

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

O.A.NO. 531 OF 2001 with OA NO. 199 of 2002
Cuttack, this the day of April, 2004

Patit Palan dan
Ms. Rajashree Satafaly

Applicant

Vrs

U or f 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? **Yes**


(S.K.NAIK)
MEMBER(A)


(B.PANIGRAHI)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. S.K. Naik, Administrative Member.

O.A. 551/2001 Sri Patitapaban Das
O.A. 199/2002 Ms. Rajashree Satapathy

- v e r s u s -

Union of India and Ors.

For the applicant : Mr. S.K. Das, counsel (O.A. No.551/2001)
For the respondents : Mr. A.K. Swain, counsel (O.A. No.199/2002)
For the respondents : Mr. A.K. Bose, counsel.

Date of order: 16.04.2004

O R D E R

S.K. Naik, AM

These are the two connected Original Applications pertaining to filling up of the posts of EDBPM in Rudrapur Branch Office under Chhatia Sub Office. While Sri Patitapaban Das the applicant in O.A. 551/2001 seeks direction from the Tribunal for cancellation of the public notification appended as Annexure-7 to said the O.A. inviting applications from the open market candidates for filling up of the said post, Ms. Rajashree Satapathy the applicant in O.A. 199/2002, seeks a direction from the Tribunal to the SPOs, South Division Cuttack, respondent No. 2 in her O.A., to appoint her as EDBPM at Rudrapur Branch Office.

2. Since both the O.As pertain to the filling up of the same vacancy and are connected with each other, it is proposed to dispose of both the O.As by this common order.

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3. Briefly stated, ~~that~~ the facts of the case are that one Sri Harihar Brahma who was working as regular EDBPM at Rudrapur was due for retirement during the year 2000.

4. As a measure of advance action to fill up the anticipated vacancy, the SPOs South Division, Cuttack issued a public notification dated 28.10.99 inviting applications for consideration for appointment to the said post. In response thereto the department received as many as 25 applications. While Sri Patitapaban Das, applicant in O.A. No. 551/2001 ~~had~~ already been working as EDDA ever since 26.6.1981 and has also been given the additional charge of the post of EDBPM on superannuation of Sri Harihar Brahma w.e.f.13.1.2000, he put forward his claim for being appointed to the post of EDBPM on a regular basis on the strength of departmental circular dated 12.9.88. He had made repeated representations even prior to the issue of public notification. While the same were pending for consideration, the SPOs, South Division Cuttack went ahead and issued the public notification. The grievance of Sri Patitapaban Das, the applicant in O.A. 551/2001, therefore, is that while he was entitled to be appointed straightway as the EDBPM on the strength of his experience as EDA for a long period and also as per the circular of 1988 of the department, the respondents, with some ulterior motive and to deprive him of his right, have gone ahead and issued the public notification inviting applications from open market.

5. The grievance of Ms. Rajashree Satapathy, however, is that the respondents after having issued the public notification inviting applications, attempted to cancel the same in order to appoint Sri Patitapaban Das

on the basis of his having worked as EDDA. The same, however, was challenged before this Tribunal by one Sri Santosh Kumar Sahani, who was also one of the applicants out of the 25. The Tribunal in O.A. 196/2000 filed by Sri Santosh Kumar Sahani held that the circular of 12.9.88 did not ipso facto entitle an EDDA to be appointed as EDBPM and that his candidature can be considered on the basis of merit along with others who applied for the post. The Tribunal in the said O.A. had, therefore, directed the respondents to consider the applications received pursuant to the notification along with the candidature of Sri Patitapaban Das, EDDA Rudrapur. Even though this direction related to the selection of the post of EDBPM, Rudrapur, it appears that Sri Santosh Kumar Sahani was subsequently appointed as EDBPM against a vacancy which was available at Srirampur Branch Office under Chhatia Sub Office. It appears that the public notice issued was common to the vacancy at both the posts viz. at Rudrapur and Srirampur. Ms. Rajashree Satapathy contends that since she was No.2 in the merit list and No.1 candidate viz. Sri Santosh Kumar Sahani has already been appointed, she would be entitled to be appointed against the vacancy of Rudrapur. She, therefore, seeks a direction in this regard.

6. The respondent authorities have filed their counter reply. Ld. counsel has fairly conceded that a serving EDDA cannot automatically be appointed as EDBPM and in view of the settled position of law by now, his merit has to be assessed along with others, who have applied in response to the public notification. He has, therefore, contended that the applicant in O.A. 551/2001, Sri Patitapaban Das will have to take his chance along with other candidates.

