

CE NTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 204 of 1993.

Date of decision **May 24, 1993.**

Niranjan Acharya ... Ap

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. S.Kr.Mohanty,
S.P.Mohanty, Advocates.

For the respondents 1 to 3 .. Mr. Ashok Misra,
Sr. Standing Counsel
(Central)

For the respondent No.4 M/s.Deepak Misra,
R. N. Naik, A. Deo,
B. S. Tripathy,
P. Panda, Advocates.

C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the impugned order selecting the Respondent No. 4, Shri Prasanta Kumar Bhuyan as Extra-Departmental Sub-Postmaster of Sidheswarpur Sub Post Office on 15.4.1993 and direct the respondents 1 to 3 to appoint the applicant in the said post on compassionate grounds.

2. Shortly stated, the case of the applicant is that his brother was serving as Extra-Departmental Sub-Postmaster in Sidheswarpur Sub-Post Office. The applicant's brother expired on 4.7.1991 after serving from 14.12.1983 to 4.7.1991. Just before Niranjan's brother expired, the applicant had taken charge as a substitute. The applicant made a representation on 2.8.1991 to be appointed on compassionate grounds which is still pending consideration before the Circle Relaxation Committee. On 10.9.1991 a notification was issued for filling up of the post of Extra-Departmental Sub-Postmaster of Sidheswarpur Post Office on regular basis. The last date for receipt of the application from intending candidates was fixed to 30.9.1991. Along with others, the applicant and Respondent No. 4 were the applicants. The selecting authority considered the cases of the applicant, respondent No. 4 and other candidates. The selecting authority adjudicated the suitability in favour of

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Respondent No.4 and issued an order of appointment in his favour. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the applicant has rushed to the Tribunal at a premature stage. The case of the applicant is being considered by the Circle Relaxation Committee as to whether compassionate appointment should be issued in his favour. Without such representation being finally disposed of, the applicant has no right to move this Bench and therefore, his application should be in limine dismissed. Furthermore, it is maintained by the respondents that the selection of Respondent No.4 is according to Rules and therefore, his selection should not be quashed - rather it should be sustained.

4. We have heard Mr. S.P. Mohanty, learned counsel for the applicant, Mr. Ashok Misra, learned Senior Standing Counsel (Central) for the respondents 1 to 3 and we have also heard Mr. Deepak Misra, learned counsel appearing for Respondent No.4, at a considerable length.

5. At the outset we must say that the applicant claims to be a dependent on his deceased brother, namely, Trilochan Acharya. Mr. S.P. Mohanty, learned counsel for the applicant strenuously urged before us that the applicant being the brother and member of the joint family is undoubtedly a dependent on the deceased brother especially when the deceased Trilochan was a bachelor. However, despite the strenuous arguments

advanced by Mr. Mohanty, we are unable to subscribe to the view that the applicant Niranjan is/was dependent over his deceased brother, Triplochan. Family constitutes wife, son etc. and those categories of people can be very well designated as dependent but in no circumstance one brother can be categorised as dependent over the other. Therefore, we are of opinion that the case of the applicant does not deserve to be sympathetically considered for compassionate appointment.

6. Now, coming to the case of applicant vis-a-vis Respondent No. 4 regarding the sustainability of the appointment of Respondent No. 4 as Extra-Departmental Sub-Postmaster of Sidheswarpur Sub Post Office the admitted position is that the last date for receipt of applications was 30.9.1991. It is always expected that the application must be accompanied with all the requirements as called for in such advertisement failing which due to non-compliance, the application is liable to be rejected as rightly notified in Annexure-3. The admitted case of the parties is that the income certificate of the Respondent No. 4 did not accompany the application. The income-certificate of the respondent No. 4 was filed on 26.2.1992. In paragraph 8 of the counter, it is stated by the respondents that Shri Prasanta Kumar Bhuyan, Respondent No. 4, one of the applicants for the post in question had submitted his application on 30.9.1991. Along with it the details of the landed

properties owned by him, his income from other sources and the copy of the report of the Revenue Inspector for issue of income certificate by the Tahasildar was filed and in such circumstances, Respondent No. 4 was permitted to file his income certificate at a later date. The Rules contemplate that income certificate must be filed along with the application and income certificate cannot be granted by any other authority except the Tahasildar. No doubt the Tahasildar will act on the report of the Revenue Inspector but the report of the Revenue Inspector is not final in the matter. It is subject to the decision of the Tahasildar who exercises his jurisdiction on the judicial side. Therefore, we cannot agree with Mr. Deepak Misra, learned counsel for the Respondent No. 4 that the selecting authority was justified in acting on the report of the Revenue Inspector. In that case, if this case is accepted, then the certificate of the Tahasildar will have no importance at all and there will be enough room and scope to make manipulation by approaching the Revenue Inspector through a back door. We are unable to agree with Mr. Deepak Misra, that though the filing of the certificate was 26.2.1992 yet it was much before the order of appointment was issued and therefore we are of opinion that the selection process has been vitiated being violative of the rules in force. Therefore, we would quash the appointment of Respondent No. 4 and we would direct that the appointing authority may

reconsider the entire case afresh considering the case of the applicant, respondent No. 4 and other candidates (those who have already applied) who have not been found suitable and thereafter the appointing authority must adjudicate the suitability of different incumbents and whosoever is found to be suitable, appointment order should be issued in his favour. The appointing authority should not misconstrue our order that by quashing the appointment of Respondent No. 4 we find him to be unsuitable. The entire matter is left to the discretion of the appointing authority to dispose of the matter according to law. It was told to us that the Respondent No. 4 has completed his training and we hope this will be taken into consideration by the selecting authority. We are further told that the Mail Overseer is now in charge of the Sub Post Office in question. He will continue till the final order is passed. Equally, the experience gained by the applicant as a substitute be taken into consideration by the selecting authority. The process of selection would be confined to the candidates who have already applied and the final order be passed within 60 (sixty) days from the date of receipt of a copy of this judgment.

7. Thus, this application is accordingly disposed of leaving the parties to bear their own cost.

..... MEMBER (ADMN.) 24/5/93.

VICE-CHAIRMAN

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
May 24, 1993/Sarangi.