

5

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.428 OF 2003
Cuttack, this the 2nd day of December 2003

Kshirod Ch. Mohanta Applicant

Vrs.

Union of India & Others Respondent

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?

Yes

No

28/11
(BHARATI RAY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.428 OF 2003
Cuttack, this the 2nd day of December 2003

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
&
HON'BLE BHARATI RAY, MEMBER(J)

Kshirod Chandra Mohanta, aged about 40 years, Son of Shri Goura Chandra Mohanta, Village/P.O- Kankada, Via-Turumunga, Dist-Keonjhar.

.....Applicant(s)

By the Advocate(s)

..... Mr. S.K. Patri.

-Vrs-

1. Union of India, represented through Chief Postmaster General, Orissa Circle, Bhubaneswar-751001.
2. Director, Postal Services, Sambalpur.
3. Superintendent of Post Offices, Keonjhar Division, Keonjhar.
4. Asst. Superintendent-in-charge, Keonjhar, East Sub-Division, Keonjhar.

.....Respondent(s)

By the Advocate(s)

..... Mr. U.B. Mohapatra,(ASC)

O R D E R

BHARATI RAY, MEMBER (JUDICIAL):

This application has been filed by Shri Kshirod Ch. Mohanta challenging the notification No.A-280/selection dated 20.06.2003 passed by

8

the Superintendent of Post Office of Keonjhar Division and seeking the following orders:-

- a) to quash the notification dated 20.06.2003 vide Annexure-4.
- b) to quash the memo dated 09.02.2001.
- c) to direct the Respondents not to carry on the necessary recruitments for selection to Gramin Dak Sevak BPM of Kankada B.O., Keonjhar;
- d) and also further to direct authorities/respondents to declare that the applicant has been appointed as the B.P.M., Kankada on permanent basis;

2. It is the case of the applicant that he applied for the post of EDBPM of Kankada Branch Post Office, Keonjhar in response to the notification dated 21.04.1998. The second notification was issued on 26.05.1998 for the same post. The second notification became necessary only because one SC Community candidate had applied in response to the first notification. In that notification it was clearly stated that if no SC candidates are available, the post would be declared as unreserved. The petitioner's application was scrutinized and he was found suitable to undergo the induction training from 19.07.1998 to 22.07.1998. But, the appointment letter was not issued to him. While the situation stood like, thus, a 3rd notification dated 16.06.1999 was issued by the Respondent for the same post. The applicant approached this Tribunal in earlier O.A. No.328/99 praying for quashing the said notification dated 16.09.1999

which was ultimately allowed by this Tribunal, with a direction to the postal authorities to give effect to the provisional selection made in response to which the applicant had already undergone training.

3. Pursuance to the said order of the Tribunal dt.14.09.2000 the applicant joined on the said post on 01.12.2000. When the matter stood thus, a fresh notification was issued for the said post of EDBPM on 20.06.2003 where it was stated that the post was reserved for SC community and in case minimum required number of 3 eligible SC candidates were not available, the vacancy would be offered to other communities, viz., OBC, ST & OC respectively.

4. The said notification is enclosed as Annexure-4 to the O.A. The applicant made a representation to Respondent No.3 on 16.07.2003 for keeping him in the said post. Copy of the same representation is enclosed at Annexure A-5 of this O.A.

5. Respondents have replied to the said representation by letter dated 28.08.03 which enclosed at page (9) of the counter filed by the Respondents.

6. Heard, I.d. Counsel for the parties. We have gone through the facts of the case and the materials placed before us. We have also gone through the judgment of the Tribunal in O.A. No.328/99 and 401/98 passed by this

9

Tribunal. We notice that vide order sheet dated 28.07.03 an interim order was granted to the extent that any appointment pursuant to Annexure.A-4 dt.20.06.03 shall only be made with the leave of this Tribunal. It was also mentioned in the said order that pendency of the case shall not stand as a bar before the Respondents to consider the representation made by the applicant and pass a reasoned and speaking order by 8th September, 2003. As already mentioned above, the representation of the applicant has been disposed of by a letter dated 28.08.03 (which is enclosed at page 9 of the counter.)

