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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.963/2002

Cuttack, this the 12th day of March 2004

Biswanath Baral

.....

Applicant

Vrs.

Union of India & Others

.....

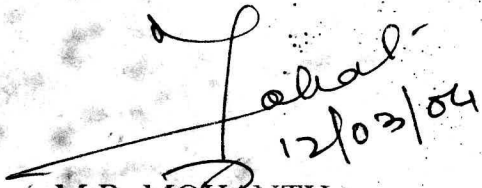
Respondent

FOR INSTRUCTIONS

- (1) Whether it be referred to the Respondents or not ?
(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not?

no

yes


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

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

&

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

Biswanath Baral, aged about 27 years. Son of Gundicha Baral, of village-Jaripada, P.O. -Kaluparaghat, PS-Tangi, Dist-Khurda.

By the Advocate(s)

..... Applicant.

M/s. Dharamidhar Nayak

R.C. Swain

R.K. Pradhan

PC Mishra

M Mohanty

-Vrs-

1. Union of India, Represented through the Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda.
2. Senior Superintendent of Post Offices, Puri Division, Puri, At/PS/Dist-Puri.
3. Sub-Divisional Inspector Post, Jatani Sub-Division, At/P.O/P.S-Jatani, District-Khurda.
4. Branch Post Master, Anda Post Office, At/P.O -Anda, Via-Bajpur, District-Khurda.

By the advocate(s)

.....Respondent(s)

Mr. S. Behera

ORDRE

SHRI B.N. SOM, VICE-CHAIRMAN: Shri Biswanath Baral has filed this application assailing the decision of Respondent No.3 to terminate his

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service giving one month' notice but giving no reasons for terminating his service although he is a regularly selected candidate.

2. The applicant was appointed as Gramin Dak Sevak Mail Carrier (in short ~~DG~~GSMC) in Anda Branch Post Office vide Respondent No.3 Memo no.A-15 dt.27.04.02. The applicant assumed charge on 03.05.02 and continued in that post till he received the letter of termination dated 21.09.02 Annexure-3 under Rule 8 (1) and (2) of the Gramin Dak Sevak (Conduct & Employment) Rules, 2001. The Respondents have submitted by filing the counter that after giving appointment to the applicant the Respondents received a complaint on dt. 22.04.03 from the villagers that the appointment made to the post had been done irregularly. Thereupon, the matter was inquired into by the Respondent in-terms of DG Posts instruction dt.27.11.97 (Annexure-6). The said instruction provides that if 3 eligible candidates from the reserved community are not available to be considered for selection, the selection should be made only after obtaining approval from the higher authority. In this case the post was advertised to the local Employment Exchange as also through local public notification that the post of GDSMC is reserved for ST community with the stipulation that if candidates from the ST community will not be available the post may filled up from among the candidate belonging to OBC/SC/OC in that order. In

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response to the advertisement, 12 candidates applied which included candidature of three OBC candidates. Respondent No.3, the Recruiting Authority, after assessing the relevant merit and qualification of the three OBC candidates found the candidature of Shri Biswanath Baral, ~~that~~ ^{the} applicant who possessed highest marks in Madhyama examination was the most suited for the post and ordered his selection on provisional basis subject to verification of certificates submitted by him. The applicant joined the post on 03.05.2002 and continued until 23.09.2002 when he received a memo dated 21.09.2002 (Annexure-3) from Respondent No.2 terminating his service under Rule 8(1) and (2) of the Gramin Dak Sevaks (Conduct & Employment) Rule, 2001. The case of the Respondent is that the selection in this case having not been carried out strictly in terms of the instructions contained in Annexure-R-6, ^{the same} was reviewed by the next higher authority i.e. Respondent No.2 and after thorough investigation into the matter directed the Respondent No.3 to terminate the service of the applicant. The letter of termination at Annexure-3 was then issued.

3. We have heard the Shri Dharanidhar Nayak Ld. Counsel for the applicant and Shri S. Behera, Ld. Counsel for the Respondents and have perused the records placed before us.

4. As stated above, the plea of the Respondents is that the selection was bad, because there were no three eligible candidates belonging to the OBC community for selection it was wrong on the part of the Respondent No.3 to have carried out the selection as he did. We have perused the DG Posts' instruction contained in letter No.19-11/97-ED and Training dated Nov. 1997. We have also gone through the check list prepared by Respondent No.2 in respect of 12 candidates who had applied for the post. From the perusal of the check list it is found that the following three OBC candidates had offered their candidature:-

<u>Name</u>	<u>Qualification</u>	<u>% of marks</u>
1.Biswanath Baral	Madhyama	52.00
2.Bigyan Ku. Prusty	HSC	55.60
3.Prasanna Ku. Parida	+2 Arts	49.60

5. We have also perused Annexure-R-4, containing the details of the 12 candidates including the three OBC candidates who had applied for the post and Annexure-R-5 i.e. the office letter dated 22.04.02 containing the discussion about the eligibility of the three OBC candidates. Respondent No.3 in his note at Annexure-R-4 had found candidature of Shri Bigyan Kumar Prusty (Sl. No.10 of the check-sheet) defective for having not declared his vocation and private income. He had also found another candidate, namely, Dharamidhar Nayak at (Sl. No.11) an O.C. candidate not

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eligible having not submitted his mark-sheet of H.S.C examination.

