

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 488 OF 1992
Cuttack this the 25th day of March, 1999

Antaryami Nayak

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

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

25.3.99

25.3.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 488 OF 1992
Cuttack this the 25th day of March, 1999

CORAM:

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

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Antaryami Nayak, aged about years,
Son of Ainth Nayak of Village and
P.O: Sikrida, P.S.Nuagaon,
Dist: Puri

...

Applicant

By the Advocates : Mr.A.K.Nayak

-Versus-

1. Union of India represented by
Chief Post Master General,
Orissa Circle, Bhubaneswar
2. Senior Superintendent of Post Offices,
Puri Circle, At/Po/Dist: Puri
3. Sukadev Nayak, now working as E.D.B.P.M.,
Sikrida Branch Post Office,
At/Po: Sikrida,
P.S: Nuagaon, Dist: Puri

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Respondents

By the Advocates : MR.A.K.Bose,
Sr.Standing Counsel
(Res.1 and 2)

Mr.S.K.Dash
(For Res.3)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, Antaryami Nayak, along with Respondent 3, viz., Sukadev Nayak and one Baishnab Pani were considered for selection to the post of Extra Departmental Branch Post Master, Sikrida Branch Office. Respondent No.3 was selected and appointed.

This application has been filed on 24.9.1993 for quashing selection and appointment of Respondent 3 on the ground that while the applicant secured 49.6% marks in the H.S.C.Examination, Respondent 3 secured 48% marks, As ^{selection} per the recruitment rules for the post of E.D.B.P.M. percentage of marks in the H.S.C.Examination governs.

Respondent No.3 though entered appearance has not filed any counter. The departmental respondents though not deny higher percentage of marks secured by the applicant than Res.3 in H.S.C.Examination, take the stand that whereas Res.3 has property exclusively in his name, neither the applicant nor Baishnab Pani have property standing exclusively in ^{their} ~~their~~ names. As per D.G.(P&T) Circular dated 20.10.1977 Joint Hindu Family immovable property is not as good as security as other kind of property and cannot therefore, satisfy the requirement of rules. As intimated by concerned Tahasildar, Nayagarh in letter No.53 dated 4.1.1990 applicant had Ac.3.35 dec. of land and Baishnab Pani had Ac.1.23 dec. of land by that time and no landed property stands exclusively either in the name of the applicant or in the name of Baishnab Pani.

2. We have heard rival submissions of learned counsels appearing for the parties and have also perused the records.

3. There is no dispute that Res.3 secured less percentage of marks in H.S.C.Examination than the applicant and selection to the post of E.D.B.P.M., as per rules, is based on marks secured in the Matriculation or equivalent examination and no weightage would be given for any qualification higher than the Matriculation. The other qualification is that the person must have adequate means of livelihood and must be in a position to offer space to deserve as the agency premises for postal operations. The rules nowhere provide that the person selected and appointed as E.D.B.P.M. should have property standing exclusively in his name. All that is required is that he must have adequate means of livelihood.

Admittedly the applicant and Baishnab Pani are members of the joint family. As coparceners under Hindu Law they have sellable interest of their share. In fact the letter of the Tahasildar dated 4.1.1990 (Annexure-R/3) reveals that the applicant has got Ac.3.35 dec. of land as his share and similarly Baishnab Pani Ac.1.23 dec. of land as his share. In other words, shares of the applicant and Baishnab Pani have been clearly defined by the local revenue authority, which in turn would indicate that they have got adequate means of livelihood.

Hyderabad Bench of the Central Administrative Tribunal in Original Application No.1428/93 disposed of

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on 29.11.1993 (G. Nageswar Rao vs. Superintendent of Post Offices, Gulibada) as quoted at page 365 of Swamy's Case Law Digest, Vol. II-1996/1, disallowed the contention of the postal department and held that the applicant therein along with Res. 3 and Shri Madhaba Sharma even though had lands in the names of the Managers of the respective joining families, complied with the condition in regard to owning of property. Thus we cannot accept the stand of the respondents that since the applicant and Baishnab Pani have no lands exclusively standing in their names need to be disqualified for being selected for the post of E.D.B.P.M.

4. In view of our discussion above, we have no hesitation to hold that selection of Res. 3 for the post of E.D.B.P.M. was not made according to law. Accordingly, appointment of Res. 3 as E.D.B.P.M., Sikrida B.O is quashed. Respondent No. 2 is directed to reconsider the selection process amongst the applicant, Res. 3 and Baishnab Pani and select one among them to that post keeping in mind the legal position as discussed above. The selection and appointment shall be completed within 60 days from to-day.

5. In the result the application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K. SAHOO

25.3.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)