7. On going through the counter filed by the Respondents we find that it is the case of the Respondent that in pursuance of the order of the Tribunal dated 14.09.2000 passed by this Bench in O.A. No.328/99 (filed by the applicant) the applicant was provisionally appointed as EDBPM Kanakda BO vide this Office memo No.A-280/CAT dated 29.11.2000 and accordingly the applicant joined the said post w.e.f. 01.12.2000. Prior to filing of O.A No.328/99 by the applicant before the Tribunal, one Sri Kamal Kanta Patra who belongs to S.C. candidate had applied for the

8.

10

post of EDBPM, Kankada BO had filed O.A. No.401/98 before this Tribunal which was disposed off vide judgement order dated 16.07.1999. The applicant here in was made as Respondent No.3 in the said O.A. The Tribunal disposed of OA No.401/98 vide their judgement dated 16.07.1999 with direction that if in this particular recruitment unity, the required percentage of SC EDBPM has already been reached then it will not be necessary for the departmental authority to issue fresh notice inviting applications from SC candidates and in that event the departmental authorities to go ahead to proceed with the selection process in pursuance of the notice for which the last date of submission of application has been mentioned as 19.07.1999. A copy of the said judgement is annexed as Annexure-R-3. of counter. Being aggrieved with the judgement passed by the Tribunal in O.A 401/98, Sri Kamala Kanta Patra filed OJC No.14866/99 before the Hon'ble High Court of Orissa challenging the order of this Tribunal, and the Hon'ble High Court of Orissa disposed of OJC No.14866/99 vide their judgement order dated 29.01.2003 modifying the order passed by the Tribunal with a direction that steps be taken by the authorities to fill p the post preferably from the SC community by securing at least 3 candidates from the said community for the said unit failing which

the cases of General candidates will be considered. The Hon'ble High Court made it clear that the department should make fresh notice and while filling up the post the applications which are already with them shall also be taken into consideration and that the entire exercise shall be over within a period of 4 months. A copy of aforesaid judgement is annexed here as Annexure-R-4. In obedience to the said direction issued by the Hon'ble High Court of Orissa in OJC No.14866/99 dated 29.01.2003 fresh notification was issued by O.P. No.3 vide notification No.A-280/selection dated 20.06.2003 inviting applications for the post fixing the last date of receipt of applications to 21.07.03.

8. The Ld. Counsel for the applicant argued that since the applicant was selected through a regular process of selection, therefore, the action of the Respondents are arbitrary. It is also submitted by the Ld. Counsel for the applicant that the applicant has no knowledge of OJC No. 14866/99 filed before the Orissa High Court and the applicant for the first time came to know that the order of this Tribunal in O.A. No.401/98 was the subject matter of challenge before the High Court.

9. Be that as it may, we find from the letter of appointment issued to the applicant vide Annexure-R/2 dated 29.11.00 that his appointment was on

19

provisional basis subject to further outcome of the judgement of the Tribunal/High Court, if any.

10. From the above facts and circumstances we find that although this Tribunal has quashed the notification dated 16.06.99 and directed the Respondent to give effect to the provisional selection made to the applicant in response to which he had undergone training, this judgement of the Tribunal got modified by the judgement of the Hon'ble High Court of Orissa, and the Respondent has issued the fresh notification in compliance of the said judgement of the Hon'ble High Court. It is also noticed that in terms of the order of the High Court, the case of the applicant as well as Respondent No.5 who had also earlier applied for the said post are also to be considered. The appointment of the applicant was on provisional basis subject to outcome of the OJC No.14866/99. The Respondent acted in terms of the order of the High Court. For the reasons discussed above, we do not find any illegality on the part of the Respondents in issuing fresh notification. We are, therefore, of the view that the applicant is not entitled to any of the reliefs prayed for in this O.A. Therefore, the O.A. being devoid of merit is dismissed. No costs.

13

11. The interim order passed by this Tribunal on 28.07.03 stands vacated. The MA 830/03 is disposed of accordingly. No costs.

Bharati R.
(BHARATI RAY)
MEMBER (JUDICIAL)

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

CAT/CTC
Kalpeswar