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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 342 OF 2001.  
Cuttack, this the 13th day of February, 2002.

DILLIP KUMAR BEHERA.

....

APPLICANT.

: VRS. :

UNION OF INDIA & ORS.

....

RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *Yes*
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

*Manoranjan Mohanty*  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

*S. A. T. Rizvi*  
(S. A. T. RIZVI)  
MEMBER (ADMN.)



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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 342 OF 2002.

Cuttack, this the 13th day of February, 2002.

C O R A M:-

THE HONOURABLE MR. S.A.T. RIZVI, MEMBER (ADMN.)

A N D

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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SHRI DILLIP KUMAR BEHERA,  
Aged about 29 years,  
S/o. Surendra Nath Behera,  
At/Po:- Tikayatpally,  
DISTRICT: SUNDERGARH.

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APPLICANT.

By legal practitioner: M/s. R.N. Acharya,  
S.K. CHOWDHURY,  
S.R. Kanungo,  
Advocates.

-VERSUS-

1. Senior Superintendent of Post Offices,  
Sundergarh division, Sundergarh.
2. The Sub-Divisional Inspector,  
Post Offices, Bonaigarh Sub-  
Division, Bonaigarh, Dist. Sundergarh.
3. Union of India represented through  
Chief Postmaster General, Orissa,  
Bhubaneswar, At/Po: P.M.G. Square,  
Dist. Khurda.

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.... RESPONDENTS.

By legal practitioner: Mr. S. Behera,  
Additional Standing Counsel  
(Central).

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O R D E R

(ORAL)

MR. S. A. T. RIZVI, MEMBER (ADMN.) :

By ~~some~~ public notice issued on 29-11-1999 (Annexure-A/1), applications were invited to fillup the post of Extra Departmental Branch Post Master (in short E.D.B.P.M.) Tikayatpalli Branch Post Office, which had fallen vacant on a permanent basis. 6 (six) applications were received in response thereto. After preliminary scrutiny of the applications filed, the Respondents discovered that the applicant was the only candidate out of the six who had filed his application complete in all respects. In respect of the others, it was found that none of them had submitted all the prescribed certificates/documents. Respondents went ahead with the Selection procedure and sent the Applicant for theoretical as well as practical training; on completion of which he was duly appointed as E.D.B.P.M., Tikayatpalli Branch Post Office. He had served as EDBPM, Tikayatpalli for close to 14 months when a show cause notice dated 16-7-2001 was served on him (Annexure-5). Applicant was asked to show cause as to why his selection as E.D.B.P.M., Tikayatpalli should not be cancelled having regard to the fact that when the Applicant came to be selected for the post, only one applicant, i.e., the Applicant himself, was in the field of consideration



and further that he was appointed without prior verification of the documents submitted by him.

2. Aggrieved by the aforesaid show cause notice, applicant came up before us by filing the present Original Application.

3. When the Original Application came up for hearing on 1- 8-2001, an ad-interim order was passed restraining the Respondents from passing a final order in the matter whether or not a reply has been filed by the Applicant. It appears that the Respondents accordingly proceeded and have made up their mind to pass orders terminating the Applicant's service and to proceed further by issuing a fresh Notification. They have accordingly filed Miscellaneous Application No.995/2001 seeking modification of the ad-interim order passed on 1- 8-2001. An objection to the aforesaid M.A. has also been filed in the Tribunal today. At this stage of hearing, we have decided with the consent of the parties to dispose of the Original Application after hearing the learned Counsel. We have, therefore, heard learned counsel for both sides and have also perused the documents on record.

