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12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 500 OF 2000
Cuttack this the 12th day of May 2004

Ganeswar Ojha

...

Applicant(s)

- VERSUS -

Union of India & Others

...

Respondent(s)

FOR INSTRUCTIONS

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

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

13

13

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 500 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)

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Ganeswar Ojha, aged about 42 years,
S/o. late Mahadeb Ojha, Vill/PO-Jaguleipara
PS/Dist-Kendrapara

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Applicant

By the Advocates

M/s. D.R. Pattanayak
M.K. Khuntia
S.K. Das
A.B. Chaudhury
R.K. Routray

- VERSUS -

1. Chief Post Master General, Orissa, Bhubaneswar,
At/PO-Bhubaneswar, Dist-Khurda
2. Superintendent of Post Offices, Cuttack North Division,
At/PO/Dist-Cuttack
3. Inspector Post Offices, Salipur, Dist-Cuttack
4. Shri Sarbeswar Das, S/o. Mukunda Das,
At/PO-Jaguleipara, Dist-Kendrapara

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Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.
M/s. Dayanidhi Mohanty
K. Lenka (Res. 4)

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Shri Ganeswar Ojha (applicant) in this Original Application under Section 19 of the A.T. Act, 1985, has challenged the action of Respondent No. 3 in appointing Res. 4 (Shri Sarbeswar Das) to the post of Extra Departmental Delivery Agent - CUM - Extra Departmental Mail Carrier (in short EDDA/MC) of Jaguleipara S.O. on the ground that the said action is arbitrary, illegal being violative of Articles 14 and 16(1) of the Constitution of India.

9

14

2. The facts of the case are that the applicant having gained some experience in working as B.P.M. wayback in 1976 had applied for the post of EDDA/MC, Jaguleipara S.O. He belongs to the village Jaguleipara and had also passed H.S.C.Examination. He belongs to OBC community and this post having been advertised to be filled up by an OBC candidate, he was hopeful to be selected. In stead, Res. No.3 appointed Res.No.4, without considering his case in utter violation of Articles 14 and 16(1) of the Constitution. He has, therefore, approached this Tribunal with prayer to direct the Respondents-Department to give him appointment against the post of EDDA/MC, Jaguleipara S.O.

3. The Respondents-Department have opposed the prayer of the applicants. They have refuted the allegation of the applicant that the appointment to the post in question was made in violation of any of the prescribed rules or instructions on the subject nor did they violate any of the constitutional provisions in the matter of employment in Government offices. They have submitted that in response to the vacancy circular dated 17.4.1999 for the post, the Employment Exchange, Kendrapara did not sponsor any candidate whereas in response to open notification they had received 21 applications. The post was in the first consideration of instance reserved for ST community candidates failing which the candidates from OBC community were to be considered. AS no ST candidate was available for consideration/ appointment, the selection was therefore, made out of the eligible OBC candidates, wherein one Shri Trilechan Sahoo was selected on merit. However, Shri Sahoo, the selected candidate could not take up the assignment due

2

local resistance and that is how he tendered his resignation from that post. Thereafter the post was again notified on 22.4.2000 calling names from the Employment Exchange as well as through open notification. This time also the Employment Exchange could not sponsor any candidate, but nine applications were received in response to open notification of which no one belonged to S.T. community, but belonged to OBC community. From among these nine candidates, Res. No. 4, viz., Shri Sarbeswar Das having secured the highest percentage of marks and having fulfilled all other required conditions was selected for the post. On the other hand, the applicant could not be selected on the ground that he was not the most meritorious amongst all the candidates. The Respondents have added that the applicant's past experience for having worked as substitute BPM was of no avail as there is no provision for giving weightage to the past experience in so far as selection of E.D. Agents is concerned. With this submission the Respondents-Department have prayed for dismissal of the O.A. being devoid of any merit.

4. Respondent No.4 has also filed a counter opposing the prayer of the applicant. In this counter Res.4 has submitted that whereas he had secured 324 marks in the H.S.C. Examination the applicant had secured only 281 marks and therefore, the applicant did not have a better claim than him. He has also argued that the plea of the applicant for giving weightage to his past experience does not hold any water and it was only a bland statement to mislead the Court.

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5. We have heard the learned counsel for the parties and perused the materials placed on record.

