

5

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 67 OF 2004
Cuttack, this the 8th day January, 2005

Sri Bijaya Chandra Sahu Applicant

Vrs.

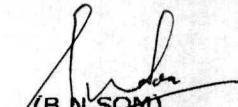
Union of India and others Respondents

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)


(J.K. KAUSHIK)
JUDICIAL MEMBER


(B.N. SOM)
VICE-CHAIRMAN

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

O.A.NO. 67 OF 2004

Cuttack, this the 8th day January, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI J.K.KAUSHIK, JUDICIAL MEMBER

Sri Bijaya Chandra Sahu, son of Sri Govinda Sahu, At Sanda Mohanty Street, P.O.
Berhampur, Dist. Ganjam

.....
Applicant

Advocates for the applicant

Mr. P.K.Padhi

Vrs.

1. Union of India, represented through its Chief Post Master General, Orissa Circle, At/PO Bhubaneswar, Dist. Khurda 751001
2. Post Master General, Berhampur Region, At/PO Berhampur, Dist.Ganjam Pin 760 001
3. Director of Postal Services, Berhampur Region, At/PO Berhampur, Dist.Ganjam
4. Superintendent of Post Offices, Berhampur Division, At/PO Berhampur, Dist. Ganjam 760001
5. Sri Subash Chandra Behera, GDS MD, At/PO B.Nuagaon, Berhampur, Dist.Ganjam

.....
Respondents

Advocates for the Respondents - Mr.U.B.Mohapatra, Sr.CGSC

O R D E R

PER J K KAUSHIK, JUDICIAL MEMBER

Shri Bijaya Chandra Sahu is seeking a mandamus to the respondents to consider his case for promotion to the Group D and promote him from the date the respondent No. 5 has submitted his refusal for promotion against the regular vacancy meant for OBC category.

2. We have heard the learned counsel for both the parties and have anxiously considered the submissions, pleadings and records of this case. Though the issue lies in a narrow compass,

J

7

2

the learned counsel addressed wide-ranging arguments in this case.

3. The contextual scenario of this case depicts that the applicant belongs to Other Backward Community (for brevity OBC) and came to be appointed to the post of Extra Departmental Stamp Vender at Berhampur Head Post office on dated 30.7.74. He has already rendered over 29 years of service without any blemish. As per the recruitment rules, the EDA is the feeder cadre for appointment by promotion to the post of group D. The appointment is made on the basis of divisional seniority and subject to fitness by the DPC. The also submitted application at number of times for said appointment. A notification came to be issued on dated 2.8.2001 for filling up 4 group D post from amongst EDA/GDS on the basis of the division to which applicant belongs. Out of these posts, one was reserved for ST category to which the applicant belongs. Applicant also submitted his application along with others. One Shri Subas Chandra Behera, an OBC candidate, Respondent No. 5 was recommended against the reserve point meant for ST. Nevertheless, the said candidate refused for the appointment since he has crossed 50 years of age. The applicant is the next candidate belonging to OBC category in the consideration zone.

 The respondents have not taken any steps to organise further

selection for the said post. He has sent number of representation but nothing could be materialised, so far. The inaction of the respondents has been challenged on diverse grounds enunciated in para 5 and its sub-paras.

4. Per contra, the official respondents have contested the case and have resisted the claim of the applicant by filing a detailed counter reply. It has been averred that though Shri Behera was selected as Group D and allotted to Parlakhemundi HO unit, he expressed his unwillingness on promotion on 5.8.2002 only. No panel was maintained by the DPC held on 18.4.2002. No further DPC has been held and the applicant could not be considered in absence of approval by the DPC. The vacancy is meant for OBC; there being shortfall of one post in-group D for OBC category. The case of the applicant will be considered by the next DPC and if found suitable then only his case for promotion in-group D can be considered.

5. Both the learned counsel representing the contesting parties have reiterated the facts and ground raised in their respective pleadings as noticed above. The learned counsel for the applicant has made us to traverse the eligibility list and demonstrated that the applicant is the second senior most candidate belonging to OBC category. His name gains height to

D

the senior most since the person who was above him has squatted. However, the respondents are protracting the holding of DPC for no cogent reason except that of causing stagnation and harassment to the applicant in a whimsical and arbitrary manner. On the other hand, the learned counsel for the respondents submitted that there is no doubt a vacancy is available but the DPC is to be held and as and when DPC would be held his candidature shall be considered in accordance with the rules. He has next contended that the respondents have made clean breast of their stand of defence in the reply as well.

6. We have considered the rival submissions and contentions put forth at bar by the learned counsel for the parties. As far as the factual facet of this case is concerned, there is no dispute. It is trite law that the state cannot be compelled to fill up any vacant post. Nothing prevents the state to take a decision for not filling up a particular post (s). The employees as it is do not have any fundamental right to promotion and as per Article 16 only right to consideration for promotion has been guaranteed. One is required to be considered when his turn comes and he otherwise fulfils the eligibility conditions. In the instant case we would have ~~ought~~ rightly rejected this case had it been the case of respondents that they do not want to fill up the vacant post and a bona fide decision is taken to that effect or else there is no

10
5

vacancy. Nevertheless, they admit of having a vacancy of group D post meant for OBC category and intend to fill up also. The respondents also do not specify any schedule time for filling up the same. Can it be said to be fair that the case of applicant be considered as and DPC is held?

7. We may point out that the action of the authorities has to be reasonable and should not smack arbitrariness as is reflected in this case ~~from~~ the cursory and casual approach of the respondents. The principles of law in this respect have been lucidly enunciated by the Apex Court in case of **AIR 1993 Supreme Court 935 Mahesh Chandra, v. Regional Manager, U.P. Financial Corporation and others**, and we would do well by reproducing the same as under:

"Every wide power, the exercise of which has far-reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of

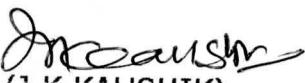
DV

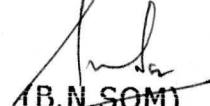
11 6

dishonesty, if the authority is found to have acted contrary to reason."

9. Keeping in view the aforesaid principle, we are of the considered opinion that the respondents have not acted fairly and treated the matter with neglect without any reason least to say justified or cogent reason. We therefore, find force in this Original Application and the same stands allowed in the following terms:

"The official respondents are directed to convene a DPC for filling up the vacant group D Post in question and reserved for OBC category and consider the candidature of all the eligible candidate including that of the applicant as per rules in force and complete the process within a period of four months from the date of communication of this order. No costs."


(J.K. KAUSHIK)
JUDICIAL MEMBER


(B.N. SOM)
VICE-CHAIRMAN