4. Learned Counsel appearing on behalf of the Respondents places reliance on the departmental instructions dated 19-3-1993 (Annexure-R/2) which inter alia



provide that if at the time of selection it is found that the effective number of candidates was less than 3(three), the vacancy in question should be renotified to the employment exchange and advertised for calling fresh names/applications. According to him the document placed at Annexure-R/1 shows that only one candidate, namely the Applicant in the present Original Application, had filed his application, complete in all respect, whereas the others had not filed all the prescribed certificates and therefore, the effective number of candidates from amongst whom a final choice was to be made was reduced to just one. Making of appointment in such a situation would, according to him, amount to making appointments without any competition. In this view of the matter, Applicant's appointment was found by the Respondents to be against the aforesaid instructions. It is for this reason that they propose to terminate the Applicant's service.

5. On a proper consideration of the matter notwithstanding the provisions made in the aforesaid instructions dated 19-3-1993, we find that even if the provisions made therein have been flouted for such an act of non-observance of the instructions for which the Respondents alone are responsible, the Applicant cannot possibly be blamed. It has not been disputed that the Applicant lacked in competence or was not properly or duly qualified. It has also not been disputed that he had

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submitted all the documents in time and that nothing adverse was found against him after the details furnished by him had been verified by the Department before appointing him as E.D.B.P.M. Further, admittedly, on having been appointed, the applicant has also served for 14 months without blemish. In the circumstances, we are left with the feeling that instead of terminating the Applicant's service, the Respondents should alternatively have proceeded to inflict punishment on the subordinate Officers who have failed to observe the Departmental Instructions properly and in a timely fashion. Learned Counsel appearing for the Respondents is not aware of any departmental action having been taken against any of the Departmental officers for the aforesaid lapse. The famous Democle's sword, however, hangs on the Head of the Applicant.

6. Having observed as above, we are also inclined to go into the validity of the instructions dated 19-3-1993 (Annexure-R/2) on which so much reliance have been placed by the Learned Additional Standing Counsel for the Respondents. The said instructions have been issued by the Directorate of posts. There is no whisper in body of the aforesaid instructions that the same have been issued with the approval of the Govt. No doubt under Article 73 of the Constitution of India, executive power of the Union extends to all matters with respect to which the parliament has the power to make laws. In exercise of this power, the Union Govt., the





Department of posts, in this case, can always issue executive/administrative instruction to supplement the Rules or to fill the gaps without in any way coming into conflict with any of the Rules. In this view of the matter, the instructions in question could have been issued by the Department itself and not by the Directorate of posts which is a field formation subordinate to the Department of Posts. For this reason, we hold that the aforesaid instructions dated 19-3-1993 lack validity and cannot be relied upon.

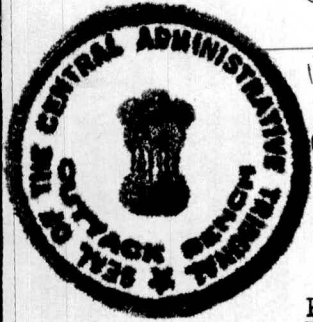


7. After noting the contents of the aforesaid instructions dated 19-8-1998 we are also inclined to hold that the provisions made therein with regard to the effective number of candidates being found to be less than three is arbitrary in nature. The word 'effective' for instance has not been defined. In such cases, by following the normal procedure, all those left in the field after preliminary scrutiny whether one, two or three can in our view, be validly and legitimately considered for appointment subject to fulfilment of the prescribed qualifications. If such a course of action is not followed, exercise can well become endless, with less than three applications found to be in order time and again.

8. For the reason of arbitrariness, also the aforesaid instructions dated 19-8-1993 (Annexure-R/2) stand vitiated and cannot be relied upon.

9. In the light of the foregoing, we find considerable merit in the Original Application which is allowed. The

show cause notice dated 16-7-2001(Annexure-5) is quashed and set aside. The applicant will continue in service as hitherto. M.A. No.995/2001 stands disposed of in terms of the above order. No costs.



*Manora Njan Mohanty*  
(MAN ORA NJAN MOHANTY) 13/02/2002  
MEMBER(JUDICIAL)

*S.A.T. Rizvi*  
(S.A.T. RIZVI)  
MEMBER (ADMN.)

KNM/CM.