

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.751 OF 2002

Cuttack, this the 12th day of Sept., 2003

Narayan Prasad Singh

.....

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*

12/09/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

12/09/03
(B.N. SGM)
VICE-CHAIRMAN

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CORAM:

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

HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

**Narayan Prasad Singh, S/o Late Udayanath Singh, Village/P.O.
Mahajanpur, Via-Bahugram, Dist-Cuttack.**

.....Applicant

By the Advocate(s) **Mr. P.K. Padhi.**

Vrs.

1. Union of India, represented through its Chief Post Master General Manager, Orissa Circle, Bhubaneswar-1
2. Superintendent of Post Offices, Cuttack South Division, At-Cantonment Road, P.K. Parija Marg, Po-Cantonment, Cuttack-1.
3. Sub-Divisional Inspector (Postal), Cuttack Central Sub-Division (South Dvn.) At/Po-Cuttack-13.
4. Shri Pramod Kumar Sahoo, GDS, MD/MC, S/O Sri Surendra Kumar Sahoo, Vill/Po-Mahajanpur, Via-Bahugram, Dist-Cuttack.

..... **Respondent(s)**

By the Advocate(s) **Mr. J.K. Nayak**

O R D E R

SHRI B.N. SOM, VICE-CHAIRMAN:

Shri Narayan Prasad Singh, by filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985 has challenged the selection of EDDA-cum-MC of Mahajanpur Branch Office, in account with Bahugram Sub Post Office, under Cuttack South Division. He has challenged the selection of

Respondent No.4 on the ground that the latter has secured less marks/percentage of marks than the applicant. He has alleged that the selection of Respondent No.4 by Respondent No.3 is arbitrary, malafide and an example of non-application of mind and, therefore, deserves to be quashed. He has also prayed to the Tribunal to direct Respondent No.3 to appoint him in service w.e.f. the date Respondent No.4 had joined as EDDA-cum-MC of Mahajanpur, B.O.

2. The Respondents have contested the OA by filing separate counters. The Respondent Nos.1,2 & 3 in one combined counter and Respondent No. 4 in a separate one have submitted that Respondent No.4 was selected out of 26 candidates who had responded to the vacancy notification and that the said Respondent No. 4 by securing 48.66 percent of marks in H.S.C Examination was provisionally selected taking him to be the most meritorious of the candidates. However, after the receipt of the notice from the Tribunal with regard to this O.A. they had carried out review of the selection made by Respondent No.3. On review, Respondent No.2 observed some defects in the selection made to the post. It revealed on record that Shri N. Singh, the applicant, had secured 342 marks, excluding extra optional paper, out of 700 marks in H.S.C Examination, the percentage of marks being 48.85. On the other hand, Respondent No.4 had secured 365 marks, excluding extra optional paper, out of 750 marks, i.e., 48.66 percent of marks. It also appeared that the application of the applicant was ignored because of the advance remarks recorded against his name by Respondent

No.3 and also on the ground that he was serving in "water supply P.H.D. Cuttack". On checking of the percentage of marks, it was found that the applicant had secured more marks than the Respondent No.4 and fulfilled all other eligibility conditions for the post. The appointment of Respondent No.4 was, therefore, terminated w.e.f. 18.11.2002 to rectify the mistake. In the counters, the Respondents have emphasised the fact that the applicant had concealed his engagement as daily laborer in the office of Junior Engineer (in short JE), Water Supply, Cuttack, in his application. The Respondents have also refuted the allegation of malafide or arbitrariness in the selection process.

3. Respondent No.4 by filing a counter has submitted that it is not correct on the part of Respondent Nos.1-3 to state that for the post in question the basis of selection is the marks secured in the H.S.C Examination when the qualification required for the post as prescribed in the recruitment rule is passing of Class VIII standard. He further stated that the standard of H.S.C. Examination held by the Board of Secondary Education, Orissa or by any other Board in other States/Central Govt. vary from year to year or from Board to Board and any selection based on examination marks is liable to be unequal and unjust and hence unreliable. He has also tried to prove statistically that 48.85% marks secured by the applicant & 48.66% secured by him could have been rounded off to 49% and then the selection should have been made by selecting the younger person and more so required in this case because for the post of EDDA/MC youth should be preferred. He has

also submitted that the applicant was guilty of suppressing the fact from the authorities that he had been serving in the Public Health Engineering Department of the State Govt. and on this ground his candidature is reliable to be rejected.

4. We have heard Shri P.K. Padhi, Ld. Counsel for the applicant & Shri J.K. Nayak, Addl. Standing Counsel for the Respondents. We have also perused the records placed before us and the citations to which our attention were drawn by the Ld. Counsels.

