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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 480 OF 1992
Cuttack, this the 5th day of February, 1998

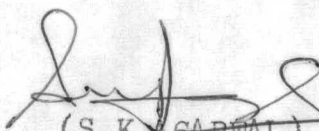
Sri Arunodaya Muduli Applicant

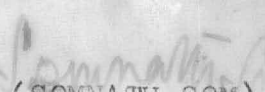
Vrs.

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 Administrative Tribunal or not? NO


(S.K. AGARWAL)
MEMBER (JUDICIAL) 5/2/98


(SOMNATH SOM)
VICE-CHAIRMAN 5/2/98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.480 OF 1992
Cuttack, this the 5th day of February, 1998

CORAM:

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

Sri Arunodaya Muduli, aged about 21 years,
son of Sri Mayadhar Muduli, At/PO-Roda (A), Dist.Dhenkanal

..... Applicant.

By the Advocates - M/s B.S.Misra, S.C.Kar &
G.N.Misra

Vrs.

1. Union of India, represented through the Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, Dist.Puri.
3. Superintendent of Post Offices, Dhenkanal Division, At/PO/Dist. Dhenkanal.
4. Sri Padmanava Sahoo, aged about 20 years, s/o Bankanidhi Sahoo, Vill-Roda 'B', P.O-Roda, P.S-Parajanga, Dist.Dhenkanal

..... Respondents

By the Advocate - Mr.Akshaya Ku.Misra,
Addl.C.G.S.C.

ORDER

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SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 16.7.1992 appointing respondent no.4 Padmanava Sahoo

as E.D.B.P.M, Roda B.O. A copy of this order has not been filed and the petitioner has averred in paragraph 4.4 of his application that as he does not have a copy of this order, he is unable to file the same. His second prayer is for a direction to respondent no.3 to appoint him as E.D.B.P.M, Roda B.O. with effect from 16.7.1992 and pay him his arrear salary accordingly. Respondent no.4 has received notice of the O.A., but he has not appeared. As this is a 1992 matter, it has been heard in the absence of respondent no.4. The departmental respondents have filed counter. The applicant has filed a rejoinder and the departmental respondents have filed a counter to the rejoinder.

2. The admitted facts of this case are that for filling up of the post of E.D.B.P.M., Roda B.O., names were called for from the Employment Exchange and five names were sent by Employment Officer, Kamakshyanagar. All the five applicants were asked to submit their applications along with the required documents. Three out of five candidates submitted the applications in the prescribed proforma along with necessary documents. These three candidates included the applicant and respondent no.4. The departmental authorities conducted enquiry into the documents submitted by the candidates and appointed respondent no.4.

3. According to the applicant, he submitted all the necessary documents. He had passed +2 Arts whereas respondent no.4 had passed H.S.C.Examination. In the High School Certificate Examination, the applicant has got 328 out of 700 marks whereas respondent no.4 has got 279 out of 700 marks. Annual income of the applicant is Rs.15000/- whereas annual income of respondent no.4 is Rs.12000/-. Solvency certificate issued in favour of the petitioner

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shows that the petitioner is solvent for Rs.20,000/- whereas the solvency certificate filed by respondent no.4 gives a figure of Rs.15000/-. The applicant is resident of the post village Roda (A) where the post office is situated whereas respondent no.4 is resident of village Roda (B). The applicant has spacious ancestral house on the road side of village Roda and he had offered the same for holding the post office. Thus the claim of the applicant is that from every consideration he is more meritorious than respondent no.4 and that is why he has come up with the prayers referred to earlier.

4. The departmental respondents have contested the different submissions of the applicant. A letter dated 16.4.1992 from Tahasildar, Kamakshyanagar, has been filed by them which states that there are not two villages named Roda (A) and Roda (B) and there is only one village named Roda. Thus they have claimed that respondent no.4 is a resident of the post village. Respondents have also stated that for the post of E.D.B.P.M, the necessary qualification is VIII standard with the stipulation that Matriculation or equivalent may be preferred and the fact that the applicant has passed +2 Arts cannot be taken into consideration under the departmental instructions. The departmental respondents have admitted that the applicant has got higher percentage of marks than respondent no.4 in H.S.C. Examination. Notwithstanding this, they have rejected the candidature of the applicant on two grounds. Firstly, it has been stated that the genuineness of the documents submitted by the three candidates was got enquired into through departmental officers. The applicant had furnished an income

