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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 478 OF 1993.

Cuttack, this the 16th day of August, 1999.

HARIBANDHU SAHOO.

....

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)
VICE-CHAIRMAN

16.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 478 OF 1993.

Cuttack, this the 16th day of August, 1999

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

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

....

Haribandhu Sahoo,
Son of late Gopinath Sahoo,
Aged about 27 years,
At/Po. Kadua Mangarajpur, via.
Jagannathprasad, Dist. Ganjam.

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Applicant.

By legal Practitioner: M/s. H. Kanungo, B. Mishra, J. K. Kanungo,
Advocates.

- VERSUS -

1. Union of India represented by its
Secretary in the Ministry of Communications,
Department of Posts, Dak Bhawan, New Delhi. 1.

2. Chief Postmaster General,
Orissa Circle, Bhubaneswar,
Dist. Khurda.

3. Postmaster General,
Berhampur Region, Berhampur,
Dist. Ganjam.

4. Superintendent of Post Offices,
Aska Division, Aska, Dist. Ganjam.

5. Susanta Kumar Sarangi,
At/Po. Kaduamangarajpur,
via. Jagannathprasad,
Dist. GANJAM.

...

Respondents.

By legal practitioner
for Respondents 1 to 4.

... Mr. Anup Kumar Bose,
Senior Standing Counsel
(Central).

By legal practitioner
for Respondent No. 5.

... Mr. B. R. Sarangi, Advocate.

....

S. Sarangi.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN :

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for a direction to the Respondents for setting aside the order of selection made in favour of Res. No. 5 and also for a further direction to consider the case of applicant keeping him in the preferential category for the post of E.D.B.P.M., Kadua Branch Post Office.

2. Applicant's case is that his ancestral village is at Jodabandha but he has got permanent residence at Village Kaduamangarajpur of which Narendrapur is a hamlet of Kadua Post village, where he resides. The post of E.D.B.P.M., Kadua Branch Post Office (wrongly mentioned by applicant as Buguda BO), fell vacant and for filling up of the said post, names were called for from the Employment Exchange. Names of applicant and Respondent No. 5 along with some others were sponsored by the Employment Exchange. The sponsored candidates were asked to apply in prescribed form with necessary documentation. Applicant and Respondent No. 5, both applied and their cases were taken into consideration. Tahasildar, Buguda had issued a resident certificate to applicant that he is a permanent resident of village Kaduamangarajpur. Respondent No. 5 raised an objection before the Tahasildar, Buguda stating that the applicant is not a resident of village Kaduamangarajpur and the Tahasildar, Buguda, without going into the merits of the case and without causing any enquiry passed an order cancelling the said

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certificate. Later on, applicant brought to the notice of the Tahasildar, Buguda that he has got a residential house at Kaduamangarajpur, which is a hamlet village of Narendrapur, the Tahasildar, Buguda, again issued an order confirming the earlier certificate granted in favour of the applicant. Applicant has further stated that he has got 51% marks and thus, he has got the highest marks amongst the candidates for the selection to the post of E.D.B.P.M. and more marks than the selected candidate, Respondent No.5 but he has not been selected and Respondent No.5 has been wrongly selected for the post and that is how, he has come up in this Original Application with the prayers referred to above.

3. Departmental Respondents in their counter have stated that for the post of E.D.B.P.M., Kaduamangarajpur, applications were received from four candidates who have passed matriculation, including applicant and Respondent No.5. These were sent for verifications to the Assistant Superintendent of Post Offices, Bhanjangan. Applicant submitted one residential certificate issued by Tahasildar Buguda showing that he is ordinarily residing in Village Kadua Mangarajpur. Subsequently, the Tahasildar, Buguda in his letter dated 17-4-1993, reported that the applicant is a permanent resident of village Jodabandha. Again the Tahasildar, Buguda, in his letter dated 6-5-1993 reported that applicant is not a permanent resident of village Jodabandha. In view of this contradictory reports of the Tahasildar, Buguda, clarification was called for. In response to this, the Tahasildar, Buguda intimated in his letter at Annexure-7, that applicant is a permanent native of village Jodabandha

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and is ordinarily residing at Narendrapur, which is a hamlet village of Kadua Mangarajpur, in his house to carry on his business. Ultimately, one inspectorial staff from the Office of the Postmaster General, Berhampur was deputed to Kadua Mangarajpur for spot enquiry who after enquiry, came to the conclusion that applicant is residing in the shop-cum-residential house since 2/3 months located at Narendrapur. Respondents have further stated that the separate identity of village Narendrapur under Kadua Mangarajpur G.P. has also been reflected in the voter's list prepared by the Government of Orissa. In view of this, Respondents have stated that applicant is not a resident of the post village. Respondents have also stated in their counter that applicant having passed the matriculation examination in compartmental is obviously less meritorious than Respondent No. 5 who has passed matriculation in one chance though got less marks. On the above grounds, the Departmental Respondents have justified the selection already made and opposed the prayer of the applicant.

4. Respondent No. 5 has also filed counter in which he has more or less taken the same ground as taken by the Departmental Respondents, and in view of this, it is not necessary to note the averments made by Respondent No. 5 in the counter.

5. We have heard Mr. H. K. Kanungo learned counsel for applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Departmental Respondents. Mr. B. R. Sarangi, learned counsel appearing for Respondent No. 5 is absent

nor has any request been made on his behalf seeking adjournment. As this is a 1993 matter which has come up for hearing from the WARNING list notified more than a month ago, it is not possible to delay the matter indefinitely. We have, therefore, decided not to grant adjournment for hearing the learned counsel for Res. No. 5.

6. From the pleadings of the parties, it is seen that the candidature of applicant has been rejected on the ground that he resides in village Narendrapur which is a hamlet village of Kadua Mangarajpur. Law is well settled that it is not lawful to reject the candidature of a person for the post of EDBPM on the ground that he does not belong to the post village or any village within the delivery zone of the post office. Departmental instruction provides that the candidate may belong to a different village but he should be prepared to take up residence in the post village on being selected and he should be prepared to provide rent free accommodation for holding the post office. It is submitted by the learned Senior Standing Counsel Mr. Bose that after the provision requiring residency in the post village was struck-down, the Departmental Authorities have issued instructions but those instructions have been issued later than the present selection. ^{That a} ~~A~~ person can not be discriminated on the ground of his residency or place of birth in public employment is a mandate of constitution itself and the Hon'ble Supreme Court has emphasized this in several cases. In view of this, we have no hesitation to hold that the rejection of the

J. J. J.

candidature of applicant on the ground that he does not belong to the post village can not be sustained. We order accordingly.

7. As regards the comparative merit between the applicant and Respondent No. 5, it has been submitted by the Departmental Respondents that applicant has passed matriculation in compartmental whereas Respondent No. 5 has passed matriculation in one chance. Applicant has mentioned in para 5. (iii) that Respondent No. 5 has got 34.14 percentage of marks and he has mentioned in para 4. (d) that he has got 51% marks. We are unable to accept the contention of the Departmental Respondents that a person who passes matriculation in one chance is inherently more meritorious than a person who passes matriculation in compartmental even ^{if} the second person gets ^{more} ~~much~~ marks. ^{J.S.M.} While computing marks of a person who has passed matriculation in compartmental the marks in the subject in which he has taken the compartmental examination have to be added by deducting the marks obtained in the subjects in earlier examination. This issue ^{J.S.M.} has already been decided by this Bench in Original Application NO. 631 of 1997. ^{J.S.M.} In view of this, this contention of Respondents is also held to be without any merit and is rejected.

8. In view of our findings above, it is held that the selection and appointment of Respondent No. 5 can not be sustained. We, therefore, quash the selection and appointment of Respondent No. 5 and direct the Departmental Authorities that they may consider the candidatures of

persons who were originally within the zone of consideration strictly in accordance with rules and instructions and in the light of the observations and directions above, within a period of 90(ninety) days from the date of receipt of a copy of this order.

9. One point, however, has to be made in this connection, ~~that~~ the applicant in his petition has made some point that the place where he is residing and where he proposes to give rent free accommodation i.e. Narendrapur is more centrally located than the place where the post office was earlier functioning. As functioning of the post office is often a matter of strong local ^{fascism} ~~fashion~~, at the instance of applicant and for that matter for any other candidate, the post office can not be shifted, even to the hamlet of the same village. In view of this, it is ordered that the post office should continue in the same hamlet where it was functioning earlier and the applicant should be prepared to provide accommodation in that village even though he is prepared to continue in the same village at Narendrapur. It is only with this undertaking from the applicant, his case may be considered for selection alongwith other candidates as per the directions made in para-8 above.

10. With the above observations and directions, the original application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
16.8.99

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