

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.473 OF 2000
Cuttack this the 12th day of May 2004

Niranjan Mali ... 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 ? Yes

(M.R. MOHANTY)
MEMBER (JUDICIAL)

12/05/04

(B.N. SENGUPTA)
VICE-CHAIRMAN

V
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.473 OF 2000
Cuttack this the 12th day of May 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

...

Sri Biranjan Mali, aged about 25 years,
S/o. Damu Mali, Village/P.O. Ambadela,
Via-Miriganiguda, Dist-Nabarangapur

...

Applicant

By the Advocates

M/s.R.K.Sahoo
B.K.Mehanty
N.K.Prahraj
P.K.Khulei
R.Ray

- VERSUS -

1. Union of India represented through Chief Post Master General, Orissa, Bhubaneswar
2. Senior Supdt. of Post Offices, Keraput Division, Jeypore (K), At/PO-Jeypore, Dist-Keraput
3. Sub-Divisional Inspector of Postal, At/PO/ District-Nabarangapur
4. Damburu Mali, S/o. Mahadev Mali, Village-Duduriguda, P.O.-Ambadela, Via-Miriganiguda, Dist-Nabarangapur

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Respondents

By the Advocates

Mr.J.K.Nayak, A.S.C.
Mr. A.Dee
Mr. M.P.J.Ray
Mr.R.K.Dash R. 4

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: This Original Application, under Section 19 of the A.T.Act, 1985 has been filed by the applicant, Shri Niranjan Mali, being aggrieved with the appointment of Respondent No.4 (Shri Damburu Mali) to the post of Extra Departmental Branch Post Master (in short E.D.B.P.M.) of Ambadela Branch Office. His allegations are that the Res.No.4 has secured less marks

than him and also does not possess the requisite qualifications as required for that post. On the other hand, it is stated that the applicant had all the requisite qualifications. In the circumstances, alleging ~~alleged~~ that the selection was made in an arbitrary manner, violating the principles of natural justice and with mala fide intention, he has prayed for quashing the selection and appointment of Respondent No.4 to the post in question, ^{and} ~~and~~ ^{inter alia} to direct the Respondents to consider his case in lieu thereof.

2. The Respondents-Department have stoutly refuted all the allegations and have said that the selection was made strictly in accordance with the rules and instructions as prescribed in this regard by the Department, at the outset by placing requisition to the Employment Exchange and simultaneously issuing public notification inviting applications from the open market. It is their case that in response to the advertisement, more than 40 applications were received and vide Annexure-R/5, they have shown in details, against each and every candidate's name, with ¹⁵ ~~2~~ reasons for not accepting their candidature. They have further stated that the applicant, whose name does appear in the said list (at Sl.No.3) had secured 44.53% marks in H.S.C. and had submitted all the required documents. Prima facie his candidature was found good for appointment and therefore, the documents submitted by him were referred to the Sub-divisional Inspector (Posts), Nabarangapur for verifying the genuineness of these. However, the said authority could verify all the documents except the

land document because of the inability of the applicant to produce its original. The reason as disclosed by the said authority in this regard was that the applicant had mortgaged his land to a bank for obtaining loan. The applicant had also sought time to produce the original document which was granted to him. However, after waiting for some months for the applicant to submit the original land document, the candidature of the next candidate, viz., Damburu Mali (Res. No. 4) was taken into consideration and after verifying the genuineness of all the records, he was given appointment. On these grounds the Respondents-Department have prayed for dismissal of this O.A. being devoided of merit.

3. We have heard the learned counsel for the parties and also perused the materials placed before us.

4. The only ground on which the candidature of the applicant found not fit was his inability to produce the originals of the land documents for verification and satisfaction of the Respondents. In this regard, we have perused the report of the Sub-divisional Inspector (Postal) at Annexure-R/7 and this document has not been repudiated by the applicant in his rejoinder. However, the applicant, instead of clearly stating the cause of his inability to produce the original land document has made an allegation against the Respondents-Department that they indulged in favouritism and that is how he has been discriminated. In his rejoinder to the counter, he has sought to argue that even though he had mortgaged his landed property that had in no way affected his right or title and/or interest

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on the property and that until and unless the said property was decreed in a suit he could not have been dispossessed of his ownership. The learned counsel for the applicant, during oral inquiry, argued before us that insistence on production of original land documents was in fact had no legal basis. Relying on the judgment of Rajasthan High Court in the case of Anil Kumar Agarwal vs. State of Rajasthan and another reported in 1984(2) SLJ 621 (Raj) and on the judgment of Kerala High Court in the case of Kuriakose v. State of Kerala(Ker) reported in 1985(1) SLR 191, he sought to persuade us that failure to produce the original documents ~~could~~ ^{could} not have been vital in the matter of appointment.

5. We have gone through these decisions. However, we are of the opinion that these decisions do not have any application in the instant case. In the case of Anil Kumar Agarwal (supra) the Rajasthan High Court held that if a candidate could not produce the degree certificate from the University because of delay of issue of the certificate by that authority, the appointing authority could depend on the mark-sheet reasonably to be satisfied about the educational qualification of the candidate. In so far as Kuriakose (supra) case is concerned, the Kerala High Court held that the rules of procedure should not be rigidly adhered to which may entail refusal of selection to a person for a job. The learned counsel for the Respondents by drawing our notice to P & T Manual (Vol-IV, Para 284) as well as D.G.P&T Instructions/letter No.13-127/71-Pen. dated 28.4.1971 submitted that one of

the prime criteria for holding a candidate eligible for appointment to the post of EDBPM is that he must be a substantial person with un-encumbered-movable property. He further submitted that as adhering to eligibility conditions provided in the recruitment rules are inviolable conditions of law and that the application of these are irrespective of caste, creed, colour or sex etc., the provisions of Article-14 will be infringed in case its edge is curbed in respect of its application in particular by obliterating the broad and composite meaning of general application and under these circumstances, the Respondents-Department were duty-bound to comply with the rules and instructions in its letter and spirit. In the instant case, the applicant has now clearly admitted that his property was already mortgaged with a bank and therefore, in terms of the eligibility conditions prescribed for recruitment of EDBPM, he did not have the eligibility for being considered. This being the rule position and the Respondents-Department having adhered to rules and instructions governing the field in its proper perspective in the matter of selection of EDBPM, their decision in the instant case can not be called in question. As regards the allegation made by the applicant with regard to favouritism and/or discrimination, this holds no water, because, he has failed to prove these allegations to the hilt.

6. Having regard to what has been discussed above, while we uphold the decision of Respondents-Department in appointing Res.No.4 to the post of

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EDBPM, Ambadela Branch Office, we dismiss the prayer
of the applicant as made in this O.A. being devoid of
merit. No costs.

~~(M.R. MOHANTY)~~ 12/05/04
MEMBER (JUDICIAL)

~~Subro~~
(B.N. SOM)
VICE-CHAIRMAN

BJY