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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.110 OF 2001
Cuttack this the 10 day of ~~September~~ October 2001
Sdm.

K.M. Rout ... Applicant (s)

-VERSUS-

Union of India & Others ... Respondent (s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
1.10.01

1.10.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)



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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 110 OF 2001
Cuttack this the 1st day of September/2001
October
1st Jan.

CORAM:

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

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Kunimani Rout, aged about 24 years,
Daughter of Damodar Rout, At-Naruda
PO-Sahadapara, Via-Balanga, Dist-Puri

...

By the Advocates

Applicant

M/s.K.C.Kanungo
S.Behera
M.K.Mandal

-VERSUS-

1. Union of India represented through Director General Posts, -cum-Secretary, Communication, Dak Bhawan, New Delhi-1
2. Chief Post Master General, Orissa Circle, Orissa, At/PO-Bhubaneswar, Dist-Khurda
3. Senior Superintendent, Post Office, At/PO-Bhubaneswar-1, Dist-Khurda
4. Sub_Divisional Inspector, Bhubaneswar, South Sub-Division, At/PO-Bhubaneswar-2, Dist-Khurda
5. Gadadhar Nayak, aged about 25 years, S/o.Ghanashyam Nayak, At-Naruda, PO-Sahadapara, Via-Balanga, Puri
6. Dinabandhu Biswal, 30 years, S/o.Udaynath Biswal, Vill-Kolitola, PO-Sahadapara, Via-Balanga, Dist-Puri

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By the Advocates

Respondents

Mr.A.K.Bose, Sr.St.
Counsel (Res.1 to 4)

M/s.S.K.Dash, B.
Mohapatra, S.K.
Mishra & S.K.Dash
(Res. No.6)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): For the post of E.D.D.A.-cum-E.D.M.C., Sahadapada Branch Office, which became vacant in 1997 applicant applied for that post and the application was received on 24.4.2000. The applicant prays for considering her candidature

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in accordance with law before appointment is given to Respondent No.6 and to declare that order of appointment of Respondent No.6 as void and illegal.

2. Respondent No.6 and the departmental respondents through separate counter oppose this Original Application. Respondent No.5 had not entered appearance.

3. Facts not in controversy are as follows. For this vacant post names were called from the Employment Exchange which sponsored 40 names who were intimated to apply on or before 14.8.1997. Only 14 of them responded. Respondent No.5 who was not a sponsored candidate applied for the post on 11.8.1997. But his application was rejected on that ground. Besides trying his luck before this Bench in O.A.292/98, he preferred O.J.C.13118/98 before the High Court, who by order dated 21.9.1998 (Annexure-2) directed the Department to consider his candidature with the applications received from the Employment Exchange sponsored candidates. Thereafter it was the turn of Respondent No.6 (not sponsored by the Employment Exchange) who knocked the doors of this Bench in O.A.199/99 and thereafter before the High Court in O.J.C.9161/99. By a brief order dated 7.9.1999 (Annexure-3) the O.J.C. was disposed of with a direction that in case the process of selection is not over Respondent No.6's application though submitted after the due date, shall be considered along with other applicants. Thereafter Respondent Nos. 5 and 6 were considered along with the sponsored candidates and ultimately Respondent No.6 being more meritorious was selected. By letter dated 19.3.2001, he was intimated about his selection and was instructed vide Annexure-A of R-6 to counter) to attend the office on



26.3.2001/27.3.2001 and to undergo training at Balanga S.O. on 28.3.2001. Accordingly he had taken the charge of the Office at Balanga on 28.3.2001 (Annexure-B of Res. 6's counter). Like Respondent No.5 and 6, the applicant is not a candidate sponsored by the Employment Exchange.

4. The grievance of the applicant is that since the selection process was not over by the time her application was received on 24.4.2000, she was entitled to get the benefit of order dated 7.9.1999 of the High Court in O.J.C.No.9161/99 and her candidature could not have been turned down because she secured the higher marks in H.S.C. than Respondent No.6. Further in the year 1996 itself, the Apex Court in the case of Excise Superintendent, Malakpatnam vs. K.B.N.Viseswar Rao reported in 1996(6) SCALE 670 held that besides following mandatory provision of requisitioning candidates from the Employment Exchange, the concerned authority should call for names ~~through either circulation~~ through newspapers and other mode of public intimation. According to the applicant, the High Court in the aforesaid O.J.C.s bearing in mind this decision of the Apex Court issued appropriate directions referred to above and on the same principle her candidature needs consideration.

In the rejoinder the applicant more or less reiterates the same facts by enclosing a copy of the O.J.C. petition of Respondent No.6

5. As earlier stated Departmental respondents and Res.No.6 oppose this Original Application.

6. Interim order dated 26.3.2001 directing not to issue appointment order is practically still in force.



7. Heard Shri K.C.Kanungo, learned counsel for the applicant, Shri A.K.Bose, learned Sr.Standing Counsel for the departmental respondents and Shri S.K.Dash, learned counsel for Respondent No.6.

8. At the outset we cannot overlook one fact, that is, either this Tribunal or the High Court did not hold that issuing requisition to the Employment Exchange without making wider publication inviting applications was bad in law. On the other hand when the post became vacant in 1997 the only mode provided in the relevant circular of the Department was to issue requisition to the Employment Exchange. It was only on 19.8.1998, the D.G.Posts issued instructions to issue public advertisement in addition to notifying the vacancy through the Employment Exchange. Hence the selection of Respondent No.6 cannot be declared illegal on this count.

9. Since the applicant claims benefit of the order dated 7.9.1999 (Annexure-3) of the High Court in O.J.C.9161/99, contending that it was based on the Apex Court decision in Excise Superintendent case, (Supra), we may as well quote that judgment hereunder.

"Heard Shri S.K.Das for the petitioner and Shri P.R. Barik, learned Addl.Standing Counsel, Central Govt., for the Opp.parties.

This writ petition is disposed of with the direction that in case the process of selection is not over, the petitioner's application, though submitted after due date, shall be considered along with other applicants."

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It will be seen that this short judgment there is no reference at all to Malakpatna case (Supra). Further the direction is conditional, that is, in case the process of selection is not over (Emphasis made). Expression 'is not over'



would necessarily imply not over on the date of judgment on 7.9.1999. It cannot be interpreted to mean that in case the selection will not be over by a particular date in future.

10. We cannot also accept the submissions that the aforesaid judgment in the O.J.C. is a judgment in rem and is applicable to all candidates who would apply even after this judgment but before the selection process attains finality. Because as per the judgment even Respondent No.6 would have been disqualified had the selection process been over by 7.9.1999. It is essentially a judgment in personam pronounced in favour of Respondent No.6 in response to his prayer in the O.J.C. petition (Annexure-5) to consider his candidature along with others.

11. Application of the applicant (Annexure-R/2) is dated 18.4.2000, that is, much after 7.9.1999 and as such she cannot derive any benefit from that judgment under Annexure-3. In this view of the matter there is no necessity for us to decide the issue raised by Shri Kanungo during hearing that the selection process will attain finality ^{only} after issue of appointment order.

12. In the result the O.A. is held to be without any merit and is accordingly dismissed. Interim order directing not to issue appointment order, if still in force is hereby vacated. No costs.

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN

1.10.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//