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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 634 of 2001
Cuttack, this the 07th day of October, 2004

Susanta Kumar Sahoo. Applicant.

-Vrs.-

Union of India & Others. Respondents.

For Instructions

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

Indra
(B.N. SOM)
Vice-Chairman

Joe
07/10/04
(M. R. MOKHANTY)
Member (Judicial)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

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C O R A M:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.)

By legal practitioner: M/s. B. Mohanty-I,
S. Patra,
P. K. Majhee,
Advocates.

:VRS.:

1. Union of India represented by
Director General, Posts,
Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa,
At/Po: Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack,
At/Po/Dist. Cuttack.
4. Assistant Superintendent of Post Offices I/c.,
Cuttack East Sub-Division, Cuttack-I,
At/Po/Dist. Cuttack.
5. Director,
Postal Services (Head-quarters),
At/Po: Bhubaneswar,
Dist. Khurda.

By legal practitioner: Mr. A. K. Bose, S. S. C.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

The post of EDBPM/GDSBPM of Naraj Branch Post Office having been fallen vacant (on the retirement of the permanent incumbent), the Departmental Authorities placed requisition with the Employment Exchange, Cuttack on 03-01-2000 requiring names of suitable candidates for filling up of the post in question. Simultaneously, public notification was also issued, on the said date, inviting applications for the said post. The last date of receipt of application was fixed as 24.1.2000. In the Public notification, it was mentioned that preference will first be given to ST candidate, in the process of selection, and, if no minimum three number of eligible ST candidate are available, preference will go to an eligible SC candidate and, if minimum three eligible SC candidate, fulfilling the required condition are not available, then the selection will be made from among/ O.B.C. candidate; failing which the post will be kept open for un-reserved candidates and in that event the selection will be made from all the candidates (on merit) fulfilling all the conditions. The Employment Exchange did not

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sponsor any name; but 17 applications were received in response to open advertisement. No S.T. candidate applied for the post. Only five S.C. candidates were there. Since none of the S.C. candidates had any landed property in their own name, preference was given to O.B.C. candidates. The Applicant being one of the OBC candidates (fulfilling the required conditions) and since he secured highest marks in the Matriculation/HSC examination (from among eligible OBC candidates, in the fray of selection) he was provisionally selected for the post and was directed to undergo necessary training vide order under Annexure-A/2 dated 07.12.2001. In the meantime, the Director of Postal Services (Hqrs.), while inspecting the Office, reviewed the records of the said selection of G.D.S.B.P.M./E.D.B.P.M. of Naraj Branch Post Office and he, having noticed irregularities directed for cancellation of the provisional selection of the Applicant. As per Rules, the S.C. candidates were also eligible for the post, they having submitted the required income certificate. That apart income from landed property being only a preferential qualification, the Director held the selection of OBC candidate to be irregular. The said factum was intimated to the Applicant (under Annexure-A/4 dated 21.12.2001) and he, being aggrieved by the said action of the Respondents, has preferred this O.A.U/s.19 of the Administrative Tribunals Act, with prayer to quash the order under

Anneiture-A/4) and for a direction (to the Respondents) to allow him to join his duty after taking necessary training.

2. Respondents, by filing a counter, denied the allegations levelled by the Applicant in his Original Application. They have also averred in the counter that since, before his joining, the selection and appointment of the Applicant has been cancelled, the said action of the Respondents does not, in any way, violate the provisions enshrined under Article 14 and 16 of the Constitution of India and in this manner, the Respondents have explained the circumstances under which the selection and appointment of the Applicant was cancelled.

3. Heard learned Counsel for the parties and perused the materials placed on record including the rejoinder filed by the Applicant.

4. By placing reliance of the judge-made-laws of the Hon'ble Apex Court, it has been submitted by the learned counsel for the Applicant that law is well settled that the selecting authorities have no power to go beyond the conditions reported upon in the advertisement; nor have they any power to deviate from the conditions reported upon in the advertisement. He has vehemently urged that the Applicant, was in no way responsible in the matter.

of his selection and appointment to the post in question. Further in support of his challenge, he has urged that since, before cancellation of his selection, no opportunity was given to the Applicant, the ^{Cancellation} same is against the well-known principles of natural justice and, therefore, he has prayed for for quashing of the order under Annexure-A/4 and, as a consequence, for taking back the applicant into the post as per the order under Annexure-A/2. On the other hand, learned Counsel appearing for the Respondents has led his submission that since blatant irregularity was committed by the selecting authority/appointing authority (in rejecting the applications of the SC candidates; which ^{and} de hores the rules) the entire process of selection being found a nullity, was ordered for cancellation of the same and, therefore, there was nothing wrong on the decision of the Respondents in passing the order under Annexure-A/4. He has further submitted that since the Applicant did not assume his duty, he has no vested right to claim any opportunity to be given to him before the cancellation of his selection.

5. For resolving the disputes, it is worthwhile to quote the relevant column of requirements as published by the Respondents in the advertisement itself while inviting applications in this connection and they are as under:-

"(c) The candidate will have to submit the attested copies of under mentioned certificate/documents alongwith application:

- (i) xx
- (ii) xx
- (iii) xx

(iv) Income certificate in his own name derived from the immoveable properties granted by Tahasildar as mentioned above in para (c)(i)".

(emphasis supplied)

6. On perusal of the materials placed on record, it is found that it is a fact that none of the S.C. candidates had any landed property in their own name. Therefore, the candidatures of the S.C. candidates were rightly rejected by the Appointing Authority as per the Advertisement. Neither the Advertisement nor rejection of the candidatures of the S.C. candidates has ever been challenged by any of the aggrieved parties. In absence of that, the Appointing Authority is bound to follow the rigors provided in the advertisement. Law is well settled (in a plethora of judicial pronouncements of the Hon'ble Apex Court) that unless and otherwise a clause is struck down, the Authorities are bound to adhere to the clauses mentioned in the Advertisement. Therefore, since the Appointing Authority had acted in accordance with the Advertisement, and the Applicant being no way responsible for any irregularity/ illegality in the matter of selection, cancellation of his appointment under Annexure-A/4 is bad in law.

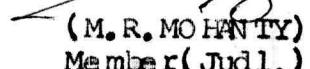
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7. In the ~~said~~ premises, we hereby quash the order of cancellation of the selection of the Applicant as GDSBPM of Nara j BO under Annexure-A/4 dated 21.12.2001 and direct the Respondents to allow the Applicant to join after undertaking the required formalities in the matter. In the result, this O.A. is allowed. No costs.


(B.N. SOM)

Vice-Chairman


(M.R. MOHANTY)
Member (Judl.)

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07/10/04