5. The Respondents have already carried out a review of the selection process for making appointment to the post. They have already terminated the appointment of Respondent No.4 from November, 2002 as the selection was not made according to the procedure laid down by the Department in this regard. This decision of the Respondent No.2 to cancel the appointment of Respondent No.4 is to rectify own mistake is legally valid as held by their Lordship in Ranjit Singh Vrs. President of India (Punjab and Haryana High Court 1971 SLR 563). We quote from this judgement:-

“Every Administrative Authority has an inherent right to rectify its own mistakes unless there is some specific provision of law which prohibits such a course. An officer holding an officiating post has no vested right to be heard or to urge that since he had obtained some benefit under a wrong decision made by a departmental authority, that decision be not rectified as it would result in the loss of that benefit to him”.

6. The Respondent No.4 in his counter has gone at length to challenge the procedure followed by the Respondents in determining the merit of the

candidates on the basis of the H.S.C Examination results. The issue raised by the Respondent No.4 in his counter is well meaning no doubt, but hardly succeeds assailing the procedure that the Respondents have followed in making the selection. Firstly, because the recruitment rules for the post do not so provide. Secondly, any selection made solely on seniority or juniority in age will be seen as selection made on extenuous consideration as held by the Apex Court in Bibhudatta Mohanty case (2002) & Sec 16. Each employer is entitled to devise his own method of selection and so long as the same method is applied uniformly in all cases, that process cannot be questioned unless it hurts the provisions of Article 14 of the Constitution of India. It is necessary to recognise that each employer is guided by the unique requirements of his organization, and therefore the employer is the best judge to decide how to get the right man for the right job. Such a selection method when it comes under judicial scrutiny will be tested to see that it is transparent, equitable and rational. In this case, we have found that the parameters of selection were notified through the vacancy circular, over and above circulating them through the executive orders as compiled in Service Rules for E.D. Agents, Swamy's Compilation by the Respondent No.3. The Respondents have also submitted the documents prepared by the Selection Committee for making selection for this post in a transparent manner. There is hardly any scope for any eye-brows to be raised in the matter. We also see no scope to accept any of the suggestions canvassed in the counter of Respondent No.4. The latter in his counter has repeatedly made a point that

the applicant's candidature should be rejected on the ground that he had suppressed the information that he was in employment under PHD , Orissa State Govt. This point has also been mentioned (though in a mutc way) by the Respondents. We are not, however, impressed by the said objection as no casual worker requires permission of his employer to apply for a regular job. The said objection raised by the Respondents is without any force of law nor does not constitute any violation of vacancy circular which we therefore overrule.

7. The Ld. Addl. Standing Counsel Mr. J.K. Nayak, drawing our attention to the case between Mr. M.K. Diwan Vs. K.P. Gita Krishna and others, (1990) 13 ATC 926 has stated that the action taken by Respondent No.2 in setting aside the appointment of Respondent No.4 on receipt of a representation pointing out error in judging his candidature on the basis of the marks obtained in HSC Examination during the pendency of this O.A cannot be faulted. The Principal Bench of this Tribunal had ruled in that case that the "Respondents will be at liberty to give relief to the applicant in such a representation during pendency of the application". He further submitted that although the service of Respondent NO.4 was terminated, no regular appointment has been made against that post following the provisions of Section 19(4) of AT Act. 1985.

8. Mr. P.K. Padhi, Ld. Counsel for the applicant, relying on the judgement of Punjab High Court rendered in Civil Writ No.1083 of 1969, decided on 25.05.1971, 1971 SLR 551, submitted that the action of the

Respondent No.2 in terminating the service of Respondent No. 4 is legally valid, because the Hon'ble High Court had observed in that case.

" where an order was passed by the Govt which was palpably an erroneous administrative decision which affected several senior officers, there was no rule of law which debarred a Govt, while acting administratively, from remedying the wrong done by itself."

9. He referred to another full Bench Judgement of the same High Court, AIR 1970 Punjab & Haryana 241, where it has been held as follows:-

"It can revise its decision at subsequent stage when mistake comes to notice. The mistake can be corrected and it cannot be said that it would be allowed to perpetuate even when the same was discovered"

10. We have given our anxious thought to the facts and circumstances of the case and the arguments of all the parties, On careful examination of the facts of the case we are of the view that the action of the Respondent-Department in terminating the service of Respondent No.4 to correct a palpable mistake was legally valid and no prejudice was caused to anyone in that process. We also find no illegality in the action taken by the Respondents to terminate the service of Respondent No.4 under Rule 6 relying on the judgement of the Apex Court in Civil Appeal No.5918 of 1997 decided on 24.12.01, SCLJ 2001 (2) 148 (Brij Mohan Singh Vr. Union of India & Ors.)

11. Having regard to the above facts and circumstances of the case and the law position in this regard, we allow the O.A. to succeed to the extent that the Respondents 1 & 2 are at liberty to make a selection of the most

suitable candidate for the post of EDDA -cum- MC Mahajanpur B.O. from out of the 26 candidates who had responded to the vacancy circular for the post. No costs.

Mohanty
12/09/03

(M.R. MOHANTY)
MEMBER (JUDICIAL)

Som

(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar