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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 523 OF 1992.

Cuttack, this the 7th of October, 1999.

SUSHANTA KUMAR DAS

...

APPLICANT

-VERSUS-

UNION OF INDIA & 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*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.10.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.523 OF 1992.

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CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

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

....

SUSHANTA KUMAR DAS
S/o Narahari Das,
At/Po. Mahagaba Via-Kamarda
Dist. Balasore

... Applicant

By legal practitioner : M/s R.N.Naik,
A.Deo,
B.S.Tripathy, Advocates

-Versus-

1. Union of India represented by
Secretary,
Department of Posts,
Dak Bhavan,
New Delhi.
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar.
3. Senior Superintendent of Post Offices,
Balasore Division,
Balasore.
4. Nabakishore Jena
S/o Narasingha Jena
At/Po. Mahagaba Via-Kamarda
Dist. Balasore

... Respondents

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By legal practitioner : Mr. Anup Kumar Bose,
Senior Standing Counsel (Central)
for Respondent Nos. 1 to 3.

M/s Aswini Kumar Mishra,
Susant Kumar Das,
Sashibhusan Jena, Advocates
for Respondent No.4.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of the Administrative Tribunal Act, the applicant has prayed for setting aside selection of Shri Nabakishore Jena (Resp.No.4) as Extra Departmental Branch Post Master (EDBPM), Mahagaba Branch Post Office and for a direction to Senior Superintendent of Post Offices, Balasore Division (Resp.No.3) to consider the case of the applicant for the post.

2. The facts of this case fall within a small compass and can be briefly stated. The admitted position is that the applicant and Respondent No.4 along with some others were candidates for the above post. The applicant had secured higher marks than the Respondent No.4, but ignoring his case, Resp.No.4 has been selected. Hence this application with the aforesaid prayers.

3. The Departmental Respondents have stated in their counter that the applicant has passed HSC Examination securing 481 marks whereas the selected candidate, Resp.No.4 has passed I.A. and secured 332 marks in HSC examination. The applicant has submitted income certificate showing annual income of Rs.12,200/-. Resp.No.4 has also submitted income certificate showing annual income of Rs.18,800/-. It is further submitted that on verification of landed property, it is found that the applicant had no land in his own name till the last date of receipt of application on 25.8.92 whereas Resp.No.4 had A0.47 Dec. of land in his own name at the time of submission of the application. Departmental Respondents have stated that as the applicant had no property in his own name, he had no ground to substantiate

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the income of Rs.12,200/-. Accordingly the case of the applicant was not found more suitable than Respondent No.4 who was selected.

4. Respondent No.4 in his counter has stated that he had worked as a substitute of the regular EDBPM, Mahagaba for 5½ months and he has passed I.A. Accordingly, taking in to account his higher educational qualification, higher income and past experience, he has been rightly selected.

5. By way of Interim Relief, the applicant had stated that as Extra Departmental Delivery Agent (EDDA) was functioning as the EDBPM, Mahagaba this arrangement should continue till the disposal of the Original Application. On the date of admission on 23.10.92, it was ordered that the result of the application would govern future service benefits of the petitioner.

6. We have heard Shri A.Deo, Learned Counsel for the petitioner, Shri A.K.Mishra, Learned Counsel for the Respondent No.4 and Shri A.K.Bose, Learned Counsel for the departmental respondents and have perused the records.

7. Departmental instruction, gist of which has been printed at page 71 of 'Swamy's Compilation of Service Rules of E.D.Staff', Sixth Edition clearly provide that the selection for the post of EDBPM should be based on marks secured in Matriculation or an equivalent examination and no weightage can be given for any qualification higher than Matriculation. In view of this, the fact that the selected candidate Resp.No.4 has passed I.A. as against the applicant who has passed H.S.C. is of no consideration. This contention of Resp.No.4 is held to be without any

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merit and is rejected.

8. In H.S.C.Examination, which the applicant and Resp.No.4 both passed in 1984, the applicant had got 481 marks whereas the Resp.No.4 has got 332 marks. Thus, the applicant has got higher marks than Resp.No.4. The departmental respondents have stated in their counter that the applicant had no land in his own name by 25.8.92, the last date for receipt of application. He has purchased land which has been registered in his name on 5.9.92 and hence his candidature is rejected. In support of their contention in rejecting the candidature of the applicant for having no land in his own name by 25.8.92, the departmental authority has relied on the circular dt.2.4.92 issued by Chief Post Master General (CPMG), Bhubaneswar which is at ANNEXURE-R/2. In this circular, CPMG had emphasised the need for proper verification of income/solvency certificate. There is no instruction in this circular that a candidate for the post of EDBPM must have land in his own name. In this circular, CPMG has drawn attention to instruction dt.14.8.85 of Director General, Post which envisages that verification of property and income is one of the preconditions of selection of a candidate for EDBPM. Departmental respondents have not enclosed copy of the circular dt.14.8.85. But gist of this circular have been printed at page 71 of Swamy's Compilation of Service Rules of ED Staff, Sixth Edition. In this circular, DG, Post has noted that in a number of cases, verification of property and income which is one of the preconditions for appointment to the post of EDBPM has been carried out only after candidates were appointed. In

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view of this, in circular dt.14.8.85, DG, Post has instructed that such verification should be done before and not after the appointment. In this circular also there is no requirement that selected candidate must have land in his own name. The instructions for selection to the post of EDBPM merely provide that the person selected must have independent means of livelihood and should not wholly depend upon his allowances as ED employee for his subsistence. In the instant case, the applicant has furnished income certificate issued by Tahasildar, Jaleswar. This has also been verified and has not been found incorrect. The departmental authority has enclosed a copy of the Check List from which it appears that candidature of applicant No.1 is rejected only on the ground of his having no landed property in his own name. It is only in the counter that the departmental respondents have taken the plea that the income certificate is not reliable. It is possible for the applicant to have income otherwise than from the land and his income certificate should not have been disbelieved, because of his having no land in his own name. The respondents have also not held at the time of selection that his income certificate is not reliable.

9. The last point is that income of Resp.No.4 is higher than the income of the applicant as certified by Tahasildar, Jaleswar in both the cases. There are specific instructions of DG, Post that the selection to the post of EDBPM should not be decided on higher level of income. This is also therefore held to be without any merit.

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10. In view of our above discussion, we hold that the candidature of the applicant has been wrongly rejected by the departmental authorities. In view of this, we direct the departmental authorities to consider the candidature of the persons, who were considered at the time respondent no.4 was selected, once again strictly in pursuance of instructions of DG, Posts and make a fresh selection. This process should be completed within a period of 120 days from the date of receipt of a copy of this order. The appointment of respondent no.4 to the post of EDBPM, Mahagaba will abide by the result of the fresh selection.

11. In the result, the Original Application is allowed in terms of the observations and directions given above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN
7.10.99