

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 385 OF 1993.

Cuttack, this the 11th day of August, 1999.

Niranjan Behera.

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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? *NO*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 385 OF 1993
Cuttack, this the 11th day of August, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

....

NIRANJAN BEHERA,
aged about 23 years,
Son of Bhobei Behera,
Vill.-Purbakhanda,
At/Po. Niali, Dist. Cuttack.

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APPLICANT.

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

-VERSUS-

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhawan, New Delhi.
2. Senior Supdt. of Post Offices,
Cuttack City Division, Cuttack.
3. Sub-Divisional Inspector (Postal),
Cuttack West Sub-Division,
Cuttack-12.
4. Sukanta Kumar Kunda, Vill. Purbakhanda,
At/Po-Niali, Dist. Cuttack. RESPONDENTS.

For Respondents 1 to 3: Mr. A.K. Bose, Senior Standing
Counsel (Central).

For Respondent No. 4. : M/s. Anil Deo, B.S. Tripathy,
P. Panda, D.K. Sahoo,
Advocates.

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J Som.

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 selection of Respondent No. 4 to the post of E.D. Packer, Niali Sub Post Office made on 05-07-1993. Second prayer is for a direction to the Departmental Authorities to consider the applicant's case afresh for appointment to the post of E.D. Packer.

2. Applicant's case is that originally his brother was E.D. Packer, Niali Sub Post Office. He was promoted to the Gr. D cadre in the Department and consequently, the post of ED Packer, Niali Sub Post Office, fell vacant. Employment Exchange, sent names of certain candidates and ultimately, applicant, Respondent No. 4 and four other candidates applied for the post. Applicant belongs to SC and his caste certificate is at Annexure-3. Applicant has also passed matriculation. It is further submitted that the applicant has worked in the post of ED Packer as substitute of his brother from May, 1991 to March, 1993 at regular intervals, when his brother was on leave. It is submitted that that the Departmental Authorities has selected Respondent No. 4 without taking into consideration the fact that the applicant belongs to SC and is entitled to get preference. They have also not given weightage to the experience gained by the applicant while working as a substitute of his brother. On the above grounds, applicant has come up in this petition with the

prayers referred to above.

3. Respondents, in their counter, have pointed out that amongst the candidates, who were under consideration, Respondent No. 4 got highest marks in the Matriculation examination. He also was otherwise eligible to be considered for appointment and accordingly Respondent No. 4 was selected. As regards the applicant's claim that his experience as a substitute should have been considered, has been opposed by the Respondents in their counter. Respondents have pointed out that in Cuttack West Sub Division, out of the total number of 141 ED posts, already SC candidates are occupying 16.3% which is more than the minimum required percentage of 15% of SC candidates. As the minimum percentage of SC was being maintained, the Respondents have pointed out that they are not obliged to give preference to the petitioner, on the ground of the petitioner is a Scheduled Caste Community.

4. The Respondent No. 4, appeared through his learned counsel Mr. A. Deo and his associates but they did not file any counter.

5. This matter has come up for hearing from the warning list notified more than a month ago. To-day, when the matter was called, learned counsel for Applicant Mr. S. P. Mohanty, was absent nor was any request made on his behalf seeking adjournment. Similarly, learned counsel for Respondent No. 4 Mr. Deo and his associates were also absent and no request was also made on their behalf seeking adjournment. In view

J. Som.

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of this, we have heard Mr. A.K. Bose, learned Senior Standing Counsel (Central) appearing for the Departmental Respondents and have also perused the records.

6. The first point urged by applicant in his petition for his selection is that his experience as a substitute, has not been taken into consideration. We have already held in a number of cases that experience of a person as substitute, can not be taken into consideration. A substitute works at the risk and responsibility of the original incumbent and is inducted to the job by the original incumbent. If experience of a substitute is given weightage, then it would be always possible for an existing incumbent to go on leave by providing one of his relations as substitute and thereby giving an undue advantage to him over other candidates ^{from} ~~in~~ the open market. In view of this, ^{Adm.} this contention of learned counsel for applicant that his experience as substitute should have been taken into consideration is held to be without any merit and is rejected. The second contention that applicant should have been given preference on the ground of he is belonging to SC is also without any merit because as has been indicated by the Respondents, in their counter that in Cuttack West Sub Division as against the required percentage of 15% meant for representations of SC candidates, already the number of persons belonging to SC working in ~~extras~~ Departmental posts is 16.3% i.e. 1.3% more. In view of this, the Respondents have rightly contended that they are not obliged to give preference to the SC candidate in the post. This contention also fails and is rejected.

Adm.

7. In the result, therefore, we find no merit
in this Original Application which is accordingly rejected.
No costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
11.8.99

KNM/CM.