

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 78/01 & 57/02
Cuttack, this the 30th day of July, 2004

IN O.A. NO. 78/2001

Biranchi Narayan Sahoo	Applicant(s)
Vrs.	
Union of India & Others	Respondent(s)

IN O.A. NO. 57/2002

Ajay Kumar Das	Applicant(s)
Vrs.	
Union of India and Others	Respondent(s)

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 ?

Malu
30/07/04
(M.R.M.CHANTY)
MEMBER(JUDICIAL)

Subra
(B.N.SGM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SQM, VICE-CHAIRMAN
&
HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

IN O.A. NO. 78/2001

Biranchi Narayan Sahoo, Aged about 21 years, S/o.Mr. Khetramohan Sahoo, of village-Gothada, P.O.-Nauganhat, Dist-Jagatsinghpur.

..... Applicant.

By the Advocate(s) Mr. Biswabihari Mohanty,
Mrs. U.R.Padhi

Vrs.

1. Union of India, represented through it's Director General of Posts Daka Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist- Khurda.
3. Superintendent of Post Offices, South Division, Cuttack, At/PO/Dist- Cuttack.
4. Assistant Superintendent of Post Offices, Jagatsinghpur, At/PO/Dist- Jagatsinghpur.
5. Ajaya Kumar Das, S/o.Agani Charan Das, At present working as E.D.D.A. in Tentoi, Branch Post Office, Via-Naugaonhat, Dist- Jagatsinghpur.

..... Respondents.

By the Advocate(s) M/s. B.K.Mohanty, R.Mohanty
P.K.Bhuyan, S.K.Patnaik,
S.K.Q.Ahmed. Mr.S.B.Jena (ASC)

IN O.A. NO. 57/2002

Ajay Kumar Das, Aged about 41 years, S/o. Agni Ch.Das, of village/PO- Godhada, P.O. Bansa, P.S. Naugaon, Dist-Jagatsinghpur.

..... Applicant(s)

By the Advocate(s) M/s A.K.Swain, B.Parida,
T.Mohapatra, M.K.Ray

Vrs.

1. Union of India, represented through Chief Post Master General, Orissa Circle, Bhubaneswar, Dist- Khurda.
2. Senior Superintendent of Post Office, South Division, Buxi-Bazar, Cuttack - 1.
3. Assistant Superintendent of Post Offices, Jagatsinghpur Sub-Division, Jagatsinghpur.

By the Advocate(s) Mr. B.Dash(ASC), Mr.B.B.Mohanty

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Since both the above mentioned O.A.s pertain to common question of facts and law, we dispose of both the O.A.s through this common order. For the sake of convenience, we may as well refer to O.A. No. 78/01.

1. Sri Biranchi Narayan Sahoo has filed this O.A. challenging the order of appointment issued in favour of Respondent No.5 (who is applicant in O.A. No. 57/02 for the post of E.D.D.A., Tentoi Branch Post Office). He has also prayed for a direction to be issued to the Respondents to appoint him to the said post.

2. The case of the petitioner is that he is a Matri-culate, belonging to OBC category and possesses all the qualifications for the post. He had applied for the post in response to the advertisement issued by the Respondents on 18.01.99. Then all on a sudden Respondent No.5 was appointed on the plea that he was more aged than the petitioner. The applicant has therefore assailed the selection of Respondent No.5 as illegal, arbitrary and discriminatory. The Respondents had also issued a public notice on 19.03.99 for the same post of E.D.D.A., Tentoi and that had been challenged in O.A. 168/99 by one Sri Mitan Kumar Behera. The petitioner had also approached the Tribunal to allow him to be impleaded as a party in that O.A.

3. The Respondents have filed a detailed reply in counter stating that one Sri Ajay Kumar Das (Respondent No.5) belonging to OBC category was selected and appointed to the post, being the senior most in age amongst 72 candidates who

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were considered, for the post. On the other hand, the applicant has not submitted the requisite documents for which his candidature was not considered. In the rejoinder to the counter, the applicant has sought to clarify the reason for missing the document by stating that he had submitted two character certificates along with his application, but it was the Respondents who had in fact suppressed one of the certificates or might have misplaced one of the certificates and put the blame on him.

4. The Respondents, however, have submitted that the selection of Respondent No.5 to the post in consideration of his age has been found, on review, to be not in order by the higher authority and the said authority was pleased to rescind the selection on the following three grounds:-

(i) That the requisition sent to the employment exchange calling for candidates was not done simultaneously with publication of public notice. The employment exchange was approached on 13.1.99 and the public notification was made on 19.3.99.

(ii) The selected candidate was not the most meritorious among the OBC candidates as there were many candidates in the Zone of consideration who had secured more percentage of marks than him in the HSC examination.

(iii) Recruitment rules for selection of E.D.D.A's do not prescribe age as the prime eligibility condition for selection.

Because of these drawbacks in the selection process the same was cancelled by the Respondent No.3. It is further submitted by the Respondents that while disposing of O.A. No. 168/99 filed by one Sri Mitan Kumar Behera, challenging

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selection process for this post, directed the Respondents to take "such action as is permitted under law to correct the wrong selection made for the post of E.D.D.A., Tentoil".

5. We have heard the Ld. Counsel for the parties and have also perused the records placed before us.

6. The Respondents have disclosed in their counter that the applicant did not submit his application complete in all respects which led to the rejection of his candidature. In reply the applicant has not been able to place any material before us to sustain his plea that he had enclosed all the requisite documents which got misplaced after receipt in the office of Respondent No.3. That being the fact of the case, we see no merit in this application.

7. We also hold that the finding of the Respondent No.3 about the lacuna in the selection process is unexceptional and therefore stands the test of judicial scrutiny. It is therefore in fitness of things that the selection of Respondent No.5 has to be annulled and a fresh selection has to be carried out strictly, according to the recruitment rules prescribed in this regard.

8. We, therefore, direct the Respondents to carry out fresh selection of the most meritorious candidate from among the applicants who had responded to the vacancy notification dated 18.1.99 (employment exchange) and dated 19.3.99 (public notification). As we have observed earlier while disposing of O.A. No. 163/99, we reiterate that the Respondents should take such action as is permitted under the law to correct the wrong selection made for the post of E.D.D.A., Tentoil. The said process of fresh selection should be completed by the

Respondents within a period of 120 days from the date of receipt of this order. We find that Respondent No.5 has already worked as E.D.D.A. for about three years. He is therefore entitled to some protection in appointment as GDS within this recruiting unit. We accordingly direct the Respondents to consider the case of the Respondent No.5 for appointment in any GDS post which may hereinafter fall vacant, in this recruitment unit, subject to his fulfilling the eligibility conditions for the post.

9. With the observation and direction as made above both the O.As(O.A. Nos. 78/01 and 57/02) are disposed of.

No costs.

Feb 20/07/84
(M.R.MOHANTY)
MEMBER (JUDICIAL)

h.m
(B.N.SQM)
VICE-CHAIRMAN

RK/SD