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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

O.A.NO.145 OF 2001

Cuttack, this the ^{29th} day of April, 2003

Iswar Kushal

Applicant

Vrs

Union of India and others


Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? ~
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ~


(MR. MOHANTY)

MEMBER (JUDL.)


(B.N. SAHA)

VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,

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Cuttack, this the ^{29th} day of April, 2003

CORAM:

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

AND

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

.....

Iswar Kushal, aged about 43 years, son of Hari Kushal, At Bisipali, P.O.Jatla,
District Bargarh Applicant

Advocate for the applicant

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M/s M.P.J.Ray &

R.K.Dash

Vs.

1. Union of India, represented by its Secretary, Department of Posts,
Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, At/PO Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Sambalpur Division, Sambalpur.
4. Assistant Superintendent of Post Offices, I/C Bargarh Sub Division, Bargarh.
5. Gitanjali Nahak, C/o Rabi Shankar Joshi, At J.Sirigida, P.O.J.Sirigida, Dist. Bargarh

..... Respondents

Advocate for the Respondents

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Mr.B.Dash,ASC

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

1. This Original Application has been filed by Shri Iswar Kushal, being aggrieved by the appointment of Respondent No.5 as EDMC, Jatla B.O., by Respondent No.4. He has approached this Tribunal with a prayer to quash the said selection of Respondent No.5 and to pass appropriate order directing the Respondent-Department to appoint the applicant in place of Respondent No.5.

2. In short, the facts of the case are that the applicant was working as EDMC, Jatla B.O., when Respondent No.4 issued an advertisement for making regular selection to the post. The applicant had filed OA No.391 of 1999 before this Tribunal to quash the selection process. This Tribunal, by its judgment dated 5.9.2000, directed the departmental authorities to complete the selection process within sixty days and to consider the applicant's case in accordance with rules, along with other candidates. It also directed the Respondents to allow the applicant to join duty as EDMC in a stop gap arrangement till the appointment of a regular person. In compliance of the said order of the Tribunal, on 6.10.2000 the applicant was allowed to join the post. He worked till 2.3.2001 when Respondent No.5 was selected as EDMC, Jatla B.O. His allegation is that Respondent No.5 was less meritorious than him, does not know cycling and does not belong to the village post office, she was selected by Respondent No.4 in an illegal and arbitrary manner.


2. The departmental Respondents have refuted the allegations of the applicant by filing a Counter. They have stoutly argued that admittedly the applicant had secured 320 marks with extra optional in

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H.S.C.Examination. But marks obtained by the candidates in H.S.C.Examination excluding extra optional marks were taken into consideration. In that way, they have submitted, the applicant had secured total marks of 285 excluding extra optional marks and Respondent No.5 had secured higher marks than the applicant in the H.S.C.Examination. They have submitted that they have carried out the selection process according to the rules and in a just manner.

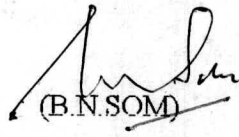
3. Though notice was issued to Respondent No.5, she did not appear or file counter.

4. We have heard the learned counsels for both the parties and have perused the records placed before us. Two of the allegations ^{levelled} by the applicant need judicial scrutiny. Firstly, whether the applicant had secured more marks in the H.S.C.Examination than Respondent No.5, and secondly, whether Respondent No.5 did not know cycling. We have, with the help of the learned counsels, examined the mark sheets of both the candidates. We find, following the principles adduced by the Respondents that extra optional marks are to be excluded for preparing the merit list, that the applicant had secured 285 marks out of 700 and Respondent No.5 had secured 300 marks out of 750 marks. In other words, in terms of percentage of marks, the applicant had secured 40.71% and Respondent No.5 had secured 40%. In the circumstances, the averment made by the Respondent-Department in their counter that "Respondent No.5 has secured higher marks than the applicant in the H.S.C.Examination" is ²~~totally~~ wrong. It is also surprising to note that the selected candidate for the post of Extra Departmental Mail Carrier does not know cycling. This allegation made by the applicant has not been refuted by the Respondents

and therefore, stays. In the circumstances, we are of the view that as Respondent No.5 did not secure higher marks than the applicant and that candidate does not know cycling, she could not have been selected for this post. We, therefore, have no hesitation in quashing the selection of Respondent No.5 to the post of EDMC, Jatla B.O. However, as Respondent No.5 has been working for last two years, we direct the Respondent-Department to provide her with an alternative job, preferably an indoor job. Accordingly, the O.A. succeeds. No costs.


(MR. MOHANTY)

MEMBER(JUDL.)


(B.N. SOM)

VICE-CHAIRMAN

AN/PS