th day of July, 1999

(PRONOUNCED IN THE OPEN COURT)

Aditya Kumar Rout

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*

2.1.1
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9.7.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

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

Sri Aditya Kumar Rout,
aged a24 yrs., S/o. Sri Dukhabandhu Rout
At: Paika Sahi, Post: Talcher
Dist: Angul

...

Applicant

By the Advocates : Mr.P.K.Padhi

-Versus-

1. Union of India represented by it's
Chief Post Master General(Orissa Circle)
At/PO: Bhubaneswar, Dist:Khurda 754001
2. Superintendent of Post Offices,
Dhenkanal Postal Division
At/PO/Dist: Dhenkanal
3. Sub-Divisional Inspector(Postal)
At/PO: Talcher, Dist:Angul

...

Respondents

By the Advocates : MrS.Behera,
Addl.Standing Counsel
(Central)

...

Som.

ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing notice dated 8.12.1998 at Annexure-4 issued by the Sub-Divisional Inspector(Postal) for cancellation of appointment of the applicant in the post of E.D.M.C., Dera Line. By way of interim relief it was prayed that his services should not be dispensed with. On the date of admission of this O.A. on 14.1.1999 it was directed that in case the applicant was working on that date, his services should not be dispensed with till 29.1.1999. Respondents have appeared and filed their counter.

2. The case of the applicant is that for filling up of the post of E.D.M.C., Dera Line public notices were issued on 7.10.1997 and 3.2.1998. These public notices are at Annexure-1 series. The applicant applied for the post of E.D.M.C. and was duly selected and accordingly tookover the charge of office on 30.3.1998. One of the unsuccessful candidates filed Original Application No.627/98 before this Tribunal in which the present applicant was made Res.5. While the applicant ^{was} continuing as E.D.M.C., Dera Line, he received the impugned notice at Annexure-4 informing him that his selection has been done in contravention of D.G.Posts letter dated 12.12.1997 and therefore, he was served with notice to show cause within one month as to why his services should not be terminated. The applicant has stated that he has been duly selected and appointed and that he has been working to the best satisfaction to his official superiors. He has also stated

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that the reason why his services are going to be terminated have not been indicated to him and therefore, he is not in a position to make effective representation in response to notice at Annexure-4. On the above grounds he has prayed for quashing notice at Annexure-4.

3. Respondents in their counter have pointed out that applicant's father was earlier working as E.D.M.C., Dera Line. He retired on 30.6.1995 and Respondent No.3 irregularly appointed the applicant in the post of E.D.M.C., Dera Line from 1.7.1995 to 9.3.1998. For regularly filling up of the post employment exchange was moved, but they did not sponsor any name. Thereafter the first public notice was issued in response to which only two persons, i.e. petitioner in O.A.627/98 and the present applicant before us, submitted their applications. As the minimum required number should have been at least three, again a fresh notice was issued in response to which three candidates submitted their applications and the applicant was selected after observing all the formalities. Subsequently on receipt of the complaint the selection process file was examined and it was found that Res.3, while issuing notice had wrongly put a condition that the selected candidate must provide a rent free accommodation for holding the E.D.B.O. and as this was selection for the post of E.D.M.C. there was no obligation to provide rent free accommodation. Therefore, it was felt that because of this wrong condition being imposed, several candidates might have refrained from applying for the post. The second irregularity is that in the notice it had been mentioned that the selected candidate must

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be a resident of Post village or any of the villages within the delivery jurisdiction of the Branch Office. Respondents have pointed out that in accordance with D.G.Posts circular, it is not necessary that the selected candidate must be a resident of the concerned Branch Office village, but only after selection he must take up the residence either in the post village or any other village within the delivery jurisdiction. It was also felt that because of these wrong imposition of conditions many intending candidates might not have applied for the post and therefore, selection was held to be vitiated. On the above grounds respondents have opposed the prayer of the applicant.

4. We have heard Shri P.K.Padhi, learned counsel for the petitioner and Shri S.Behera, learned Addl.Standing Counsel appearing for the respondents and also perused the records. It has been submitted by the petitioner that Ernakulam Bench of the C.A.T. in the case of **Chander Shekar Pandey v. Senior Superintendent, Posts, Pratapgarh** and another in T.A.No.5/94 in O.A.1590/93, gist of which has been reported at Pages 292 - 293 of Swamy's Case Law Digest, Vol.XIII - 1997/1 held that an order of appointment could not be cancelled by an officer higher in rank to the appointing authority without the appointing authority exercising his discretion in issue of the order. In this case notice at Annexure-A/4 has been issued by the appointing authority. Learned counsel for the petitioner has also relied on the decision of Ernakulam Bench in the case of **K.Kuttalingam v. The Sub-Record Officer, RMS, Kollam and others**(O.A.No.274/96: Date of Judgment 1.5.1996) gist of which has been reported in Swamy's Case Law Digest,

Vol.XII, 1996/2, wherein it has been held that the authority competent to cancel an order should put the affected person on notice and consider his ^{that} representation. In the instant case, we find that already notice has been issued to the applicant to show cause against the proposal of termination of service and therefore, this decision of the Ernakulam Bench is not relevant for the present purpose. Learned counsel for the petitioner has also relied on the decision of this Bench in O.A.503/98, which was disposed of at the admission stage in order dated 28.9.1998. In that case it was held by the Tribunal that in the notice calling upon the applicant, who had been allegedly appointed illegally, the nature of illegality had not been mentioned and it was held by the Tribunal that this type of notice was not sufficient and therefore, the respondents should indicate the nature of illegality to the applicant to enable him to make an effective representation. In the instant case, we find that in the impugned notice at Annexure-4, it has been mentioned specifically that while giving appointment to the applicant, instructions of D.G.(Posts) in letter dated 13.12.1997 has been violated. From this, it appears that the nature of illegality has been communicated to the applicant. As regards the other illegality with regard to condition imposed, while calling for application from the general public that the selected candidate ^{has} to provide rent free accommodation, the applicant is not required to reply, because, this illegality has been committed by the department authorities themselves and the applicant is not required to answer to this. Therefore, this nature of illegality

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need not be communicated to the applicant. Contention of the learned counsel for the petitioner in this regard is therefore, rejected. From the above discussion of facts it is seen that the respondents had issued defective public notice whereby many intending candidates might have refrained from applying for the post because of the two conditions put therein wrongly. In view of this we do not think that this is a case which merits interference by the Tribunal at this stage.

Before we part with this case, we note that respondents at page-4 of the counter have stated that applicant's services would not be terminated till the final outcome of the Original Application 627/98.

4. In view of the discussions held above we hold that prayer of the applicant for quashing Annexure-4 is without any merit and the same is therefore, rejected, but without any order as to costs. Respondents may go ahead with further action in pursuance of notice at Annexure-4.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO

(SOMNATH SOM)
VICE-CHAIRMAN