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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.218 OF 2001
Cuttack this the 28th day of January/2002

B.C. Naik

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(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 ? No.

T. Mohanty
28/1/2002
(M.R. MOHANTY)
MEMBER (JUDICIAL)

S. Somnath
28/1/2002
(SOMNATH SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.218 OF 2001
Cuttack this the 28th day of January/2002

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

Bhaskar Chandra Naik, aged about 32 years,
S/o. Sri Kasinath Naik, at present Working
as E.D.B.P.M., Niladri Prasad B.O.,
Via-Gambharimuda S.O., Dist - Khurda

... **Applicant**
By the Advocates M/s.P.V.Ramdas
P.V.Balakrishna

-VERSUS-

1. Union of India represented by the Chief Post Master General, Orissa Circle, Bhubaneswar-751001, Dist-Khurda
2. Sr. Superintendent of Post Offices, Puri Division, Puri-752001
3. Sub-Divisional Inspector (Postal), Balugaon Sub-Division, Balugaon-752031 Dist-Khurda

By the Advocates

Respondents

Mr. A. K. Bose,
Sr. Standing Counsel
(Central)

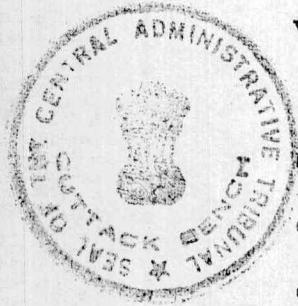
ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: Heard Shri P.V.Ramdas, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel for the respondents.

2. In this Original Application the petitioner has prayed for quashing the order dated 14.5.2001 at Annexure-3, terminating his services as E.D.B.P.M., Niladri Prasad B.O. and to declare that his appointment is against a regular post which fell vacant on the retirement of the previous incumbent. His second prayer is for direction to Senior

Superintendent of Post Offices, Puri Division (Res. 2) to allow the applicant to continue in service for a further period of six months or till a regular appointment to the said post is made. By way of interim relief the applicant had prayed that order of termination at Annexure-3 should be stayed. In order dated 6.6.2001, as an ad interim measure, order at Annexure-3 was stayed and this ad interim order is continuing till date.

3. The case of the applicant is that a vacancy arose in the post of E.D.B.P.M., Niladri Prasad B.O. on superannuation of the previous incumbent in March, 2000. For filling up of the said post, an advertisement was issued on 11.1.2001 vide Annexure-1, in response to which petitioner, and someother candidates applied. In this notification it was mentioned that preference would be given to SC/ST candidates only. Applicant has stated that he belongs to reserved category. After verification of the candidature of all the applicants, applicant was selected and appointed to the post in question in order dated 28.9.2000 vide Annexure-2. The grievance of the applicant is that even though he was appointed provisionally for a period of six months from the date of joining, in order dated 14-5-2001 at Annexure-3 it was directed that services of the applicant would stand terminated on expiry of one month from the date this notice/order at Annexure-3 was served on him. According to applicant, he completed the period of six months of service on 18.4.2001 having joined on 18.10.2000, but he was allowed to continue till the notice under Annexure-3 was received by him. It has been further



SDM

submitted by the applicant that before the order of termination was issued no show cause notice was issued to him. In the context of the above, the applicant has approached the Tribunal with the prayers referred to earlier.

4. Respondents in their counter have not denied the factual aspects, viz., calling for applications for the post in question, considering the cases of all the candidates who had applied for the post and selecting and appointing the present applicant, for a period of six months. It is averred by the respondents that the post was to be filled up from amongst the eligible candidates on the basis of higher percentage of marks in the H.S.C. Examination and according to them while one Pandab Nayak secured 46.8% marks the applicant Shri B.C.Naik secured 34.42% marks in the H.S.C.Examination. Respondents at Page-3 of their counter have stated that candidature of Shri Pandab Nayak was rejected because he failed to arrange accommodation for the Post Office in the post-village when the S.D.I(P), Balugaon (Res.3) verified the genuineness of the documents and therefore, the applicant having secured the 2nd highest percentage of marks was selected. Shri Pandab Nayak filed representation before the higher authority, who held that insisting upon Shri Pandab Nayak to show the house where the post office will be held even before his selection was not proper. In view of this impugned order 14.5.2001 at Annexure-3 has been issued terminating the services of the applicant.

5. We have gone through the records and found that



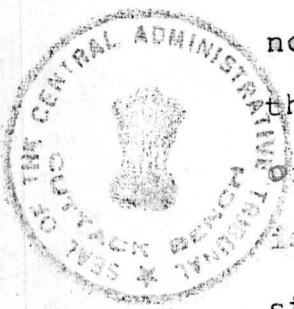
J. S. J. S. J.

according to check sheet produced by the Respondents, Shri Pandab Nayak secured the highest percentage of marks in the H.S.C.Examination. It further appears that Shri P. Nayak had filed a consent statement of one R.K.Nayak, which at the time of inquiry was found to be a forged one and therefore, the appointing authority held that as Shri P. having Nayak filed a forged document coulds not relied upon by the Department. Be that as it may, it is not necessary for us to go into the candidature of Shri Pandab Nayak. The admitted position is that on the basis of pleadings is that before issuing order of termination under Annexure-3, no show cause notice was issued to the applicant. The fact that the applicant was appointed for a period of six months is of no consideration because the statement of the applicant is that he was allowed to continue even after the expiry of six months' period has not been disputed by the respondents. The sole point for consideration is whether any show cause notice should have been issued to the applicant before issuing the order of termination. This point has been considered by the Full Bench of the Tribunal in the case of Tilak Dhari Yadav v. Union of India reported in (1997) 36 A.T. Cases 539(FB) and the Full Bench answered the questions referred to therein in the following words.

S JWM

"...we are of the view that under Rule 6 of the Rules, the appointing authority does not possess power to cancel the appointment of Extra Departmental Agent for reasons other than unsatisfactory service or for administrative reasons unconnected with the conduct of the appointee, without giving him an opportunity to show cause."

"Rule 6 of Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964, does not confer a power on the appointing authority or any authority, superior to the appointing authority to cancel the appointment of an Extra Departmental



Agent who has been appointed on a regular basis in accordance with rules for reasons other than unsatisfactory service or for administrative reasons unconnected with conduct of the appointee, without giving him an opportunity to show cause".

In view of the above decision of the Full Bench it is clear that before issuing the order of termination a show cause notice should have been issued to the applicant, which has not been done in the instant case. Shri A.K.Bose, learned Senior Standing Counsel referred to a decision of this Bench in the case of Prahallad Charan Swain vs. Union of India & Ors. reported in (1987) ATC 54, where a contrary view was taken. This decision in Prahallad Charan Swain's case was specifically considered by the Full Bench in Tilakdhari Yadav case (Supra) and therefore, the law, as laid down by this Bench in Prahallad Charan Swain's case is no longer good law. In this view of the matter, we have no hesitation in quashing the order of termination at Annexure-3. It is so ordered. By virtue of the interim order dated 6.6.2001, the applicant is continuing in the post of EDBPM, Niladri Prasad. We, however, make it clear that notwithstanding our above order, respondents would be free to take such action as deemed fit and proper under law and instructions.

With the above direction and observation the O.A. is allowed. No costs.

T. Narayan Choudhury
(M.R.MOHANTY) 28/01/2002
MEMBER (JUDICIAL)

B.K.SAHOO//

S. Somnath Som
(SOMNATH SOM)
VICE-CHIEF JUDGE 28/01/2002