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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A. NO. 265 OF 1989.

Date of decision - 31st October, 1989.

Laxman Murmu @ Majhi,
S/o Late Chandu Murmu @ Majhi,
Scheduled Tribe by caste,
At/P.O. Anua, Via-Chitrada,
P.S. Moroda, Dist- Mayurbhanj.

.... Applicant

Versus.

1. Union of India represented by
the Director General (Posts) India,
Dak Bhawan, New Delhi.
2. Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, Dist-Puri.
3. Superintendent of Post offices,
Mayurbhanj Division, Baripada,
District-Mayurbhanj.
4. Smt. Padmabati Mahanta,
W/o. Jayaram Mohanta,
At/P.O. Anua, Via-Chitrada,
P.S. Moroda, Dist- Mayurbhanj.

.... Respondents

For Applicant Mr. Pradipta Kumar Mohanty

For Respondents 1 to 3 .. Mr. T. Dalai, A.S.C. (Central)

For Respondent No.4 .. Mr. Aswini Kumar Mishra.

C O R A M :

The Honourable Mr. B.R. Patel, Vice-Chairman

A n d

The Honourable Mr. N. Sen Gupta, Member (Judicial).

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT.

N. SEN GUPTA, MEMBER(JUDICIAL). In this application under section 19 of the Administrative Tribunals Act, 1985 the applicant prays that he should be given appointment as the Extra Departmental Branch Postmaster of Anua Branch Post office in the district of Mayurbhanj.

2. The facts alleged in the application, stated in brief, are as under :

The applicant has been working as the Extra Departmental Delivery Agent in the Anua Branch Post office since 1973. On the death of one Sri Goura Charan Giri, the Extra Departmental Branch Postmaster of Anua, that post fell vacant in January, 1989. As the post of Extra Departmental Branch Postmaster fell vacant, the applicant made an application for appointing him to that post relying on a circular issued by the Director General, Posts dated 12.9.88 under his No.43-27/85-Pen(EDC & Trg) The applicant has further averred that in the meanwhile the respondent No.4 i.e. one Padmabati Mohanta has been given appointment as E.D.B.P.M. though on provisional basis ignoring his claim. It is unnecessary to detail the other facts for the present purpose except saying that the applicant has also averred that he has all the requisite qualifications for appointment as E.D. B.P.M. and in fact, the Branch Post office

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is now functioning in his ~~own~~ ^{family} house.

3. The counter of the respondents is that the applicant had not annexed to his application all the relevant documents, particularly the certificate relating to his own income. For that, though it was not very necessary, only because he was a man serving in the Department, a letter requiring him to make good the wanting documents was issued but even in spite of that, the applicant did not submit any certificate of his own income. That is the main ground on which the claim of the applicant is being resisted. Of course, it has been alleged in the counter in para-3 that the method of employment or appointment of Branch Postmasters is by calling for applications from the Employment Exchange and then screening the applications to appoint the most suitable persons. But it need not be elaborated for what is going to be stated below.

4. It is undisputed that the applicant has been working as E.D.D.A. at the Branch Post office at Anua whose last B.P.M. Shri Giri died and the post fell vacant which has been filled up by the provisional appointment of a lady, the respondent No. 4. Shri A.K. Mishra appearing for the respondents has very vehemently contended that the circular (Annexure-7) relied on by the applicant has really no application and as such he cannot ask for the relief sought for on the strength of that circular. This contention of Shri Mishra requires some scrutiny. It would be worthwhile to notice that the circular was issued with the heading "Transfer of E.D. Agents from one post to ~~another~~ another". Paragraph-1 of that government order states that the normal rule is that E.D.D.As. are to be recruited from the area and they are not eligible for transfer from one post to

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another but when a post is abolished, the E.D.As. are to be offered alternative appointments within the Subdivision in the next available vacancy, those of E.D.As. who are held as surplus consequent to the abolition of E.D. posts are to be adjusted against the posts that may ~~be occurred~~ ^{- fall vacant} subsequently in the same office or in the neighbouring office. On this para, Shri Mishra relies more and contends that the applicability of the circular would be confined to those Agents. But we regret to say that we cannot persuade ourselves to agree with this contention of Shri Mishra for what follows thereafter ~~that is~~ merely a prelude to what is stated just below that. In the circular it has been stated that in view of the above position it would not be correct to allow transfer of E.D.As freely from one post to another. However, it had been decided that exception may be made in the following cases and the first of such exceptions is that when E.D. post falls vacant in the same office or in any office in the same place and if one of the existing E.D.As prefers to work against that post, he may be allowed to be appointed against that post without coming through the Employment Exchange provided he/ she is suitable for the other post and fulfils all the required conditions. On reading the circular it would appear that except in the exceptional cases as stated above, free transfer of E.D.As from one post to another was sought to be checked. As has been stated above, the vacancy occurred in the same office in which the applicant is working and it is also undisputed that he made an application for being appointed as E.D. B.P.M. Therefore it can safely be said that the applicant preferred to work against the post of E.D. B.P.M. Shri Mishra has also contended that the

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application of the applicant was ~~merely~~ ^{duely} considered but it could not be acted upon as he had not given information about his own income. Therefore, the applicant is not entitled to the relief as otherwise it would amount to allowing a person to take the advantage of his own laches. Stated as bald proposition of law one cannot find fault with it, ^{but} as we find, the applicant had been in service and he belongs to a Scheduled Tribe Community and he had filed a Khatian (Annexure-5) before the appointing authority. This annexure will show that the applicant was recorded as one of the co-owners of the agricultural lands measuring Ac. 1 $\frac{1}{2}$. What is required for appointment of an E.D. B.P.M. is that he must have adequate means of livelihood, strictly speaking, an income certificate is not necessary. But, however, it has been customary to ask for such a certificate. So we do not like to deviate from such practice.

5. Having heard the learned counsels for the parties and having perused the documents produced before us, we are of the opinion that an opportunity should be given to the applicant to file all the required documents and we direct the respondents 1 to 3 to consider his case afresh for the regular appointment in the light of the circular at Annexure-7 and if he is considered suitable by examination of all the materials, he should be appointed. While considering the application of the applicant due regard should be had to the D.G. P & T. letters No. 43-14/72 dated 2.3.72, ~~and~~ No. 43-246/77 dated 8.3.78 and No. 43-312/78 dated 20.1.79 relating to preferential categories in the matter of such appointment. Final decision of the Department should be taken within four months from the date of receipt of a copy of this judgment.

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6. The application is accordingly disposed of, but in the circumstances of the case, there shall be no order as to costs.

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MEMBER (JUDICIAL)

B.R. PATEL, VICE-CHAIRMAN.

I agree.



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VICE- CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack,

The 31st October, 1989/ Jena/SPA.