

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.526 OF 2000

Cuttack this the 25th day of September, 2008

Ramesh Chandra Nayak and others

.....

Applicants

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B. of CAT or not?

(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.526 OF 2000

Cuttack this the 25th day of September, 2008

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

- ...
1. Ramesh Chandra Nayak, Son of Duryodhan Nayak of Village-Kapileswar, PS-Niali, District-Cuttack
 2. Satyabadi Biswal, Son of Narayan Biswal of Village-Balarampur, P.S./District-Jagatsinghpur
 3. Babaji Charan Pradhan, son of Nilambar Pradhan, of village-Reso, P.S. Pattamundai, District-Kendrapara

... Applicants

By the Advocates: M/s. D. Nayak,

R.C. Swain

S. Swain

S.K. Moharana

P.K. Mishra

-VERSUS-

1. Union of India represented through its Secretary, Department of Posts, Dak Bhawan, New Delhi
2. Chief Post Master General, At/PO-Bhubaneswar, Dist-Khurda
3. Senior Superintendent, R.M.S., (North Division), Cuttack
4. Head Record Officer, R.M.S., (North Division), Cuttack
5. Deepak Kumar Behera, At-Jobra, Tala Sahi, Cuttack-753 003
6. Pradeep Kumar Das, C/o. Khetramohan Das, At-Tulasipur, Cuttack-753008
7. Prahallad Naik, At/PO-Cuttack GPO, Buxi Bazar, Cuttack-753001

... Respondents

By the Advocates: Mr. U.B. Mohapatra

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Applicants (three in number) have approached this Tribunal praying to quash the selection of Res. 5 to 7 for the new existing three posts of EDMM.

(S)

They have also prayed to direct the Respondent-Department to appoint them in the post of EDMM on regular basis in view of their experience and seniority.

2. As the question raised in this O.A. has already been set at rest by the judgment dated 15.7.2000 of the Hon'ble High Court of Orissa, in O.J.C.No.17400/98, the only fact to be considered is whether this O.A. requires any further consideration by this Tribunal or not. To answer the above question, short fact of this case now presented in this O.A. is to be described, as under.

3. The three applicants were provisionally appointed as Extra Departmental Mail Man (in short EDMM) in R.M.S. North Division, Cutback, during 1982-83 on daily wage basis. While continuing as such, regular vacancies of three posts of EDMM occurred during 1992. The Respondents having not considered the applicants for their appointment as against the said regular vacancies having due regard to their past experience, they moved this Tribunal in O.A. Nos.53, 60, 61 and 69 of 1992 seeking regularization of their service. Those Original Applications were disposed of by this Tribunal on 7.3.1997 directing the official respondents therein to consider the suitability of the applicants for regularization in the posts of EDMM in accordance with rules subject to giving them the relaxation of age, if necessary, to the extent of service rendered by them in the Department previously against the vacant posts which they propose to fill on regular basis. While the matter stood thus, applicant Nos. 1 and 2 herein filed two Misc.Applications in O.A.No.53 and 60/92 to consider the case along with the applicants in the above mentioned O.As and accordingly, the Tribunal directed so. However, at the time of selection, Res. 4 appointed 13

00)

X

persons as regular EDMM in the H.R.O. R.M.S.(N) Division, Cuttack. Being aggrieved by such selection, the applicants filed another O.A. 725/97 before this Tribunal with prayer to quash the appointment of 13 newly appointed EDMM selected by the 4th Respondent and to consider their case having regard to their experience, seniority and suitability. While the matter stood thus, the 3rd Respondent being the higher authority of Res.No.4 reviewed the selection and appointment made by the 4th Respondent and having found the same fraught with serious irregularities, passed an order dated 8.6.1998 declaring the appointment of 13 persons so made by Res.4 null and void. This action of Respondent No.3 gave rise to filing Original Application No.300 of 1998 before this Tribunal by the 13 aggrieved applicants. This Tribunal rejected the claim of the applicants therein and directed the Respondents to give fresh opportunity to all the 73 candidates to submit the complete documents. It was also directed that before the appointment orders could be issued, Respondent No.4 should submit file before Respondent No.3. Being aggrieved by the above order dated 10.12.1998 of the Tribunal, 13 applicants preferred O.J.C. No.17499/98 before the Hon'ble High Court. It is to be noted that by the order dated 10.12.1998 of the Tribunal in O.A.No.300/98, the prayer of the applicants in O.A. 725/97 rendered infructuous. While the entire process was in a state of impasse, having occurred three more vacancies of EDMM, the Respondent No.4, without considering the candidature of the applicants, appointed Res. 5, 6 and 7, who are out of the 73 candidates relating to which the matter is sub judice before the

(M)

Hon'ble High Court and hence, the applicants have filed the present Original Application.

4. In this background, it is advantageous to quote hereunder the decision dated 15.7.1998 of the Hon'ble High Court in O.J.C.No.17400 of 1998.

“Considering the submissions made by the learned counsel for the respective parties and after going through their pleadings as well as the impugned order dated 8.6.1998 (Annexure-4) and order dated 10.12.1998 passed by the learned Tribunal in O.A.No.300 of 1998 (Annexure-5), we are of the considered view that no illegality has been committed by the opposite party No.3 in passing the order dated 8.6.1998 (Annexure-4) since he has been vested with the power to review the case of appointment as per the Departmental Rules in force as well as the Circular/instruction issued by the Director General, Posts and Telegraph in this regard and since opposite party No.3 is higher in rank than opposite party No.4, he has every right to review the selection process and pass appropriate order in the matter, if the selection process is riddled with irregularities, omission and commissions. As such, there is also no illegality, irregularity and/or manifest error of law in the impugned order dated 10.12.1998 passed by the learned Tribunal in O.A.No.300 of 1998 (Annexure-5), which would call for any interference by this Court.

In view of the above, we are not inclined to interfere in the matter. The writ petition is accordingly dismissed as the same is devoid of any merit.

Since the writ petition is dismissed and the process of selection is already over in compliance of the order dated 10.12.1998 of the Tribunal (Annexure-5) as well as order of this Court dated 14.12.1998 passed in Misc.Case No.16064 of 1998, the Departmental Authorities are directed to proceed with the matter. All Misc.Cases are accordingly disposed of and as such interim orders stand vacated”.

5. From a reading of the above, it is clear that the entire case of the applicants herein has been already taken into consideration by the Hon'ble High Court. The Hon'ble High Court, while upholding the power, authority and jurisdiction of 3rd Respondent in the matter of reviewing the selection and



5

19
appointment made by the 4th Respondent, also confirmed the order passed by this Tribunal in O.A.No.300/98. In the light of the above, we are of the view that nothing more remains to be considered by this Tribunal in the instant O.A. regarding the claim of the applicants. However, it is also made clear that the applicants are entitled to be considered ^{for} by the selection made by the authorities as per the judgment of the Hon'ble High Court.

6. In the above circumstances, the O.A. stands disposed of as above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER