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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 559 OF 1992.

Cuttack, this the 29th day of April, 1999.

PRADIPTA KUMAR SWAIN.

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.*

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(G. NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
29.4.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 559 OF 1992.

Cuttack, this the 29th day of April, 1992.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

....

Pradipta Kumar Swain, aged about 29 years,
Son of Sudarsan Swain, resident of Village
Selada, Po. Kasarda, Dist. Cuttack.

... APPLICANT.

By legal Practitioner: Mr. Gopal Chandra Mishra, Advocate.

-VERSUS-

1. Union of India represented through its
Secretary in the Department of Post,
Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle,
Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices,
Cuttack City Division, Cuttack.
4. Sub-Divisional Inspector (Postal),
Cuttack West Sub-Division, Cuttack.
5. Niranjan Mallik, aged about 27 years,
Son of Govinda Mallik, At. Badhiasahi,
Po. Kasarda, Dist. Cuttack. ... RESPONDENTS.

By legal Practitioner: Mr. J. K. Nayak, Additional Standing
Counsel (Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the Appointment of Niranjan Mallik, (Respondent No. 5) as Extra Departmental Packer, Kasarda Sub Post Office and for a further direction to consider the case of the petitioner for the above post, taking into account his past experience in that post.

2. Facts of this case, according to the petitioner are that he was provisionally selected as Extra Departmental Packer of Kasarda Sub Post Office in order dated 23.3.1991 at Annexure-1. He joined on 27-3-1991 and continued as such. Thereafter, the Sub Divisional Inspector (Postal) Cuttack West Sub Division, Cuttack (Respondent No. 4) called for names from Employment Exchange but as the names were not sponsored by the Employment Exchange, applications were invited by public notice and petitioner pursuant to such public notice, submitted his application. In order dated 1-5-1991 (Annexure-2), the petitioner was selected as Extra Departmental Backer of Kasarda Sub post Office. The services of the applicant were terminated in order dated 28-4-1992 (Annexure-3) under Rule-6 of the P&T ED Agents (Conduct & Service) Rules, 1964 without assigning any reason. Applicant challenged this order at Annexure-3 in OA No. 369/1992. In that case, Departmental Authorities advanced a number of contention regarding the irregularity in the selection and taking into consideration the submissions made by the parties, this Tribunal directed that there should be a fresh selection, in accordance with Rules. Applicant has

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stated that in the fresh selection process, names were called for from the Employment Exchange. Petitioner submitted his application alongwith requisite documents. Respondent No. 5 was also an applicant. The case of the applicant is that Respondent No. 4 without following the norms and procedures and without giving preference to the applicant, selected Respondent No. 5 as Extra Departmental Packer of Kasarda Sub Post Office. In the context of the above facts, applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant was previously appointed to the Post of Extra Departmental Packer of Kasarda Sub Post Office. But his appointment was held to be irregular by Respondents 2 and 3 and instructions were issued to Respondent No. 4 to cancel the appointment and to make fresh selection by observing the usual procedure. Accordingly, Respondent No. 4 terminated the services of the applicant and started fresh selection. Applicant approached this Tribunal in Original Application No. 369 of 1992 challenging the order of termination of his service. Tribunal in order dated 28-2-1992 directed the Respondents to undertake fresh selection by calling for names from the Employment Exchange. The Tribunal further directed that the applicant should continue in that post till final selection is over. The Tribunal also made it clear to the applicant that if he is not appointed after fresh selection, then he has to vacate the post in favour of the selected candidate. Ultimately, the applicant was not selected. Being aggrieved by his non-

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consideration, the petitioner has come up in this Original Application. Respondents have stated that the application of the petitioner was taken into consideration and it was found that the application of the petitioner which at Annexure-R/1 was not properly filled in, even though instructions were issued that applications which are incomplete, in any respect, would be liable to be rejected. It is further stated that Respondent No. 5 belongs to SC Community and he has been adjudged to be more suitable and that is how, Respondent No. 5 has been appointed. Respondents have stated that the selection of Respondent No. 5 has been done strictly in accordance with Rules and in view of this, they have opposed the prayer of the applicant.

4. In his rejoinder, the petitioner has re-iterated his averments that in selecting Respondent No. 5, Departmental Authorities have violated the Departmental norms and instructions. It is not necessary at this stage to note various averments made by the petitioner, in his rejoinder because these points have been raised by the learned counsel for the petitioner at the time of hearing of this petition and these submissions will be considered later on while discussing the rival submissions of the parties.

5. Respondent No. 5 was issued with notice but he did not appear nor did he file any counter.

6. By way of interim relief, petitioner has prayed for a direction that he should be allowed to continue. On the date of admission, on 9.11.1992, the prayer for interim relief was disposed of with a direction that when order of appointment is issued in favour of Respondent No. 5, it should be specifically mentioned that his order of appointment would be subject

to the result of this application.