6. In the O.A. the applicant has challenged the selection of Res.No.4 on the ground that the selection was undertaken in violation of Articles 14 and 16(1) of the Constitution of India, and, secondly, that the Respondents-Department, while selecting the candidate for the post in question ignored his past experience. Neither of these two arguments contain any substance. We do not see how the allegation of violation of Article 14 of the Constitution could be levelled when the post was notified/circulated strictly according to the procedure prescribed for this purpose by the Department, i.e., notifying the vacancy to the Employment Exchange and also resorting to open/public notification. It has also been pointed out by the Respondents-Department that in pursuance of notifications dated 17.4.1999 and 22.4.2000, 21 and 9 candidates respectively applied for the post. Viewed from this angle, the allegation of the applicant that Article 14 of the Constitution has been infringed seems to be ~~unfounded~~ ^{baseless} and unfounded. Similarly, we do not see substance in the argument of the applicant that Article 16(1) of the Constitution has been violated. As regards the plea of the applicant that his past experience has not been given due weightage by the Respondents-Department in the matter of selection, we are of the opinion that this proposition of the applicant will be of no avail on the ground that there is no such provision in the recruitment rules of ED Agents. Besides this, it is the settled position of law that no weightage can be given

17

to the experience gained as substitute in the matter of selection to E.D. posts. It was the further submission of the learned counsel for the applicant that the selection was not made strictly in accordance with recruitment rules. It is his submission that the recruitment rules prescribe as under :

" Educational Qualifications: - E.D. Delivery Agents - VIII standard. Preference may be given to the candidates with Matriculation qualifications. No weightage should be given for any qualification higher than Matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English".

In the instant case the learned counsel for the applicant pointed out that the Respondents-Department did not call for Class-VIII mark-sheet from any of the candidates nor did they hold any examination for assessing the knowledge of the candidates in arithmetic and regional language. He, therefore, submitted that because of these shortcomings in the procedure of selection the same should be declared null and void. The learned Sr.Standing Counsel for the Respondents, however, opposed this submission stating that the applicant having not agitated this point in the O.A. as a ground for challenge the selection, he, at this stage, is estopped from raising this. It is the further submission of the learned Sr.Standing Counsel that the applicant having not challenged either of the notifications dated 17.4.1999 ~~or~~ ^{being} 22.4.2000 wherein despite the qualification prescribed for the post in question Class-VIII standard, it was laid down that preference may be given

18

Matriculates and the applicant having accepted this position without demerit and further that he having been considered along with others as Matriculate candidate, he is ^{not} precluded to raise this issue at this stage. We see lot of force in the submission of the learned Sr. Standing Counsel and hold that the applicant is estopped to raise this point now after having participated in the selection process without protest, because, whether non calling for Class-VIII mark-sheet of all the candidates and not holding a separate test for assessing the level of knowledge of all the candidates in arithmetic and regional language was fatal in so far as selection of EDDA/MC is concerned could have been an issue for adjudication had the applicant's case been ignored by the Respondents-Department on those grounds. The learned Sr. Standing Counsel also submitted that the Respondents have no doubt assessed the comparative knowledge of the candidates in arithmetic and regional language through their performance in the Board level examination wherein the candidates had one compulsory paper in Oriya (regional language) and one paper in Mathematics (including arithmetics).

We have gone through the decision of the Hon'ble Supreme Court of India in the case of Bibhudatta Mohanty v. Union of India (reported in AIR 2002 SC 1503) in support of the contention raised by the learned counsel for the applicant. As referred to earlier, it is not the case of the applicant that the Respondents-Department did not consider his case on the ground that he was a non-Matriculate/Class-VIII standard and straightaway selected the candidate having Matriculate qualification. It is the contention of

6

19

- 7 -

19

the Respondents that they selected that candidate for the post out of the nine in the zone of consideration, who had fulfilled all the required conditions and among them Res.No.4 being the most meritorious was chosen for the

post. . Thus, they have followed the ratio in the case of Bibhudutta Mohanty (supra) which lays down the law as follows :

" Where any rule or guideline provides preference in respect of some qualification, it only means that all other requirements being equal a person possessing higher educational qualification will be preferred".

Having regard to what has been discussed above, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for by him and in the circumstances, the O.A. being devoid of merit is dismissed. No costs.

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

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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