

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 42 of 1998**

**Present : Hon'ble Mr. Gokul Chandra Pati, Member(A)  
Hon'ble Mr. Swarup Kumar Mishra, Member(J)**

Pramod Kumar Jena, aged about 35 years, S/o Lokanath Jena,  
Vill/PO- Alichar, PS – Gop, Dist. – Puri.

.....Applicant

VERSUS

1. Union of India, represented through Senior Superintendent of Post Offices, Puri Division, Puri, AT/PO/Dist.- Puri-752001.
2. Assistant Superintendent of Post Offices, I/C, Puri Sub Division, Puri, At/PO/Dist-Puri, 752001.
3. Chief Post Master General, Orissa Circle, Bhubaneswar, At/PO – Bhubaneswar, Dist.- Khurda.
4. Sri Durga Prasad Mishra, aged about 49 years, S/O Gadadhar Mishra, At-Abakasa Lane, PO-Puri 2, PS – Kumbharpada Town/ Dist.- Puri, was working as EDBPM, Gopinathpur under BPO, Puri-2.

.....Respondents.

For the applicant: Mr.B.S.Tripathy, counsel

For the respondents: Mr.D.K.Mallick, counsel  
Mr.D.P.Dhalsamant, counsel

Heard & reserved on: 29.7.2019 Date of Order : 1.8.2019

**O R D E R**

**Per Mr.Gokul Chandra Pati, Member (A)**

The OA has been filed by the applicant seeking the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

“The applicant therefore prays that Your Lordships may be graciously pleased to admit the original application and after hearing the parties the fresh notification under Annexure-5 be declared illegal and the respondents be directed to take step for issuing appointment letter in favour of the applicant for the post of Extra Departmental Branch Post Master, Gopinathpur (B.O.) under Puri 2 Sub Division within stipulated period and any other order as deem fit be passed.”

2. The applicant claims in the OA that he was allowed to officiate as E.D. B.P.M. of Alichar Branch Post Office (in short BO) against leave vacancy from 27.9.1986 on different occasions. His name was sponsored by the Employment Exchange, Puri for selection of the post of E.D. B.P.M., Gopinathpur BO. It is stated in the OA that the applicant was duly selected and directed by the respondent no. 1 to apply for the said post. He had accordingly applied for the said post. Thereafter, the respondent No. 2 asked the applicant to produce original documents (Annexure-3). The applicant appeared before the authority with documents and consent letter of the owner of the house from a village very near Gopinathpur, which was not accepted. Then the applicant produced consent letter of another house owner of Gopinathpur village (Annexure-4), but

the respondents remained silent over the matter although all the formalities were completed.

3. On 2.1.1998, the respondent no. 1 issued an advertisement (Annexure-5) to fill up the vacancy of E.D.B.P.M., Gopinathpur for which the applicant was selected. It is alleged in the OA that the fresh advertisement issued by the respondent no. 1 was illegal and arbitrary since the applicant was selected for the said post. He submitted a representation dated 10.1.1998 (Annexure-6), but there was no response from the respondents. Hence, being aggrieved, the applicant has filed this OA.

4. Counter was filed by the official respondents without disputing the facts. It is stated that since the applicant could not produce the consent letter from the house owner of Gopinathpur village, his candidature was rejected. Later on the applicant produced consent letter from a house owner of the village, but there was complaint from local inhabitant. There was a complaint against the applicant on the ground that he was involved in a criminal case in which he was convicted by the criminal court vide the judgment dated 31.10.1987 (Annexure-B). The applicant, while submitting his application, had declared that there was no criminal case pending against him, which was a false statement. Hence, his candidature was rejected on that ground also.

5. The applicant in his Rejoinder admitted his conviction in a criminal offence, but stated that in his appeal, the order of conviction was dismissed and the benefit of the Probation of Offenders Act was extended to the applicant vide order dated 1.7.1992.

6. At the time of hearing on 6.2.1998, the Tribunal while considering the prayer for interim relief, directed that any appointment to be made will be subject to the result of this OA. The OA was allowed by this Tribunal vide order dated 8.5.2000, directing the respondents to issue appointment order to the applicant as his selection process was completed already by the respondents.

7. Thereafter, the respondent no. 4 who was selected by the respondents in pursuance of the advertisement dated 2.1.1998 moved Hon'ble High Court challenging the order dated 8.5.2000 of the Tribunal on the ground that the order dated 8.5.2000 was passed without impleading him as a party as he was already functioning as E.D.B.P.M., Gopinathpur after his selection and appointment by the respondents. Hon'ble High Court stayed the order dated 8.5.2000 vide order dated 7.6.2000. Finally, vide order dated 15.3.2019, Hon'ble High Court set aside the order dated 8.5.2000, remitting the matter back to the Tribunal to consider the same after impleading the writ petitioner.

