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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 489 OF 1992.

Cuttack, this the 14/12 day of December, 1999.

Radha Mohan Patnaik. Applicant.

Vrs.

Union of India & Others. Respondents.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be referred to all the Benches of the Central Administrative Tribunal or not? No

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
14.12.99



14.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 489 OF 1992.

Cuttack, this the 14th day of December, 1999

C O R A M :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.)

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Radha Mohan Patnaik, Aged about 35 years,
S/o. Ram Chandra Patnaik, Vill/PO. Badukul,
Via./Ps. Balugaon, Dist. Puri.

APPLICANT

By legal practitioner : M/s. S. K. Mohanty, S. P. Mohanty, Advocates.

- Versus -

1. Union of India represented by its Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Puri Division, Puri.
3. Chief Postmaster General, Orissa Circle, Bhubaneswar.
4. Narendra Kumar Dala Behera, At/PO-Badukul, Via/PS. Balugaon, Dist. Puri.

.... RESPONDENTS.

By legal practitioner : Mr. A. K. Bose, Senior Standing Counsel (Central).

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O R D E RMR. G. NARASIMHAM, MEMBER (JUDICIAL) :

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, filed in September, 1992, applicant Radhamohan Patnaik challenges the selection and appointment of Narendra Kumar Dala Behera to the post of Extra Departmental Branch Post Master, Badakul Branch Post Office. The post fell vacant on 30.6.1992, when Ram Chandra Patnaik, the father of applicant retired from that post.

2. The case of applicant is that he had read upto class 10 and was working as substitute during the period of his father, whenever, he was on leave. As per notification dated 16.4.1992 (Annexure-1), applications were invited for that post. In response to this notification, he submitted his application along with the relevant documents before the due date i.e. 8.5.1992. Yet another public notification dt. 19.5.1992 (Annexure-6) inviting fresh applications from the open market for the said post was made. Even in response to that notification, he submitted another application with necessary certificates/documents before the due date yet again another notification dated 24.6.1992 (Annexure-7) fixing last date as 16.7.1992 was made. In response to this notification, he as well as Res. No. 4, applied for that post. Respondent No. 4 comparably has lesser income than the applicant and the applicant is more solvent. According to applicant, inviting applications through repeated notifications without cancelling the notifications earlier issued would reveal the arbitrary exercise of power by the Appointing



Authority. Hence the selection of Res.No.4 has to be cancelled.

3. Respondent No.4 had not entered appearance inspite of due notice.

4. Department, in their counter stated that to fillup the post which was due to became vacant on 30.6.1992 Employment Exchange Officer, Khurda was requested to sponsor candidates for selection in letter dated 3.3.1992. As no response was received from the Employment Exchange, within the stipulated period of thirty days, notification dated 16.4.1992 was issued inviting applications. In response to this notification, applicant alone applied. Since as per rules at least three candidates are required to be sponsored by the Employment Exchange and as such at least three candidates are essential or essentially required for selection, the Senior Superintendent of Post Offices, felt the necessity to notify again on 19.5.1992 inviting applications. In response to this notification, only two candidates including applicant applied for the post. Even the candidate other than the applicant did not submit the essential documents. Since the minimum requirement number of applications not received against notification dated 24.6.1992 was issued. In response to this notification four candidates including applicant and Respondent No.4 applied. Out of the four candidates, candidature of one was rejected as he has failed to submit the essential documents like solvency, income, residential certificate and so on. Candidature of the third one i.e. other than the applicant and Res.No.4 was not



considered as he was not a resident of post village. Further this candidate has submitted the income certificate of his father instead of his own. As between Respondent No. 4 and the applicant, the case of the Department is that, though the applicant in his application mentioned to be a resident of post village Badakul, actually he is a resident of Injanpur as evident from his School Leaving Certificate (Annexure-2). As per rules, the person to be selected as EDBPM, should be a permanent resident of that village where the post office is located. This apart, the Respondent No. 4 is a resident of village Badakula and has a better educational record inasmuch as he appeared in class 10 examination though failed whereas applicant has read upto class 10 only and even the mark sheet submitted by both of them would reveal that Respondent No. 4 secured better percentage of marks and accordingly, Respondent No. 4 was selected for the post.



4. No rejoinder has been filed.
5. We have heard Mr. S. P. Mohanty, learned counsel for applicant and Mr. A. K. Bose, learned Senior Standing Counsel (Central) for the Departmental Respondents and also perused the records.
6. It is clear from the above recital facts in the counter which have not been refuted through any rejoinder that the previous two notifications inviting applications could not be acted upon because the number of applications being less than the minimum three. We therefore, do not see any irregularity or illegality in issuing the third notification inviting applications.

can not be a qualification or dis-qualification for selection to a post. Even otherwise, the admitted fact is that the applicant's father was retired as EDBPM ~~at~~ post village and he joined as EDBPM of that post on 26.7.1962. In other words, applicant's father was EDBPM of that post office for about 30 years. Hence on the basis of place of residence, applicant could not have been dis-qualified.

There is, however, some force in the version of the Department that Respondent No.4 is educationally more qualified than applicant for that post. At that time, minimum educational qualification for the post of EDBPM was 8th class pass. However, matriculation or equivalent qualification would be preferred. Admittedly, applicant did not pass class 10 and while passing class 9, he secured 218 marks out of 800 vide Annexure-R/8 i.e. about 27%. However, Respondent No.4 though failed in HSC examn. in the year 1974, secured 286 marks out of 800 i.e. about 36% (Annexure-R/9). Therefore, we do not see any irregularity or illegality in preferring Res. No.4 to that post than the applicant.

We are aware of the contention of applicant that he is financially more solvent than Res. No.4 but all that the relevant rules required that the person to be selected must have adequate means of livelihood. The check sheet (Annexure-R/3) reveals that Respondent No.4 is solvent upto Rs. 26,000/- having annual income of Rs. 6000/- though this solvency is less than the applicant yet it can not be said that Respondent No.4 had no adequate



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means of livelihood.

7. In the result, we are not inclined to cancel the selection and appointment of Respondent No. 4 to the post of EDBPM, Badakul BO. The Original Application is therefore, rejected. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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KNM/CM.



14.12.81
(G. NARASIMHAM)
MEMBER (JUDICIAL)