

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 649 of 2000
Cuttack, this the 5th day of Nov. , 2004

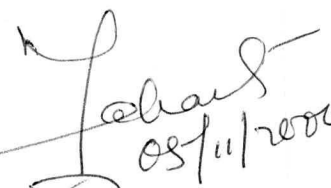
Jitendra Kumar Mohapatra & Others Applicant

Vrs

Union of India & Others Respondents

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)


(B.N. SGM)
VICE-CHAIRMAN

12

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CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

1. Jitendra Kumar Mohapatra aged about 22 years, S/o Kailash Mohapatra, At-Gajapati Nagar, P.O.-Jatni, Dist-Khurda.
2. Sri Pradipta Kumar Mohanty, aged about 24 years, S/o Late Somnath Mohanty, Vill-Gajapati Nagar, P.O.-Jatni, Dist-Khurda.
3. Sri Chaitanya Behera aged about 30 years, S/o Sri Tikan Benara, Vill-Jamujhari, P.O.-Mendhasala, Dist-Khurda.

..... Applicants

Advocates for the Applicants - M/s. G.Rath, S.Misra,
T.K.Praharaj

Vrs.

1. Union of India represented through its Director General of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda.
3. Sr. Superintendent, R.M.S., 'N' Division, Khurda Road, Dist.-Khurda.
4. Sub-Record Officer, R.M.S., 'N' Division, Khurda Road, Dist-Khurda.
5. Satyaban Behera, S/o. Late Debaraj Behera, At-Kardarpur, P.O.-Jatni, Dist-Khurda.

..... Respondents

Advocate for the Respondents - Mr. U.S.Mohapatra, Sr. St.
Counsel (Central)

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13

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Jitendra Kumar Mohapatra and two others have filed this O.A. being aggrieved by the notice dated 27.11.2000 issued to them by Respondent No.3 as to why their appointment as Extra Departmental Mail Man should not be cancelled as the selection process undertaken by the department was irregular.

2. The facts of the case in short are that Respondent No.4 had carried out selection of Extra Departmental Mail Man by placing requisition on Employment Exchange on 30.8.99 and by issuing a public notification. Thereafter, the said authority selected three candidates, two from the OC community and one from ST community for the said posts. Being aggrieved with the decision of Respondent No.4, two of un-selected candidates approached this Tribunal in O.A. No. 590/99 challenging the appointment of the applicants. The Tribunal disposed of the said O.A. on 16.10.2000 observing that as the official Respondents in their counter have noticed serious procedural irregularity in the selection process, they were given liberty to take such action as was permitted under law with regard to removing the irregularities referred to in the counter. It was also ordered that the process of review should be completed within a period of 60 days

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14

from the date of receipt of the copy of that order. The plea of the applicants is that since the alleged irregularities were committed by the Respondents, the applicants should not be made to suffer and that the impugned notice should be declared bad and illegal.

3. In their counter, the Respondents have disclosed that in pursuance of the order of this Tribunal, they had issued show-cause notice to the three selected candidates; i.e. the applicants in the present O.A. and after considering their representations, their services were terminated, in respect of applicant No.1 and 3 w.e.f. 12.1.01 and in respect of applicant No.2 w.e.f. 17.2.01.

4. The Respondents have also pointed out that there were serious procedural irregularities in the selection process which were as follows :

(i) The public notification inviting applications for selection of EDMM had not been given wide publicity.

(ii) The age limit advertised was contrary to the age prescribed in the recruitment rules.

(iii) The condition of residency for the posts was changed, in contravention of the recruitment rules.

(iv) The general candidates sponsored by the Employment Exchange were not asked to produce their certificates.

(v) All the ST candidates sponsored by the Employment Exchange were not called to produce their documents, only

6

15
four candidates were asked to produce documents.

(vi) Rejection of candidature of some of the candidates due to non-receipt of residency certificates.

(vii) No statement showing comparative merit of the candidates in the zone of selection was prepared.

On account of these irregularities noticed in the process of selection Respondent No.3 had declared the selection as "Null and Void".

5. We have heard the Ld. Counsel for the rival parties and have perused the records placed before us.

6. The sole point raised by the applicants for answer is whether after their appointment to the posts the same could be terminated on grounds of procedural irregularities committed in the selection process.

7. Fair and transparent selection process is the hallmark of public policy and public accountability. The ED/GDS posts having been held as civil posts under the Government, the Respondents are bound under law to ensure public accountability. To fulfill the demand of public accountability, recruitment rules are framed laying down eligibility conditions for recruitment to posts and no deviation is permissible. The Respondents, in the instant cases, have given detailed reasons why the selection to the post of ED Mail Man carried out by Respondent No.4 had to be declared "Null and Void"; these having been made in total contravention of the recruitment rules. It is also the

16
uncontroverted fact of the case that some irregularities were committed by the recruiting authority. Thus, when the Respondent No.3 detected the irregularities committed in the process of selection, he could not have avoided taking proper action to set right the matter.

8. In this regard, we would refer to the Full Bench decision of Hon'ble Punjab and Haryana High Court in the case of Sunder Lal and other Vs State of Punjab and others, 1970 SLR 59, where it has been held that where the Government has taken a decision which later turns out to be not correct, it could not be said that the mistake must be allowed to be perpetuated and that the Government has no power to rectify that mistake even after the same is discovered. Similar view was taken by a Full Bench of the Patna High Court in the case of S.A.F. Abbas and others Vs State of Bihar and others, AIR 1970 Patna 397. In the case of Ranjit Singh Vs President of India, 1971 SLR 561, a Division Bench of the Hon'ble High Court of Punjab and Haryana, relying on Sunder Lal's case (supra) and S.A.F. Abbas's case (supra), has held that every administrative authority has an inherent right to rectify its own mistake unless there is some specific provision of law which prohibits such a course.

9. As the Respondents are duty bound to rectify the mistake as committed in violating of the laid down rules and procedures by Respondent No.4 in recruitment to certain civil posts, we see no illegality in the notice

17

issued/show-cause sent by Respondent No.3 to the applicants. Infact, by our order passed in O.A. 590/99 dated 16.10.2000 liberty had been already given to the Respondents to take such action as is permitted under law to rectify the irregularities.

10. In the aforesaid circumstances, the relief sought by the applicants is misplaced and accordingly, this O.A. fails. No costs.

 05/11/09

(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

RK/SD