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certificate issued by Tahasildar, Kamakshyanagar, showing his income as Rs.3000/- from land and Rs.12000/- from other sources. On enquiry, it was noticed that the applicant is one of three brothers and the younger brother of the applicant is running a shop and therefore, income of his younger brother has been shown as Rs.12,000/-. Secondly, it has been stated that during enquiry it was noticed that the applicant is a student of Talcher College and therefore, he was not residing in his village. The applicant submitted a letter dated 20.1.1992 (Annexure-R/4) addressed to respondent no.3 stating that after passing +2 Arts Examination he had taken admission in +3 Arts in Talcher College, but he has left his studies since July 1991 and was not attending the classes. Respondents checked up the matter with the Principal, Talcher College who informed respondent no.3 in his letter dated 24.2.1992 (Annexure-R/5) that the applicant was continuing his studies in +3 Arts (2nd year) having Roll No.137 during the session 1991-92. The respondents have stated that in view of the letter of the Principal, it was held by the departmental authorities that the applicant has made a false statement/^{that} he has left his studies and because of this, it has been found that he is untrustworthy and therefore, he has not been selected.

5. The applicant in his rejoinder has sought to controvert both the points. He has submitted that the shop belongs to him and not his brother. Had the enquiry been conducted in his presence, he would have been in a position to prove the same. As regards his continuance in the college, he has submitted that with the hope of getting the job he had stopped attending the classes. But when he was not selected, he again started attending classes. He has alleged that his candidature has been rejected

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male fide in order to make out a case for appointing respondent no.4.

6. The departmental respondents in their counter to the rejoinder have reiterated their earlier submissions on the two points basing on which the candidature of the applicant has been rejected.

7. We have heard the learned lawyer for the petitioner and learned Additional Standing Counsel, Shri Akhaya Kumar Misra appearing on behalf of the ^{departmental} respondents, and have also perused the records. As earlier noted, respondent no.4 did not appear in spite of notice.


8. On perusal of the pleadings and other documents, we are unable to accept the contention of the learned Additional Standing Counsel that the applicant has deliberately suppressed the fact that he was continuing his studies and this fact proves that he is untrustworthy and on that ground his candidature has been rightly rejected. We note that vide Annexure-R/4 the applicant has submitted a letter dated 20.1.1992 addressed to respondent no.3 in which he has mentioned that he had left the studies in July 1991 and he was not attending classes. Principal's letter dated 24.2.1992 merely brings out that the applicant's name is on the rolls of the College. The Principal's letter does not say that the applicant was attending the classes. In case the statement of the applicant in his letter dated 20.1.1992 was disbelieved by the departmental authorities in view of the Principal's letter dated 24.2.1992, they should have ascertained from the applicant if he was prepared to discontinue his studies in the event of his selection for the post of E.D.B.P.M. Without doing that it was not proper on the part of the departmental authorities to reject his candidature out of hand by holding that the applicant has made a false statement.

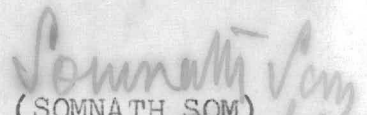
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9. The second ground on which his candidature has been rejected is regarding the income of Rs.12000/- from the shop. The applicant's case is that the shop belongs to him and not his younger brother and had an enquiry been made, he would have been in a position to prove the same. The departmental respondents have also come to a finding against the applicant behind his back. In consideration of the above, we hold that the rejection of the candidature of the applicant has been done on the basis of surmise and on considerations which cannot sustain the scrutiny of law. We, therefore, hold that the rejection of the candidature of the applicant is wrong.

10. In the result, therefore, the application succeeds and is allowed. The order dated 16.7.1992 appointing respondent no.4 as E.D.B.P.M., Rode B.O., is quashed. The departmental respondents are directed to consider the three candidates afresh and make a selection amongst them strictly following the rules and instructions and the observations made in this order.

No order as to costs.


(S.K. AGARWAL) 5/2/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 5/2/98