8. Learned counsel for the respondent no. 4 filed a memo with a copy of the order dated 15.3.2019 of Hon'ble High Court for re-consideration of the matter in terms of the order dated 15.3.2019 of Hon'ble High Court. This OA was accordingly taken up on 12.4.2019 for consideration. The respondent no. 4 was

impleaded as a party in this OA by virtue of the order of Hon'ble High Court and his counsel was directed to file an amended cause title for the OA. Since none was present on behalf of the applicant, the copy of the order dated 12.4.2019 was sent to the applicant by speed post. The matter was taken up on 5.7.2019 when no one from the applicant's side was present and Mr. M.K. Rath, counsel appearing on behalf of Mr. B.S. Tripathy, learned counsel who had earlier appeared on behalf of the applicant and submitted that he will not represent the applicant. Hence, as a last opportunity, the OA was fixed on 29.7.2019 for filing of Counter by respondent no. 4 and hearing. Copy of the order was sent to the applicant by speed post vide the note of the Registry dated 8.7.2019.

9. When the OA was taken up on 29.7.2019, no one from the applicant's side was present. Hence, as per earlier order, it was decided to proceed with the hearing. The order dated 29.7.2019 state as under:-

Pl type the order dated 29.7.2019 in this OA

10. Learned counsel for the respondent no. 4 submitted that he was duly selected in terms of the advertisement dated 2.1.1998(Annexure R-4/1 to the Counter filed by respondent no. 4). After verification of the documents, he was asked to attend training vide letter dated 27.7.1998 (Annexure R-4/3). Accordingly, the respondent no. 4 had assumed charge on 1.8.1998 (Annexure R-4/4) and he is functioning as E.D.B.P.M., Gopinathpur since 1.8.1998. It was further submitted that as stated in his Counter, as per the DG Posts circular dated 18.9.1995, the authority is required to issue public notification when the number of eligible candidates sponsored by the Employment Exchange is less than three. It is stated that when the names from the Employment Exchange was called none of the candidates including the applicant could fulfill the requirements for appointment for which, the authority had to issue public notice to fill up the post as per the DG's circular.

11. Learned counsel for the respondent no. 4 also cited the judgment of Hon'ble Apex Court in the case of the Excise Superintendent of Malkapatnam vs. K.B.N. Visweshwar Rao & others in which it was laid down that the recruiting authority is required to call for names by issuing public notification in addition to calling for names from Employment Exchange and accordingly, the modified instructions have been issued by DG, Posts vide OM dated 19.8.1998.

12. Learned counsel for the official respondents submitted that the respondent No. 1 had issued the advertisement to fill up the post of E.D.B.P.M., Gopinathpur after the applicant's candidature was cancelled after his failure to furnish the consent from the willing house owner of the same village where the BO is located and after receipt of complaints against the applicant about his conviction.

13. We have considered the submissions and pleadings of the respondents as well as the grounds taken by the applicant in the OA. It is clear that during the pendency of the OA and before the order dated 8.5.2000 was passed by this Tribunal, the respondent no. 4 had already been appointed for the post of E.D.B.P.M., Gopinathpur and he had assumed charge on 1.8.1998 after being duly selected in pursuance of the advertisement dated 2.1.1998. Although the Tribunal had passed the interim order dated 6.2.1998 that any appointment was subject to the result of this OA, it was necessary for the applicant to have impleaded the respondent No. 4 as a necessary party. The respondents have failed to inform this Tribunal about appointment of respondent No.4. The order dated 8.5.2000 was passed by this Tribunal without hearing the respondent No. 4 who had been appointed to the said post in the meantime. Further, when the respondent No. 4, challenged the order dated 8.5.2000 before Hon'ble High Court, the order dated 8.5.2000 was set aside with direction to the Tribunal to re-hear the matter after incorporating the respondent No. 4. Thereafter, the applicant did not appear before this Tribunal to oppose the contentions of the respondent No. 4.

14. In the facts and circumstances as above, we do not find any merit in the applicant's claim for the said post as he failed to implead the respondent No. 4 as a party in this case after his appointment to the said post on 1.8.1998. There is nothing on record to show that the competent authority had issued the appointment order in favour of the applicant, at any point of time. The applicant could not furnish the consent of a house owner of Gopinathpur village when he was called by the respondents for the first time. It was submitted subsequently that no document has been produced by the applicant to show that the respondents had allowed another opportunity to him to produce the consent letter from a house owner of Gopinathpur village, which was a condition for the appointment of the applicant. There is nothing on record to show that the applicant was more meritorious compared to the respondent No.4 or if his claim is in accordance with the extant rules and instructions of the DG, Posts.

15. In view of the above, the OA is devoid of merit and is liable to be dismissed. Accordingly, it is dismissed with no order as to cost.

16. The Registry is to send a copy of this order to the applicant by Post.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

