

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.NO. 405 OF 2003
Cuttack, this the 17th day of September, 2004

LAXMI NARAYAN DAKUA.

APPLICANT.

: VRS.:

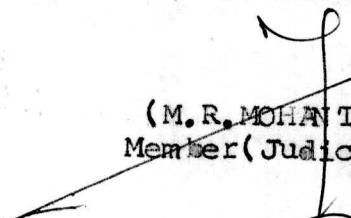
UNION OF INDIA & OTHERS.

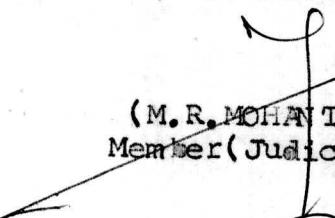
RESPONDENTS.

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


(B.N. Sasmal)
Vice-Chairman


(M.R. MOHANTY)
Member (Judicial)


17/09/04

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.NO. 405 OF 2003

Cuttack, this the 17th day of September, 2004

C O R A M

THE HONOURABLE MR. B.N. SOM, VICE- CHAIRMAN
And
THE HONOURABLE MR. M. R. MOHANTY, MEMBER (JUDL.)

....

LAXMI NARAYAN DAKUA,
Aged about 27 years,
S/o. Jaya Krishna Dakua,
At/Po: Jagannath Prasad,
DIST: GAN JAM.

.... APPLICANT.

By legal practitioner: Mr. D. P. Dhalsamant,
Advocate.

-Versus-

1. Union of India represented through
Director General, Department of Post,
Ministry of Communications,
Dak Bhawan, New Delhi-110 001.
2. Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist. Khurda-751 001.
3. Postmaster General, Berhampur Region,
Berhampur-760 001.
4. Director Postal Services,
Berhampur Region,
Berhampur-76001.
5. Superintendent of Post Offices,
Aska Division, Aska, Ganjam.

.... RESPONDENTS.

By legal practitioner: Mr. A. K. Bose,
Senior Standing Counsel.

....

J

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant Laxmi Narayan Dakua having secured highest percentage of marks (in the H.S.C. examination) among the three Physically handicapped candidates, was selected for the post of Extra Departmental Branch Post Master of Chamunda Branch Post Office subject to his clearance from the Medical Board. Accordingly, his case was referred to the Chief District Medical Officer (Ganjam) vide Departmental letter dated 20-03-2001 for his examination (by a Medical Board) to obtain a capability certificate. In return, the C.D.M.O. of Ganjam District (vide his letter dated 29.03.2001) reported that the Physically handicapped certificate that was issued in favour of the Applicant (after examining him in the Physically Handicapped Board, constituted for the purpose) was a correct one and that the Applicant is capable of doing the work of a Branch Postmaster. As appointment of Physically handicapped candidates, under preferential category are required to be approved by the Postmaster General (in terms of D.G. (Post) Letter No. 21-3/92-ED and TRG dated 22-4-1994) the case of the Applicant was forwarded to the Postmaster General of Berhampur Region vide Deptl. letter dated 10-05-2001. While the matter was pending in the office of the Postmaster General (Berhampur Region), a complaint from one Shri Bulu Kumar Arukha, a Physically Handicapped

candidate, was received through the Chief Postmaster General of Orissa Circle and the Superintendent of CBI/SPE, Bhubaneswar; wherein it was alleged that the Applicant is a man of sound physique but not physically handicapped. On receipt of the said complaint, the Office of the Postmaster General (Berhampur) made inquiries through their own Agency and also referred the matter to the Department of Health of Government of Orissa for further medical examination of the Applicant regarding his disability. The said Standing Medical Board advised the Applicant for M.R.I. investigation vide CDMO (Ganjam) Memo No. 2892/M.03 dated 06-05-2003; on receipt of which, the Applicant submitted a representation to the Respondents praying them to bear the cost of M.R.I. On the other hand, expecting that the entire process may take more time and the vacancy in the post of EDBPM (Chamunda) may cause inconvenience to the members of Public, the post Master General issued direction to fill-up the said post from among the GDS employees of the Division. In the said premises, the Applicant, being aggrieved by the said action of the Respondents filed this Original Application u/s. 19 of the Administrative Tribunals Act, 1985 with prayer: (a) to quash the Notification dated 19-05-2003 under Annexure-13 (by which the vacancy in question was sought to be filled up by alternate measures); (b) to direct the Respondents to appoint the Applicant in the post of EDBPM of Chamunda Branch Post Office.

✓

2. The Respondents, by filing their counter, have admitted the above facts and have stated that the Respondents had to take a decision in the interest of the general public, there was nothing wrong in taking such a decision. On this, the Applicant filed a rejoinder.

3. Heard learned counsel for the parties and perused the materials placed on record.

4. On the date of admission (21-7-2003) it was specifically mentioned by the learned counsel for the Applicant that no report having been received from the CDMO of Ganjam District, the Respondents should be restrained from filling up of the post in question and, considering such submissions, this Tribunal had directed (on 21-07-2003) as under:-

"By way of interim relief, it is hereby directed that any appointment made, pursuant to Annexure-13, to the post of GDSBPM, Chamunda BO shall be subject to the result of the Medical report, in respect of the Applicant, to be received from the Chief Medical Officer, Ganjam".

5. The entire fate of the matter depended on the report of the Medical Board with regard to the disability of the Applicant. Through rejoinder, the Applicant has produced the proceedings of the Standing Medical Board held on 2-7-2003 pursuant to the letter dated 17-4-2003 of the DPS Orissa; which reads as follows:-

7
8

"2-7-2003;

Shri Laxmi Narayan Dakua appeared before the Standing Board on 2-7-2003 for his medical examination. The report of M.R.I. done on 7-6-2003 was reviewed, which indicates that Shri Dakua has diffuse Posterior Dulge at L-4, L-5 level causing Thecal Sac indentation and Canal atresia. This may not have visible Physical handicap but would have pain leading to disability during activity which is considered as handicapped".

(emphasis supplied)

The above medical Board constituted of the Prof. and HOD of Surgery, & Prof. & HOD of Medicine of MKCG Medical College (Berhampur) and the Chief District Medical Officer, Ganjam District.

6. Now that the Medical Board have certified, basing on the M.R.I. report, that the Applicant is "a Physically Handicapped person", the Respondents are hereby directed to allow the Applicant to join his duty as EDBPM of Chamunda EO; more so when his selection and appointment has already been upheld by this Tribunal (Division Bench) in O.A.No. 583/2001 of Bulu Kumar Arukha and that was disposed of on 13-04-2004 and make it clear that if, in the meantime, the post, in question, has been filled up by any body (pursuant to Annexure-13, on transfer basis) then the man should be repatriated to his original post or he should be adjusted in any other vacant post

J
S

in order to give room to the Applicant at Chamunda Branch Post Office.

7. In the result, this Original Application is allowed. No costs.

B.N. SOM
(B.N. SOM)
VICE-CHAIRMAN

M.R. Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Chamunda
17/09/2014