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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 293 of 2010
Cuttack this the 31st day of July, 2012

Jugal Kishore Pal Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yu*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *yu*


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member(Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Jugal Kishore Pal, aged about 46 years, S/o. late Kapil Charan Pal, resident of Village - Kalinga (Bandhanali), PO-Kalingapal, Dist-Dhenkanal

...Applicant
By the Advocates: M/s.A.R.Dash, S.K.Nanda-1, B.Mohapatra & S.N.Sahoo, ~~Advocate~~, Counsel
-VERSUS-

1. Union of India represented through the Chief Post Master General, Orissa Circle, Bhubaneswar
2. Superintendent of Post Office, Dhenkanal division, Dhenkanal
3. Arati Padhi, aged about 29 years, C/o. Akshya Kumar Padhi, At/Po-Kalingapal, Via-Rasol, Dist-Dhenkanal

...Respondents
By the Advocates: Mr.D.K.Behera, ASC
Mr.T.Rath, Counsel (Res.No.3)

O R D E R
C.R.MOHAPATRA, MEMBER (A):

In this Original Application under section 19 of the A.T.Act, 1985, applicant has sought the following relief:

“...to admit the Original Applicant and hearing the learned counsels for the parties upon notice, allow the same quashing Annexure-A/5 and directing consideration of the case of the applicant along with only those candidates who had all the required qualifications and eligibilities as per Annexure-A/1 on the date of submission of their applications as per the said advertisement from amongst such available candidates only”.

2. Applicant was a candidate for the post of Extra Departmental Branch Post Master, Kalingapal Branch Office,

pursuant to notification dated 5.12.1997(Annexure-A/1). In this Original Application, he has questioned the legality and validity of consideration, selection and appointment of Arati Padhi (Private Respondent No.3) to the post in question on the sole ground that as on the last date fixed, i.e., 31.12.1997 for receipt of applications she was not within the age of 18 years as prescribed in the Notification under Annexure-A/1 and as such, she was not at all eligible for being considered for the post of EDBPM, Kalingapal B.O, what so speak of selection and appointment.

3. Respondent-Department, have filed their counter opposing the prayer of the applicant. It has been submitted by the Respondents that aggrieved with his non selection to the post in question, the present applicant had earlier moved this Tribunal in O.A.No.310/98. The said O.A. was disposed of by this Tribunal vide order dated 3.5.2000. This Tribunal, while quashing the selection made by the Respondents directed that the new document issued by the Tahasildar on 05.05.1998 in favour of the applicant should be taken into consideration by the Departmental Authorities. The Tribunal further directed that it is only fair that other candidates in the check sheet would also be given a chance to submit the missing documents, if any, and the Departmental authorities should conduct a fresh selection strictly in accordance with merit confining the selection process amongst the candidates whose names have been

mentioned in the check sheet. According to Respondents, the said order could not be implemented because one Ranjan Kumar Pal, the then GDSBPM, Kalingapl B.O., who was selected for the post filed a writ petition (OJC No.5889/2000) before the Hon'ble High Court of Orissa, Cuttack which was later on dismissed as not pressed by order dated 0509.2007. It is the further case of the Respondent that in spite of this, the order of the Tribunal in O.A.No.310/98 could not be implemented because of pendency of O.A.No.433/2008 filed by one Dibakar Panda, who was officiating as GDSBPM, Kalingapal Branch Post Office and had claimed for regularization in that post. The said O.A. No.433/2008 was disposed by this Tribunal vide order dated 18.01.2010, reiterating the earlier order passed by this Tribunal in O.A.No.310/98.

4. Be that as it may, the main thrust of the counter is that the Respondents conducted the fresh selection on 14.05.2010 considering the document of the applicant dated 05.05.1998 as per the order passed by this Tribunal in O.A.No.310/98 and simultaneously considered the applications of the other applicants where in **Arati Padhi** (Respondent No.3) was found to have fulfilled all the eligibility conditions such as age, educational qualification and property qualification as on the date of pronouncement of the judgment, i.e., 03.05.2000 in O.A.No.310/98. According to Respondents, they have strictly complied with the order of this

Tribunal in O.A.No.310/98. In the circumstances, they have prayed that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has filed rejoinder more or less reiterating the same grounds as urged in the Original Application.

6. No counter has been filed by the Private Respondent No.3 although Shri T.Rath, learned counsel has represented Respondent No.3

7. We have heard Shri A.R.Dash, learned counsel for the applicant, Shri D.K.Bhera, learned A.S.C. appearing on behalf of the Departmental Respondents and Shri T.Rath, learned counsel appearing on behalf of Private Respondent No.3 and perused the materials on record. The main plea canvassed by the Respondent-Department is that having regard to the decision of this Tribunal in O.A.No.310/98 they have strictly considered the candidature of the candidates who were in the zone of consideration as on 03.05.2000, i.e., the date of disposal of O.A.No.310/98.

8. We have considered the submissions of the Respondents. It is an admitted position that Notification vide Annexure-A/1 lays down that the **eligibility condition of age for an applicant to the post in question should be within 18 years to 65 years of age as on the last date fixed for receipt of application, i.e., 31.12.1997.** The date of birth of Respondent No.3 being 24.12.1981, she was less than 16 years of age by some days as on 31.12.1997. Therefore, by no

stretch of imagination, she could have been considered eligible to be of 18 years of age for the post in question, as advertised vide Annexure-A/1. By directing to conduct fresh selection strictly in accordance with rules in O.A.No.310/98, this Tribunal had not allowed any departure from the contents of notification at Annexure-A/1. Therefore, as long as notification under Annexure-A/1 holds good, the Respondent-Department are duty bound to comply with the rules and instructions set out therein for conducting selection to the post in question. Therefore, the eligibility on account of age for the post in question as on the last date of receipt of applications, i.e., **31.12.1997** could not have been altered or substituted by the Respondents to make an ineligible candidate in the fray eligible. The plea of the Respondents that as on 03.05.2000 i.e., the date of disposal of O.A.No.310/98 they have reckoned the age of the applicant being contrary to notification under Annexure-A/1 is not tenable.

9. For the reasons discussed above, we have no hesitation to hold that selection and appointment of Respondent No.3 to the post of EDBPM, Kalingapal Branch Post Office vide Annexure-A/5 dated 14.5.2010, being against the notification under Annexure-A/1 is liable to be quashed and accordingly. As a result, the Respondents-Department are directed to proceed with fresh selection from amongst the candidates within the zone of consideration who were fulfilling

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the eligibility conditions as per Annexure-A/1. This should be done within a period of three months from the date of receipt of this order. In the result, the O.A. is allowed to the extent indicated above. Parties to bear their own costs.

(A.K.PATNAIK)
Member (Judl.)

(C.R.MOHAPATRA)
Member (Admn.)