

91

4

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.435 OF 1992

Cuttack, this the 19th day of March, 1998

Shri Jagadish Sahu

Applicant

Vrs.

Union of India and others

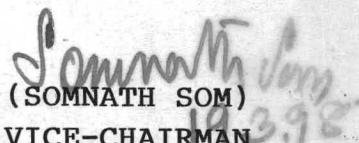
Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*

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


(S.K.AGARWAL) 19/3/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 19/3/98

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.435 OF 1992
Cuttack, this the 19th day of March, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

.....

Jagdish Sahu,
aged about 26 years
Son of Harihar Sahu
at present at Plot No.1774/3740, BJB Nagar,
Bhubaneswar, District-Khurda Applicant

By the Advocates -

M/s Devanand Misra,
R.N.Naik, A.Deo,
B.S.Tripathy,
P.Panda
& D.K.Sahu.

Vrs.

1. Union of India,
represented by its Secretary,
Department of Posts,
Dak Bhavan,
New Delhi.
2. Chief Post Master General,
Orissa Circle,
At/PO-Bhubaneswar, Dist.Puri.
3. Senior Superintendent of Post Offices,
Bhubaneswar Division,
At/PO-Bhubaneswar, Dist.Puri.
4. Sub-Divisional Inspector (Postal),
Bhubaneswar South Sub-Division,
At/PO-Bhubaneswar, Dist.Puri.
5. Shri Mohan Parida,
Extra-Departmental Delivery Agent,
BJB Nagar Sub Post Office,
Bhubaneswar-14, Dist.Puri

By the Advocates -

Respondents.
Mr.Ashok Misra,
Sr.Panel Counsel
(For R.1 to 4)
& M/s C.Behera,
K.K.Barik &
B.B.Panda(For R.5)

*Somnath Som
19.3.98*

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order of selection of respondent no.5 as E.D.D.A., B.J.B.Nagar Sub-Post Office, Bhubaneswar and for a further direction to respondent nos. 1 to 4 to select the applicant for the post of E.D.D.A.

2. Facts of this case, according to the applicant, are that in response to an advertisement calling for names for filling up of the post of E.D.D.A., B.J.B.Nagar Sub-Post Office, the petitioner along with others applied. Respondent no.5 who was also an applicant claimed that he belongs to Scheduled Tribe. The applicant is a Matriculate and should have been preferred because of his higher qualification. But that was ignored and respondent no.5 was selected. Respondent no.5 was directed to produce the caste certificate within one week from the date of provisional appointment on 1.6.1992. Subsequently, respondent no.5 produced a certificate from the Revenue Inspector who was not authorised to issue the certificate, but the same was accepted and the appointment order was issued. The applicant has also stated that there was no justification for showing preference to persons belonging to Scheduled Tribes. Further,

11

*Somnath Som
19.3.98*

it has been stated that the brother of respondent no.5 is an employee of the same Sub-Post Office and because of this, respondent no.5 should have been disqualified, but this was not taken into consideration. On the above grounds, the applicant has come up with the aforesaid prayers.

3. The departmental respondents in their counter have submitted that respondent no.5 was the only candidate from S.T. community and he was given preference and selected for the post. The respondents have further submitted that educational qualification for the post of E.D.D.A. is Class VIII and no preference could have been shown to a person with higher qualification under the rules. Moreover, as per recruitment rules, S.C. and S.T. candidates are to be given preference over other candidates and this was correctly done. Further it is stated that after provisional selection respondent no.5 was directed to produce all original certificates for verification and accordingly, a caste certificate issued by Tahasildar, Khurda, who is the appropriate authority, was produced by respondent no.5. Therefore, on the above grounds, the departmental respondents have submitted that the selection has been fairly done and on that basis, they have opposed the prayers of the applicant.

*sunil jain
19.3.98*

4. Respondent no.5 has also filed a counter in which he has submitted that all certificates were filed by him

correctly and his selection has been done strictly in accordance with rules and therefore, his selection should not be set aside.

5. We have heard Shri B.S.Tripathy, the learned lawyer for the applicant, Shri Ashok Misra, the learned Senior Panel Counsel appearing on behalf of the departmental respondents, and Shri C.Behera, learned lawyer appearing for respondent no.5, and have also perused the records.

6. Learned Senior Panel Counsel appearing on behalf of the departmental respondents have referred to the instructions regarding giving preference to candidates belonging to S.C. and S.T. This is at Annexure-R/3. According to this, "wherever possible, first preference should be given to Scheduled Caste/Scheduled Tribe candidates, apart from P & T and other Government pensioners, for appointment as E.D.Agents". From the above, it is clear that giving of preference to respondent no.5 as an S.T.candidate is strictly in accordance with Rules. As regards the caste certificate, learned lawyer for respondent no.5 has submitted xerox copies of documents submitted by him to the departmental authorities and in this he has enclosed the Scheduled Tribe certificate issued by Additional Tahasildar, Khurda. The departmental authorities have also mentioned in their counter that Scheduled Tribe certificate issued by Tahasildar, Khurda, was submitted

*Soummi J.M
19.3.98*

by respondent no.5 at the time of his appointment. As such the contention of the learned lawyer for the petitioner that respondent no.5 did not submit the caste certificate from an authorised officer cannot be accepted.

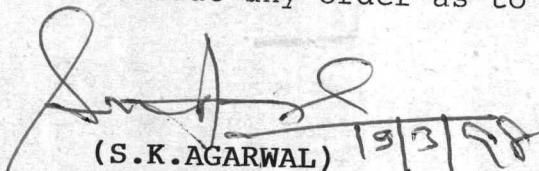
7. The third point urged by the learned lawyer for the petitioner is that the applicant being a Matriculate should have been preferred over respondent no.5 who has passed Class VIII. From the list of educational qualifications fixed categories of for different E.D. employees and mentioned at page 67 of Swamy's Compilation of Service Rules for Extra-Departmental Staff in Postal Department (Sixth Edition) it is seen that for E.D.D.A. the minimum qualification is VIII Standard with preference to be given to candidates with Matriculation qualification. In this case, respondent no.5 has VIII class qualification and the petitioner is xxxx a Matriculate, but the departmental authorities have not preferred the petitioner. They have exercised the preference in favour of respondent no.5 because he belongs to Scheduled Tribe, as noted earlier. In view of this, we hold that no illegality has been committed by the departmental authorities in not giving preference to Matriculation qualification of the petitioner.

*Final J.M.J.
19398*

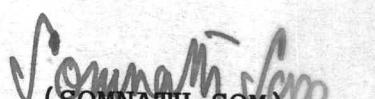
8. The last point urged by the learned lawyer for the petitioner is that brother of respondent no.5 is working in the same Sub-Post Office and this should have disentitled him to be considered for the post of E.D.D.A. The

departmental rules no doubt provide that as far as possible appointment of members of the same family or close relations in the same Post Office should be avoided. But this provision has been struck down by the Hon'ble Supreme Court in the case of Baliram Prasad v. Union of India and others, AIR 1997 SC 637. In view of the above decision of the Hon'ble Apex Court, it cannot be held that engagement of brother of respondent no.5 in the same Post Office would disentitle respondent no.5 for being appointed as E.D.D.A.

9. In the result, therefore, we find no infirmity in the selection and appointment of respondent no.5 as E.D.D.A., B.J.B.Nagar Sub-Post Office. The application, therefore, fails and is rejected but, under the circumstances, without any order as to costs.



(S.K.AGARWAL) 13/3/98
MEMBER (JUDICIAL)



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 19/3/98

AN/PS