

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.212 OF 2000
Cuttack this the 30th day of August, 2001

N.K. Mohanta

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

30-8-01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.212 OF 2000
Cuttack this the 30th day of August/2001

CORAM:

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

Sri Nanda Kishore Mohanta,
S/o. Late Bharat Chandra Mohanta
Vill/PO-Bartania, Via-Saharapara
Dist - Keonjhar, PIN 758016

... 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 751001
2. Superintendent of Post Offices, Keonjhar Division, At/PO-Keonjhar, Dist-Keonjhar-758001
3. Kali Charan Mohanta, aged 40 yrs., EDBPM, S/o. Pravakar Mohanta, Vill/PO-Bartania, Dist-Keonjhar

... Respondents
By the Advocates Mr.J.K.Nayak,
A.S.C. (Res.1 & 2)
Mr.D.P.Dhalasamant
(For Res.3)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Nanda Kishore Mohanta, Respondent No.3 (Kali Charan Mahanta) and four others in response to notification dated 22.8.1995 had applied for the post of Extra Departmental Branch Post Master, Bartania B.O. which fell vacant due to superannuation retirement of the person holding that post by then.

2. During the process of selection, Respondent No.3 filed O.A.42/96 before this Bench seeking direction on the Department to appoint him to that post. The Department opposed that O.A. stating that the sale deed standing in the name of Respondent

No.3 pertains to a joint property and one of the share holders had not given her consent to the sale and as such the sale deed could not have conveyed title in favour of Respondent No.3. Respondent No.3 then filed power of attorney ^{executed} entitled by that shareholder in favour of the two vendors executing the sale deed. Still the Department contended that the sale deed is silent about the power of attorney and that the shareholder had consented.

3. This O.A. was disposed of on 15.4.1999. This Bench, while holding that Respondent No.3's candidature should not have been rejected, issued the following directions in Para-9 of the order:

" Having said this, we find from the counter of the respondents that candidatures of several other persons out of the seven candidates have been rejected on the same ground. In view of this, we feel that like the applicant those persons whose candidatures have been rejected because of purchase of joint family property from one or some of the larger number of share-holders should not have been rejected. We, therefore, direct the respondents to consider the candidatures of the seven persons in the check-list once again strictly in accordance with the departmental rules and instructions and in the light of our observation above, and select the best person amongst them. The candidature of the person who has not submitted the necessary documents need not, however, be considered".

4. Thereafter Respondent No.3 was selected and appointed. This O.A. has been filed for quashing that appointment and for applicant's appointment to that post on the ground that amongst the candidates in the zone of consideration he secured the highest percentage of marks in the H.S.C. Examination and that he also fulfills the property criterion.

5. Department and Respondent No.3 filed separate counters. Respondent No.3's version is that he secured more marks



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in the Matriculation or equivalent examination than the applicant and that the applicant had not properly filled in the application form.

The Department in their counter though admit that amongst the candidates applicant secured the highest percentage of marks in the H.S.C., oppose the O.A. stating that the sale deed submitted by the applicant relates to a joint property from share holders out of whom only two had executed the deed without the consent of the other two and as such the sale deed did not confer face title on the applicant. Moreover, in his application (Annexure-R/2) as against Col.4(i), he had mentioned "no adequate income from other source". Accordingly his candidature was rejected. As per observations of this Bench in O.A.42/96, Respondent No.3, who secured the next higher percentage of marks and who could produce patta in respect of 041 decimals of land was rightly selected and appointed.

6. In his rejoinder filed in 1.2.2001, applicant takes the stand that the land 0.54 decimals purchased by him is not in dispute and he being a share-holder purchased it from his brothers, who are other shareholders and has since obtained Patta (Annexure-4). On the other hand the land purchased by Respondent No.3 is in dispute as the seller Ananta Mohanta is still in possession and running a title.

