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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 164 OF 1993.
Cuttack, this the 11th day of November, 1999.

SMT. PUSPALATA ACHARYA. ... APPLICANT.

-VERSUS-

UNION OF INDIA & ORS. ... 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)

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SOMNATH SOM
VICE-CHAIRMAN
11.11.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.164 OF 1993.
Cuttack, this the 11th day of November, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN;

AND

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

....

SM T. PUSPALATA ACHARYA,
Aged about 24 years,
W/o. Sri Narendra Nath Dash,
At/Po. Dahana, Via. Dangarabhaja,
PS. Nowrangpur, Dist. Nowrangpur.

....

APPLICANT.

By legal practitioner: M/s. C. A. Rao,
S. K. Purohit,
S. K. Behera,
P. K. Sahoo,
Advocates.

-versus-

1. Union of India represented through its Secretary in the Department of Posts, Dak Bhawan, New Delhi.
2. Chief postmaster General, Orissa Link, Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Koraput Division, At/Po. Jeypore, Dist. Koraput.
4. Inspector of Post Offices, Nowrangpur, At/Po. Dist. Nowrangpur.
5. Soumya Prasad Mishra, S/o. Radha Mohan Mishra, Vill/Po. Dahana, Via. Dangarabhaja, Dist. Nowrangpur. ... RESPONDENTS.

By legal practitioner: Mr. A. K. Bose, Senior 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 a direction to the Respondents to consider the applicant for the post of Extra Departmental Branch Post Master, Dahana Branch Post Office and to declare the appointment of Opp. Party No. 5 as illegal. The second prayer is for a direction to Respondents to consider the case of applicant for appointment in any other vacancy.

2. Facts of this case, according to applicant, are that she is a resident of village Dahana and has passed HSC Examination. Her father-in-law, who was working as EDBPM, Dahana BO retired on 29-6-1991 after handing over charge to the overseer mail. Applicant has worked for some days as substitute of her father-in-law, as per details given in the Original Application. She represented for appointment to the post but without any result. It is submitted that inspite of several representations by her these were not considered and OP No. 5 was appointed without any public notification and without following the due procedure. The local member of Parliament also took up her case but without any result. It is stated that the sr. Supdt. of post offices, Koraput Division wanted to help the brother of an employee of his office and therefore, did not issue public notice calling for applications for the post and did not follow the procedure and appointed OP No. 5 who is the brother of one Kanhu Charan Mishra, Clerk, in the office of OP No. 3. No names were also called for from the Employment Exchange.

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No preference was also shown to lady candidate or candidates belonging to SC/ST community. On the above grounds, the applicant has come up in this Original Application with the prayers referred to earlier.

3. Respondents, in their counter, have stated that the father-in-law of applicant was duly retired on attaining the age of superannuation. Respondents have stated that the application of applicant for considering her past experience/ service as substitute is not entertainable for the purpose of regular selection. It is further stated that Res.No.5 was selected for the post of EDBPM, Dahana BO by observing usual procedure. Employment Exchange Officer, Nawarangpur was requested to sponsor candidates and out of the candidates sponsored by the Employment Exchange Officer, in the letter dated 18.5.1991, Respondent No.5 was duly selected. On the above grounds, the Respondents have opposed the prayer of applicant.

4. We have heard Mr.C.A.Rao, learned counsel for applicant and Mr.A.K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and have also perused the records. The selected candidate Res.No.5 was issued with notice but he did not appear or file counter. At the conclusion of hearing we had indicated that we would like to see the selection file before passing the orders in this case. Accordingly, learned senior Standing Counsel Mr.Bose, has produced the selection file which has also been perused.

5. It has been submitted by learned counsel for the petitioner that according to law as laid down by the Hon'ble Supreme Court in the case of EXCISE SUPDT. MALKAPATNAM KRISHNA

District, AP -VRS.-K.B.N. Viswashwara Rao & others reported in 1996 SCC(L&S)1420, it has been held that in addition to requisitioning names from employment exchange, names should also be called for by publication in newspapers, having wide circulation, and display in office notice boards and only such a procedure would subserve fairplay in selection and appointment to public posts. This law as laid down by the Hon'ble Supreme Court in this case has been followed by the Hon'ble High Court of Orissa in the case of Susanta Kumar Kar Vrs. Registrar (Judicial), Orissa High Court, Cuttack reported in 1997 (1) OLR 463 but in the instant case names were called for from the employment exchange and thereby the process of selection and appointment of Res. No. 5 to the post of EDBPM, Dahana BO has been challenged by the petitioner. Departmental Rules provide that for filling up of the post of EDBPM, names have to be called for from the Employment Exchange and only if the Employment Exchange Authorities are not able to sponsor names within the time period fixed, public notice have to be issued inviting application. In the instant case, the Employment Exchange was moved in April, 1991 and names were sponsored by the Employment Exchange Authorities in their letter dated 18.5.1991. The decision of the Hon'ble Supreme Court came only in August, 1996 which after the selection process was initiated in the instant case. Moreover, in the case of Union of India Vrs. N. Hargopal and others reported in AIR 1987 SC 1227, the Hon'ble Supreme Court have held that insistence of recruitment through employment exchange advances rather than restricts the rights guaranteed by

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Arts. 14 and 16 of the Constitution. As in the instant case, the selection procedure was initiated much earlier than the decision of the Hon'ble Supreme Court, in the case of Excise Supdt. Malkapatnam (supra), non issuing of a public notice can not be said to be vitiated the selection. Moreover, from the selection file, we find that the applicant had directly applied to the Departmental Authorities and her case was taken into consideration as it appears from the checklist. In the check list it has been mentioned that as her name has not been sponsored by the Employment Exchange, she has not been considered. But from the certificate given by the applicant herself along with her application which is at 114/c, it is seen that the applicant passed the HSC examination in 3rd Division. From the mark sheet of the selected candidate, OP No. 5 which is at 131/c, it is seen that OP No. 5 passed HSC examination in 2nd Division. Instructions regarding selection for the post of EDBPM provide that amongst the eligible candidates the person who has secured the highest percentage of marks in HSC examn. has to be selected. In this case, the selected candidate has got higher percentage of marks, than the petitioner and therefore, the grievance of the petitioner for her non-selection can not be held to be genuine. *Wm.*

6. As regards her experience as a substitute, a substitute is inducted by the regular incumbent during the period of his leave. The substitute works at the risk and responsibility of the original incumbent. The experience of a substitute can not be taken into consideration for the purpose of selection. If that is allowed then it would always

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be open for an incumbent to go on leave by providing a person as a substitute in order to give him advantage over other candidates in subsequent selection..In view of the above, we hold that the applicant is not entitled to have his prayer for quashing the appointment of Res. No. 5 as EDBPM, Dahana BO.

7. The applicant has also made a prayer that she should be adjusted against some other vacancy. In case she applies for any ED post and is eligible then her case should be considered in accordance with rules.

8. In the result, the Original Application is disposed of with the observations and directions made above but in the circumstances, without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
11.11.99

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