3/2001

7. On the application of Ms. Rajashree Satapathy, the counsel has contended that the decision can be taken by the respondents only after ~~any~~ final order ~~was~~ passed in these O.As as there is an embargo on filling up of the post as ordered by the Tribunal in O.A. 196/2000 in Santosh Sahani's case.

8. We have duly considered the contentions raised by the Id. counsel for the parties and have also perused the records of the case. So far as the claim of Sri Patitapaban Das in O.A. 551/2001 is concerned, it is entirely based on the circular of respondents dated 12.9.1988. The circular has been extensively dealt with in the order of Co-ordinate Bench in O.A. 196/2000 in Santosh Sahani's case. It has been stated therein that the matter had also been discussed earlier in O.A. 284/96, O.A. 13/1999 and O.A. 64/99. A consistent view ~~was~~ taken by the Tribunal in these matters and the same is reflected in the extract from the order dated 26.7.2001 in O.A. 196/2000 as under:-

" This letter dated 12.9.88 was the subject matter of interpretation by this Bench in O.A. 284/96, O.A. 13 of 99 and O.A. 64/99. This Bench consistently held that when this letter was issued in the year 1988, applications in the post for ED posts were required to be sponsored through Employment Exchange. This decision was taken because normally the Employment Exchange does not register/sponsor the names of persons in Employment excepting in the case for appointment of higher posts. A proposal that EDAs may therefore be considered in limited manner for appointment any other ED posts without coming through the agencies of Employment Exchange in exceptional cases was examined in that letter. In other words, this letter dated 12.9.88 under Annexure-R/2 is only an exception to this extent that an ED agent can apply to the post of EDBPM without his name being sponsored through Employment Exchange, provided he has the requisite qualification to the post and fulfils all the required conditions. This should not mean that such ED agent can be appointed if he has got the qualification for the post, eve if he is less meritorious than the candidates sponsored through Employment Exchange, because this letter is clear that he must also be suitable."

7/2001

9. The position is, therefore, very clear that the applicant Sri Patitapaban Das even ~~on~~ ^{though} working as EDDA could not have any automatic right on the post of EDBPM and he would have to take his chance along with other candidates. However, what strikes us is that the respondents earlier having attempted to cancel the selection on the basis of open advertisement to appoint the applicant have now stated in their counter reply that the candidature of Sri Patitapaban Das cannot be considered on the ground that he has not applied through his appointing authority. They have stated that Sri Patitapaban Das has applied directly to the SPOs, South Division, Cuttack whereas he should have sent his application through the SDT(P) Cuttack, Central Sub Division. Ld. counsel for the applicant has, of course refuted the contention of the respondents and stated that SDI(P) Cuttack is the appointing authority in case of EDDA and not for EDBPM and the application has, therefore, been rightly addressed to the SPOs, Cuttack. We are of the view that the respondents are resorting to hyper-technicality in the matter and they should not deprive the consideration of his candidature on this technical ground alone.

10. In so far as the claim of Ms. Rajashree Satapathy in O.A. 199/2002 is concerned, she will be entitled to be considered on merit when the respondents undertakes de novo scrutiny of the available candidates. If one of the earlier candidates Sri Santosh Kumar Sahani has been appointed as EDBPM, he would certainly be out of consideration for the post of Rudrapur. If Ms. Rajashree Satapathy happens to be the next most meritorious candidate, the respondents no doubt will consider her case suitably as per rules.

3/2002

11. To conclude we dispose of both the O.As with the following observations:-

- (a) Sri Patitapaban Das, applicant in O.A. 551/2001 has no right to be appointed straightway as EDBPM, Rudrapur BPO, on the strength of the circular dated 12.9.1988, and he has to take his chance along with others.
- (b) That the candidature of Sri Patitapaban Das should not be rejected on the technical ground of his application not having been routed through proper channel and the respondents should consider his candidature along with other candidates.
- (c) The case of Ms. Rajashree Satapathy will also be considered along with that of Sri Patitapaban Das amongst others.
- (d) The respondents are directed to finalise the selection within a period of two months from the date of receipt of the copy of the order.

12. Both the O.As are disposed of in the terms of the above without any order as to costs.

Das
Member (A)


Vice-Chairman.