7. We have heard Mr. G. C. Mishra, learned counsel for the applicant and Mr. J. K. Nayak, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

8. The first point urged by the petitioner is that he has secured more mark than Respondent No. 5 in the matriculation examination. This contention is rejected because Respondents have pointed out in the counter and have also annexed the mark sheet of the applicant and Respondent No. 5 at Annexures- 3, 3-A and 4 showing that applicant has got '240' marks out of '700' whereas Respondent No. 5 has got '279' marks out of '700'. As such, it is clear that Respondent No. 5 has got higher marks than the applicant.

The next contention is that Departmental Authorities have not taken into consideration the fact that the applicant has worked for more than a year as ED Packer and his experience has not been given weightage. Departmental instructions are clear that amongst the eligible candidates, selection will have to be made on the basis of higher percentage of mark obtained in the matriculation examination.

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Question of giving preference to the person who has gathered experience would arise only if two candidates are evenly balanced. There is no question that persons with lesser mark should be selected if he has some experience. This contention is also rejected.

The third contention is that the selection has taken place without verification of documents. It has been pointed

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out by the Respondents that Respondent No. 5 was given
provisional appointment pending regular selection after
termination of service of the applicant and at the time
of provisional appointment of Respondent No. 5, his documents
have been earlier verified. Moreover, even after selection
a condition is put that the selection is subject to the
satisfactory verification of original documents. As in this
case documents of both the candidates have been verified,
we find no merit in this contention of learned counsel for
the petitioner.

The next contention is that Respondent No. 5 does not
have the personal income and therefore, he should not have
been selected. Respondents have pointed out in the letter at
Annexure R/2, both the applicant and Respondent No. 5 and four
others who are under consideration were asked to submit
different documents and their income criteria is not applicable
to ED Packer. Income certificate was also not called for from
any of them. As Income Certificate was not called for from
any of the candidates, naturally, Respondent No. 5 did not
submit any Income Certificate. His appointment, therefore,
can not be challenged on this ground.

The next point made is that Res. No. 5's uncle namely
Shri Bandhu Mallik is working in Erancha Branch post office
which has account with Kasarda Sub Post Office and therefore,
Respondent No. 5 should not have been selected. It has been
pointed out by the Respondents that according to the DG's
instructions, appointment of candidates whose near relatives
are serving in the same office has to be avoided. According

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to the Respondents, uncle of Respondent No.5 is working in another office, and therefore, the candidature of Respondent No.5 could not have been held ineligible on that ground. In this connection it has to be noted that the Hon'ble Supreme Court held that appointment to a more meritorious candidate can not be denied on the ground that his near relatives is working in the same office. In view of this, this contention is also held to be without any merit.

9. In the rejoinder, the applicant has made certain averments challenging his termination. He has stated that in the instruction to Respondent No. 4 to terminate his service name was mentioned as 'Kedarnath Swain' and not the name of the applicant 'P.K. Swain'. This point can not be considered by us at this stage because applicant has earlier challenged his termination in Original Application No. 369 of 1992 and this Tribunal had ordered for fresh selection. Therefore, the same issue challenging his termination can not be raised by the applicant in this Original Application. It is further stated by the applicant in his rejoinder that the present Respondent No.5 was also a candidate in the earlier selection but he was not qualified in the said selection. Respondents have specifically urged in OA No. 369 of 1992 that the previous selection was not correctly done and therefore, this point does not merit any consideration.

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10. In view of our discussions above, we find that all the grounds urged by the applicant for quashing the appointment of Respondent No.5 are without any merit.

11. Before closing this aspect, of the matter it has to be noted that Respondents have correctly averred that the petitioner has not filled up his application correctly - a xerox copy of the petitioner's application is at Annexure-R/1 and it is seen that he has not filled up the name of Village, Post Office and the Police Station. As the applicant has urged so many technicalities for quashing the appointment of Respondent No. 5 he could have filled up his application completely in all respects.

12. Learned counsel for the petitioner has lastly urged that the applicant has worked as ED Packer for more than one year and has gained experience. In view of this, Departmental Respondents should be directed to consider him for any ED Posts suitable to his qualification. We have noted the fact that the applicant was originally selected by the Departmental Authorities but that selection was cancelled because of irregularities committed in the process of selection. It is not the case of the Respondents that for these irregularities applicant is in any way responsible. In consideration of the above, while holding that the present original application is without any merit and is rejected, we direct the Respondents that in case the petitioner applies to any ED Posts, then his candidature should be considered in accordance with rules and his eligibility.

13. In the result, the original application is disposed of with the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN
07/11/99