Thereafter, he concluded as follows:-

" Among the eligible candidates, the candidate at Sl. No.8 Sri Biswanath Baral possesses highest marks in the Madhyama Examination which is equivalent to HSC Examination. Hence he is selected as GDS Mail Deliverer, Anda BO provisionally subject to verification of the certificates submitted by him."

6. The selection so made by Respondent No.3 was reviewed by

Respondent No.2 as he did not correctly follow the instructions as laid down

by DG Posts (Annexure-R-6). The Review order is extracted below:-

" On review, it is found that the selection of Shri Biswanath Baral against the post of GDS MD Anda BO in account with Bajpur S.O. vide your memo under reference is not in order. There were only three OBC candidates in the panel and among them one is found ineligible for the post due to want of vocation and private income. Hence there were only two candidates in the zone of selection. It is also not correct to select a person for appointment out of two candidates without taking prior approval from the competent authority. Therefore, you are directed to cancel the selection/appointment of Sri Biswanath Baral GDS MD anda BO immediately by giving suitable notice as per rules. If the candidate has joined, he may be given notice immediately and further follow up action should be taken as per rules and report compliance."

7. In the light of the said order of the Respondent No.2 the applicant

was served with a termination notice (Annexure-3). The applicant in his

application has prayed for quashing Annexure-3 and to allow him to

discharge his duties of the post on the ground that the post was lying vacant

when he applied for it and that he was eligible to be appointed to that post.

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He has also sought to make a legal plea that if there would have been any instance of fraud or mistake committed on the part of the applicant, the Respondents should have initiated action against him within 90 days of joining and not after lapse of six months. The order of termination therefore, is bad in the eye of law, he has submitted.

8. We have carefully considered the submissions made by the applicant and also the reasons that had weighted with the Respondents to issue the order of termination at Annexure-3.

9. We do not, however, see any legal force in the argument of the applicant that if any action was to be initiated against him by the Respondent they should have done that within 90 days of his joining and not after lapse of six months because no such regulations has been laid down under GDS (Conduct and Service) Rules, 2001. We also do not agree with the conclusion arrived by the Respondent No.3 that Respondent No.2 could not have made any selection for the post out of the three OBC candidates in the panel when one of the candidates was found ineligible ^{for} ~~due to~~ want of declaring his vocation and private income. It is true that the conditions of eligibility given in the public notification contained a provision that the applicant has to declare his "vocation and private income". The same condition was put in the requisition sent to the Employment Exchange also

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under the heading, " Any other relevant information". On the other hand, the recruitment instructions for selection to the post of GDSMC provides as follows:-

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VIII Standard Preference may be given to the candidates with Matriculation qualifications. No weightage should be given for any qualification higher than Matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English.

4.

(i)XXXXXX

(ii) ED Mail Carriers, Runners and Mail Peons should reside in the station of the main Post Office or stage wherefrom mails originate/terminate, i.e. ., they should be permanent residents of the delivery jurisdiction of the Post Office."

(iii) XXXXXX

So, in the recruitment instructions the condition of income and means of livelihood have not been put as eligibility conditions. In the circumstances, the notification dated 06.02.2002 and the requisition sent to the Employment Exchange (Annexure II) are without authority and hence defective in the eye of law and rejection of the candidature of Shri B. Prusty on these ground ~~are~~^{is} unsustainable in the eye of law. In fact, Shri B. Prusty having secured 55.60% marks in the HSC examination was the most meritorious among the three OBC candidates. As the vacancy notification has been found to be defective by us the decision not to select Shri Prusty

on that ground is also equally bad. This important point having been overlooked by the Respondent No.2 his decision as contained in his letter dated 17.09.02 at Annexure-R-7 is also bad in law and, therefore, must be quashed. In the circumstances, we direct as the selection of Shri B. Baral, the applicant, was done on the basis of a defective advertisement his appointment also is unsustainable and is hereby revoked. We further direct the Respondent to re-advertise the post strictly in-terms of the qualifications contained in Section-IV Method of Recruitment, instructions issued regarding selection for GDS Delivery Agents/Mail Carriers and other categories, in Swamy's Compilation of Service Rules for GDS. It should be noted that according to these instructions condition of income and ownership of property or vocation are not eligible pre-requisites for appointment to this category of posts. We also direct that the post should be re-advertised curing the defect and the OBC candidates who had responded to the earlier notification need not apply again. The process of fresh selection should be completed within a period of 120 days from the date of receipt of this order. As the applicant's appointment has been found to be bad ab-initio his service to be terminated and after that Shri B. Prusty who has secured highest marks among the OBC candidates may be offered the post, if so advised, provisionally till the regular appointment is made as per our order stated

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earlier. The Respondents are also given the liberty to combine the job of this post with another existing GDS post till the fresh selection is finalized and the post is filled of on a regular basis. Accordingly, this O.A. fails. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar