

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 29 of 2002
Cuttack, this the 18th day of October, 2004.

Atal Bihari Pati. Applicant.

-Vrs.-

Union of India & Ors. 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? No.

Nukta
(B.N. SOR)
Vice-Chairman

M. R. Mohanty
Member (Judl.)

Chair
18/10/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 29 of 2002
Cuttack, this the 8th day of October, 2004.

CORAM:

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

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ATAL BIHARI PATI,
S/o. Sri Rabindra Mohan Pati,
At/Po: Bainsia, Ps: Gondia,
Dist. Dhenkanal. Applicant.

By legal practitioner: M/s. P. K. Mishra, B. K. Beura, Advocates.

-Versus.

1. Union of India represented through
Director General of Posts, Dak Bhawan,
New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle,
At/Po: Bhubaneswar-751 001, Dist. Khurda.
3. Postmaster General, Sambalpur Region,
Sambalpur-1.
4. Superintendent of Post Offices,
Dhenkanal Division, Dhenkanal-759 001.
5. Sri Arabinda Sahoo,
Branch Post Master,
Bainsia Branch Post Office,
At/po: Bainsia, Mahima Gadi,
Dist. Dhenkanal-759 014. Respondents.

By legal practitioner: Mr. B. Dash, Addl. Standing Counsel.

8

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Consequent upon retirement of the Extra Departmental Branch Post Master (Rabindra Mohan Pati) of Bainsia Branch Post Office (in account with Mahimagadi Sub Post Office) of Dhenkanal Postal Division, the Respondent Department issued public Notification on 20.09.2001 (fixing 10.10.2001 as last date for receipt of application, complete in all respect) to fill-up the said vacancy. Simultaneously, vide letter dated 20.09.2001 of the Respondent Department, requisition was also placed with the Employment Exchange at Dhenkanal for sponsoring names of candidates for the vacant post, in question. Respondent No.5 upon being selected, was appointed as the EDBPM/GDSBPM, in question and the Applicant (who was a candidate for the post in question) being aggrieved by the selection and appointment of the Respondent No.5 has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 wherein he has challenged (the selection and appointment of Respondent No.5) on the ground that the application of Respondent No.5 was received after the last date

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(as stipulated in the Advertisement) and that, therefore, the Applicant has prayed for issuance of a direction to the Respondents to select him (Applicant) for the post, in question.

2. Respondents have filed a counter disclosing therein that the allegation of the Applicant (that the application of Respondent No.5 was submitted on 16.10.2001 and that the same was received by the Department on 17.10.2001) to be false. It is the case of the Respondents that application of Respondent No.5 was made over to the concerned Branch Post office of Respondent No.4 which was duly acknowledged in the BO journal at Sl. No.12/39 dated 10.10.2001 in the office of the Respondent No.4 and, therefore, there was nothing wrong in taking the same into consideration and that since the Respondent No.5 secured the highest marks (in the matriculation examination having all eligibility) among all eligible candidates; he was selected and appointed.

3. Applicant also filed a rejoinder stating therein that the document filed as Annexure-R/5 denoting receipt of the application (of Respondent No.5) on 10.10.2001 to be not a genuine document and on perusal of the said document, in course of hearing the Respondents were asked (by this Tribunal) to come with better particulars and in the said premises,

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the Respondent No. 4 filed an Affidavit enclosing a letter dated 05.08.2004 of the Director of Postal Services, Sambalpur Region; relevant portion of which reads as under:-

"I have visited Dhenkanal Division on 04.08.2004 and inquired into the case with reference to the original records relating to the case. It revealed from the inquiry that the application of Sri Arabinda Sahoo, the selected candidate for the post of BPM, Bainsia had not been received either by ordinary post or by registered post. It appears that the said application was received by hand. However, at this juncture it is not possible to pin point if this application was received on 17.10.2001, i.e. after the cut off date 10.10.2001, as alleged by the complainant in view of the fact that the two of the documents i.e. income certificate dated 9.10.2001 and copy of the sale deed of land records of Sri Arabinda Sahoo were attested by the Assistant Surgeon, District Headquarter Hospital, Dhenkanal on 10.10.2001."

Nonetheless the fact of the matter is that the application of Sri Arabinda Sahoo was not received by registered post as stipulated in the notification for appointment. In spite of that the appointing authority considered the application of Sri Arabinda Sahoo and ultimately appointed as BPM, Bainsia.

As regards, Annexure-R/5 to the counter, it is submitted that there has no tampering/manipulation with documents. In fact the R.L.No. 3291 dated 9.10.2001 was sent by Subdivisional Inspector of Posts, Kamakhyanagar enclosing nine letters addressed to the Divisional Superintendent, Dhenkanal in connection with different matters relating to the different branches which may be seen from the said Annexure-R/5. None of the letters were application for the post of BPM, Bainsia.

Explanation of the concerned appointing authority is being called for, for taking further necessary action".

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In paragraphs 2,3 and 4 of the aforesaid Affidavit it has been disclosed as under:-

"2. That during the course of hearing, this Hon'ble Tribunal on 24.7.2004 while expressing its displeasure directed for an enquiry to be conducted by the Director of Postal Services, Sambalpur. In terms of the aforesaid order, the Director of Postal Services, Sambalpur conducted an enquiry and found that the application of the selected candidate was neither received by ordinary post nor by Registered post and in that view of the matter, his application ought not to have been considered for selection against the post of BPM, Bainsia."

Further the Director has observed that 9 documents were sent enclosed in the same enclosed cover i.e. the RL No. 3291 dated 09.10.2001 sent by the Inspector of Post Offices, Kamakhyanagar but none of the said documents related to filling up the post of BPM Bainsia and finally observed that necessary action is being taken against the erring officials. A copy of the letter addressed by the Director disclosing the aforesaid facts is filed herewith as ANNEXURE-R/7.

3. That in view of the report of the Director, Postal Services, Sambalpur, the selection of the Respondent No.5 to the post of BPM Bainsia is not proper. Necessary steps are being taken in this regard.

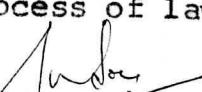
4. That from the check sheet, it is clear that in place of the selected candidates, the applicant cannot get an appointment since other candidates satisfying prescribed conditions secured more marks than the applicant".

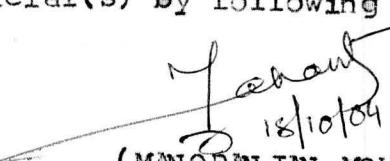
4. Heard learned counsel for both sides and perused the materials placed on record. From the letter dated *M*
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05.08.2004(extracted above), it is crystal clear that there were some irregularity in the matter of receipt of application of Respondent No.5 leading to his selection and appointment to the post in question. The said factum has also been admitted by the Departmental Respondents in the Affidavit filed on 06.08.2004 and departmental letter dated 05.08.2004. It has also been disclosed in the Affidavit filed on 06.08.2004 that Departmental Respondents are taking steps to undo the wrong. However, it has been disclosed that even if Respondent No.5 goes out, still then the Applicant may not stand selected; because more meritorious candidates than him were there.

5. In the result, this Original Application is hereby disposed of leaving the matter to the Departmental Respondents (especially to the Director of Postal Services, at Sambalpur) to undo the wrong expeditiously and to punish the erring official(s) by following due process of law.


(B.N. SOMPAL)
Vice-Chairman


18/10/04
(MANORANJAN MOHANTY)
Member (Judicial)