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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 26 OF 1992
Cuttack this the 27th day of July, 1999

Jhekaru Sandha

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*,

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not ? *No*.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

27.7.99

27.7.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.26 OF 1992
Cuttack this the 27th day of July, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Jhekaru Sandha, aged about 24 years,
S/o. Makhane Sandha, At/PO: Bhainsa
P.S: Patnagarh, Dist: Bolangir

...

Applicant

By the Advocates : M/s.K.B. Kar
P.K.Dash
C.R. Ray

-Versus-

1. Post Master General,
Berhampur Circle, Berhampur
Dist: Ganjam
2. Postal Superintendent,
Bolangir
3. Sub Divisional Inspector (Postal)
Patnagarh, Dist: Bolangir
4. Manoj Kr. Behera,
At/PO: Bhainsa, PS: Patnagarh
Dist: Bolangir
5. Union of India represented through its
Secretary, in the Department of Posts,
Dak Bhawan, New Delhi

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel(Central)
(Res. 1 to 3 and 5)

Mr.B.S.Tripathy(Res.4)

ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant and Res.4, viz. Manoj Kumar Behera were candidates for the post of E.D.Packer/M.C. in Baishana Branch Office. Respondent 4 was selected and appointed. In this application the applicant prays for quashing selection and appointment of Res.4 and for directing the department to appoint him in that post.

2. Facts are not much in controversy. When the post became vacant due to promotion of the incumbent, the Employment Officer, Patnagarh was requested to sponsor names of candidates. 13 names including ^{the} applicant and Res.4 were sponsored. All of them have been asked to apply for the post with required certificates and documents. Applicant and Res.4 applied for the post mentioning that they have submitted required copies of certificates and other documents. While the applicant is and a Matriculate/belongs to S.T. community, Respondent 4 is a non-Matriculate belonging to S.C. community. At the relevant time there was no fixed educational qualification for the post barring sufficient knowledge of regional language and simple arithmetics and that preference would go to reserved community in order to ensure the minimum fixed percentage as laid down for Group C and D cadre for these communities in respect of E.D. categories. Respondent 3, viz., S.D.I.(P) prepared the check list (Annexure-R/7) mentioning that educational certificate and one character certificate stated to be attached to the application of the applicant were not found and on this ground the candidature of the applicant was rejected. On selection and appointment of Res.4, the

applicant preferred complaint before Res.1, viz., Post Master General to probe into the irregularities committed in the selection and cancel the appointment of Res.4. On being directed, Respondent No.2, viz., Superintendent of Post Offices scrutinised the recruitment file and found the selection irregular inasmuch as exact vacancy of the community was not announced by Res.3. Accordingly selection and appointment of Res.4 were ordered to be cancelled and a fresh selection was directed to be made. Thereafter, Respondent No.4 approached this Tribunal in O.A.447/91 for quashing cancellation of his appointment ordered by Respondents. During pendency of that application, the present applicant preferred this application.

3. The version of the applicant is that he being a Matriculate and belonging to S.T. community is more qualified to post in question than Res.4, who is a non-Matriculate. Respondent No.3, in order to help Res.4, made a false endorsement as to the want of educational certificate and character certificate in the check list.

4. Respondent No.4, though entered appearance had not filed counter. The version of the Department as already indicated above is that the Department itself cancelled selection and appointment of Res.4 long prior to filing of the present application. But Res.4, filed Original Application No.447/91 praying for quashing the cancellation of his appointment.

5. Perusal of records in O.A.447/91 reveals that it was disposed of on contest by the then Bench on

20 5.1.1993. Order of cancellation of appointment of Res.4 was quashed and he was directed to be reinstated. Though in the counter to O.A. 26/92 the Department averred that the present applicant was a party in O.A.447/91, it is actually not so. Yet the question arises whether this Tribunal, having at one stage found cancellation of appointment of Res.4 being illegal and having quashed the same by ordering reinstatement of Res.4, can at this stage reopen the very same issue ?

6. We have heard learned counsel, for both sides and also perused the records.

Perusal of records of O.A.447/91 reveals that Res.2 did not accept the version of the applicant that in fact he had enclosed the educational certificate and character certificate found to be wanting by Res.3. Reasons for cancellation of appointment of Res.4 as submitted by the Department have been enumerated in para-5 of the judgment in O.A.447/91 which are as follows

- (a) In case the ST candidate at Annexure-R/5 did not submit the Board Certificate or one character certificate he should have been asked to submit in order to give him the reasonable opportunity;
- (b) The selection did not comply with the condition laid down in Annexure-R/4;
- (c) As regards selection of reserved community the Respondent No.4 has not noted any discussion in the selection file as to if the S.T. representation in his Unit was full as required vide Annexure-R/9;
- (d) It was suspected that the application at Annexure-R/5 was received by hand by the Respondent No.4 as the Regd.envelope was not kept in the file and it was also doubted that the Respondent No.4 in order to appoint the candidate of his choice, did away with the two documents keeping a note to save the situation.

After having mentioned these reasons, this Tribunal in Paragraph 6 of the judgment came to a finding

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 that the S.T. candidate (meaning the present applicant) did not submit the Board Certificate and a character certificate and that the observation of Res.2(OP 3 in O.A.447/91) that Res.3, viz., Sub-Divisional Inspector, Postal, Patnagarh (O.P. 4 in O.A.447/91) in order to help Res.4 has done away the two documents keeping a note of their absence to save the situation is nothing but a suspicion and that inference of such a nature has no basis.

Counter in this case was filed on 21.4.1992 vide order dated 8.9.1997. Moreover, after receiving copy of counter and knowing fully well that Res.2 had ordered for fresh selection as averred in the counter, the applicant has ^{not} taken any step to amend the application to include the prayer for quashing that order of fresh selection. Hence even if selection of Res.4 is held to be not according to law, no direction can be given for automatic appointment of the applicant in place of Res.4 when the departmental order for fresh selection still stands on the way.

Be that as it may, we are not inclined to disturb the finding of this Tribunal in O.A.447/91 disposed of ^{on} more than six and half years back, specially when there is no concrete material barring assertion of the applicant that he had in fact submitted the required educational certificate and copy of character certificate.

7. For the reasons discussed above, we do not see any merit in this application which is accordingly dismissed, but no order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 27.7.99

B.K.SAHOO

27.7.99
 (G.NARASIMHAM)
 MEMBER(JUDICIAL)