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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.437 OF 2007

Cuttack this the 31st day of March, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...
Hemanta Kumar Behera, aged about 33 years, Son of Gangadha Behera, At/PO-Kakhadi,
Dist-Cuttack

...Applicant

By the Advocates: M/s.B.Pujari & A.K.Jena
-VERSUS

1. Union of India represented through Chief Post Master General, Orissa Circle,
Bhubaneswar-751001
2. Manager, Postal Printing Press, Mancheswar, PO-Rasulgarh, Bhubaneswar-
751010

...Respondents

By the Advocates: Mr.B.K.Mohapatra, A.S.C.

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. This Original Application has been filed for a direction to Respondents to appoint the Applicant as a Bindery Assistant on regular basis.

2. Shorn of unnecessary details, the admitted position is that the applicant being the topper in the interview joined the apprentice training under the respondent no.2 & after successful completion of the said training course applied for his engagement as Bindery Assistant. He was advised to apply when the steps for filling up the vacancies will be done. Subsequently the Respondent-Department invited applications for filling different posts including that of the Bindery Assistant vide Notification dated 8.5.1996 (Annexure-R/6 to the O.A.) against which the applicant applied for the post of Bindery Assistant and at the same time, approached this Tribunal, along with two others in O.A.No.359/96, praying therein for direction to the Respondents to absorb them as Bindery Assistant based on the aforesaid notification. This Tribunal disposed of the said O.A. vide order dated 9.12.1996, the operative portion of which reads as under:

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“...I direct that the respondents shall scrupulously follow the directions of the Supreme Court and consider the applicants subject to their showing training certificates, as entitled to preference over other candidates. Since they are the first batch, their seniority also is not disputed. The respondents shall consider their cases and fill up the posts of Bindery Assistants as per the advertisement dated 8.5.96 within a period of six weeks from the date of receipt of a copy of this order. The O.A. is disposed of accordingly. No costs”.

3. In the above backdrop, the applicant was called to appear in the interview but having not been selected for appointment to the post in question filed a representation to the respondent no.1 ventilating his grievance for non-consideration of his case on preferential basis although other two similarly placed persons were appointed. He also brought it to the notice of the respondent no.1 regarding appointment of two outsiders who have not received the apprentice training under the respondent-department. The applicant has also filed the instant O.A. seeking for the following relief :

“the respondents may be directed to appoint the applicant as a Bindery Assistant in the Postal Printing Press, Bhubaneswar on regular basis.”

4. The Respondents have filed their counter opposing the prayer of the applicant. According to Respondents, there were four vacancies of Bindery Assistant, viz., 2 UR and 1 SC and 1 ST, as notified vide Notification dated 8.5.1996. In pursuance of the direction of this Tribunal in O.A.No.359/96, the applicant along with others appeared at the interview held on 18/19.2.1997. It has been admitted that although the applicant had secured the highest mark in the Trade Test, but regular selection to the post of Bindery Assistant was made on the basis of performance during interview before the Selection Committee and the performance of the other two candidates having been adjudged better than the applicant by the Selection Committee, the applicant could not be selected and appointed to the post in question. The Respondents, in this connection, have annexed the Result Sheet dated 26.2.1997 (Annexure-R/5) wherein the result of the recruitment to the post of Bindery Assistant was announced. In the circumstances, they have prayed that the O.A. being devoid of merit is liable to be dismissed.

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5. We have heard Shri B.Pujari, learned counsel for the applicant and Shri B.K.Mohapatra, learned Addl.Standing Counsel for the Respondent- Department and perused the materials on record.

6. The applicant has challenged the selection process made to the post of Bindery Assistant vide Annexure-R/5 as no preferential treatment was meted out to him inspite of the clear-cut direction of this tribunal but has not filed rejoinder refuting the stand taken by the Respondents in their counter affidavit.

7. The Respondents in their counter affidavit have taken a stand that the applicant has not disputed the method of selection adopted by the Respondent-Department to the post in question except that of preferential treatment in view of the successful completion of apprentice training. Further the respondents have reiterated that the performance of the other two candidates having been adjudged better than the applicant by the Selection Committee during interview, the applicant could not be selected. Undoubtedly, the applicant has also not alleged any infringement of the recruitment rules by the Selection Committee. In the circumstances, the inescapable conclusion that only could be drawn is that the applicant has not been able to establish that he has an indefeasible right to be appointed to the post in question and therefore, the O.A. deserves to be dismissed.

8. We have heard the rival contentions advanced by the learned counsel for both the applicant as well as the respondent-department & perused the records. On being directed vide order dated 19.1.2011, the Respondents have produced the relevant file dealing with the selection to the post in question. We have gone through the entries made therein against each of the candidates within the zone of consideration as well as the selected candidate for the post of Bindery Assistant. The total marks secured by Shri Subrat Kr.Ray, OC candidate is 66 whereas the applicant has secured 50. On a cursory view, what revealed from the check sheet was that the selected O.C. candidate Shri Subrat Kumar Ray had passed in the year 1987 whereas the present applicant in the year 1995 along with other selected candidates. It is an admitted fact that the applicant was the first batch of apprentice training imparted by the Respondent-Postal Printing Press, having

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secured the highest mark in the trade test. The Respondents have not brought on record from which Institution, Shri Subrat Kumar Ray, O.C candidate who has been selected and appointed as Bindery Assistant, had obtained trade certificate. This Tribunal, in earlier O.A.No.359/1996 disposed of on 9.12.1996, at Page-9, made an observation, the relevant portion of which, reads as under:

“...There may be other applicants from other institutions. As far as private institutions are concerned, the applicants shall get preference over those candidates because the standard of selection in a private institution is not usually very exacting. The concern of the Supreme Court is that the respondents having spent public money for training the applicants(sic) cannot ignore them for appointment”.

9. Having regard to what has been discussed above and having regard to the observations of this Tribunal vide supra, we make the following order:

- i) The Respondent-Department shall review the selection of Shri Subrat Kumar Rao, O.C. candidate in so far as his trade certificate as Bindery assistant is concerned in order to come to a finding that the certificate so furnished by him at the time of selection was in consonance with the observation of this Tribunal in O.A.No.359/96 as referred to above. In other words, the trade certificate submitted by Shri Subrat Kumar Ray stood in preferential category as that of the certificate submitted by the applicant, and.
- ii) Pass appropriate orders within a period of 45 days from the date of receipt of this order.

With the above observation and direction, this O.A. is disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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