7. Heard the learned counsel on record.

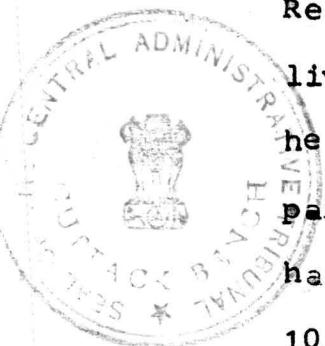
8. In order to be eligible for the post of E.D.B.P.M., one must have passed Matriculation or equivalent examination and must have adequate means of livelihood. A person having adequate means of livelihood cannot become E.D.B.P.M. if he has not passed Matric or equivalent examination. There is no



dispute that H.S.C. is equivalent to Matriculation. Consistent view of this Bench as well as the other Benches of C.A.T is that amongst the candidates applying for the post, candidate securing higher percentage of marks in Matriculation or H.S.C. will have to be selected unless he is disqualified in some other aspect, as for instance, not possessing adequate means of livelihood.

9. Annexure-R/1 of counter of the Department is ~~of~~ relevant check sheet. It discloses that the applicant secured 297 marks out of 700 in H.S.C. Examination, i.e. 41.41%, without adding the marks in extra optional and this percentage is the highest amongst the seven candidates. Next to the applicant, Respondent No.3 secured 41.25%, i.e., 330 out of 800. Hence under normal conditions applicant was to have been appointed. But the Respondents' explanation is that he has no adequate means of livelihood; that in the application form against column No.4 (i) he had mentioned "no adequate income from other source"; and particularly according to Respondent No.3, the application form has not been properly filled.

10. Annexure-R/2 the application form of the applicant containing the signature of the applicant discloses that no column remained unfulfilled. It even contains the list of 12 enclosures. Respondent No.3's objection in this connection has no basis. As to mention of particulars corresponding to Col. 4(i), the same has to be read along with particulars under Column 3(c) "if having landed property of his own". The answer given is 'yes'. Thus it is clear that the applicant has no adequate income from other source excepting from lands. By no stretch of imagination it can be understood that the



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applicant meant that he has no adequate income even from lands.

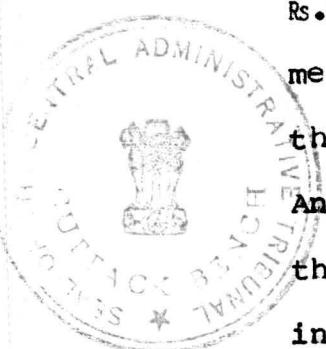
11. Next for consideration is whether the applicant has adequate means of livelihood. Annexure-R/3 to the application of the applicant discloses that he submitted 'Income Certificate' issued by the Competent Authority. Further the checksheet Annexure-R/1 discloses that this income certificate reveals annual income of Rs.10,000/- (ten thousand) from agricultural source. It is not the case of Respondents that this certificate is not genuine or that the Competent Revenue Authority issued the same arbitrarily without following the relevant procedure. It is inconceivable that a person during year 1995 having annual income of ten thousand rupees from lands, that is, about Rs.800/- per month can be branded as a person having no adequate means of livelihood to man the post of E.D.B.P.M., which by then was carrying monthly allowance of only Rs.275/- (vide Annexure-R/3, advertisement dated 22.8.1995), more so when the D.G.Posts Circular dated 6.12.1993 marked as Annexure-R/5 in this disposed of O.A.42/96 clarifies that it is not necessary to quantify adequate means of livelihood.

12. The criterion "adequate means of livelihood" is dealt under Instruction No.3 in Chapter "METHOD OF RECRUITMENT", Swamy's Compilation of Service Rules for Postal E.D. Staff. This instruction No.3 runs as follows :

"3. Income and ownership of property:

The person who takes over the agency (ED SPM/ED BPM) must be one who has an adequate means of livelihood. The person selected for the post of ED SPM/ED BPM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business) premises such as shops, etc., may be preferred)"

This instruction does not lay down that the person to



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be selected as EDBPM must own landed property exclusively in his own name. Even a person having fat bank balance or other assets, like building, vehicles and so on, can come under the category of person having adequate means of livelihood. In fact in Para-6 at Page-76 of Swamy's Compilation of Service Rules for Postal E.D.Staff (99th Edn.) the criterion to judge adequate means of livelihood has been indicated as follows :

"... The criterion to judge "adequate means of livelihood" should be that, in case he loses his main source of income, he should be adjudged as incurring a disqualification to continue as ED SPM/ED BPM. In other words, there must be absolute insistence of the adequate source of income of ED SPM/BPM and the allowances for his work as ED SPM/BPM must be just supplementary to his income. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such, business premises such as shops, etc., must be preferred regardless of the various categories of preferences mentioned above."

(DG P & T Letter No.43-84/80-Pen., dated the 30th January, 1981 and Corrigendum dated the 29th March, 1981, D.G.Pts letter No.41-301/87-II (ED & Trg.) dated the 6th June, 1988 and No.17-366/91-ED & Trg., dated the 12th March, 1993)



Thus the aforesaid instruction is clear as to what the Department originally meant by adequate means of livelihood is that the person selected as EDBPM must have the means to offer office space to serve for the agency premises for postal operations as well as public call office. It is not the case of the Department that the applicant has no such means.

At this stage it is profitable to quote the following observations of the Division Bench of the Central Administrative Tribunal, Jaipur Bench in the case of Kailash Chandra Sharma vs.

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Union of India & Ors. reported in (1996) 32

A.T. Cases 35 (At Pages 37 and 38):

"The learned counsel for the respondents argued that the requirement of adequate means of livelihood implies that the applicant should himself have sufficient property in the village concerned before his appointment. Then only can he be said to have adequate means of livelihood. In our view this is stretching the matter too far. We have first to look at what is contained in the above provision and what are the reasons given in the order which is the foundation or the basis for termination of the applicant's service. All that is mentioned in the order Annexure. R/1, which is the basis for ordering termination is that the applicant did not own immovable property in his own name and that he had been studying at Niwai, which is another place. Studying at another place is not a disqualification for appointment as E. D. B. P. M. There is no specific, clear and categorical requirement in the provisions reproduced above that the applicant must necessarily possess property in his own name. We cannot link the means of livelihood with possession of property when no such linkage has been established in the Rules and perhaps cannot be established even otherwise, because a person may possess means of livelihood without owning any property".

In O.A.65 of 1998 and O.A.439/2000 disposed off

by this Bench, the aforesaid view of Jaipur Bench was

accepted as correct. In these two disposed of OAs we held that a candidate to the post of EDBPM to come under that the expression "adequate means of



"livelihood" need not necessarily own landed property exclusively in his own name. Moreover, in our direction in judgment (Annexure-R/3) in O.A.42/96, it was made clear that persons whose candidatures have been rejected because of purchase of joint family property from one or some of the larger number of shareholders should not have been rejected. Even otherwise specific averment in the rejoinder dated 1.2.2001 that the applicant has since obtained R.O.R. (Annexure-4) in his name in respect of very land covered under the sale deed executed in his favour has not been disputed during hearing on 9.8.2001.

13. Thus we are of the view that the applicant should have been appointed to that post in place of Respondent No.3, without being disqualified on the ground of having no means of adequate livelihood.

14. Before closing the judgment, we may refer to one aspect developed subsequent to the conclusion of arguments on 9.8.2001. After closure of arguments, Shri Dhalasamant, the learned counsel for Respondent No.3 requested for time to file some circular and decision for our reference and accordingly time was allowed till 13.8.2001. On 13.8.2001, instead of filing any circular or decision, Shri Dhalasamant filed notes of argument. Even in these notes there is no challenge as to the genuineness of the R.O.R. (Annexure-4) filed with rejoinder. The points dealt therein have already been discussed by us in the preceding paragraphs. But three Supreme Court decisions referred therein with reference to 'SCC' journals could not be verified by us as 'SCC' journals are not available in our Library and xerox copies of the same have not been filed. Still these decisions are not relevant



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for deciding the issue "adequate means of livelihood", involved in this case, because the notes disclose the same have been mentioned in support of submission that Courts cannot sit in judgment over the wisdom of executive in choosing the mode of recruitment. There is no dispute before us regarding the mode of selection. What is in dispute is that interpretation of expression "adequate means of livelihood" which is a criterion for selection.

15. In view of our discussion above, we quash the selection and appointment of Respondent No.3 to the post of E.D.B.P.M., Bartania in Keonjhar Division. Departmental respondents are directed to consider the applicant for that post, bearing in mind the legal position as discussed above, within a period of 60(sixty) days from the date of receipt of copies of this order.

14. In the result, O.A. is allowed, but without any order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN 2/101

30.8.01.
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

B.K.SAHOO//