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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIINAL APPLICATION NO.556 OF 1993
Cuttack, this the 7th day of January, 1999

Pitambar Samal Applicant

Vrs.

Union of India and 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)

SOMNATH SOM
VICE-CHAIRMAN
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CUTTACK BENCH, CUTTACK.

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Cuttack, this the 7th day of January, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Pitambar Samal, aged about 26 years,
son of Laxmidhar Samal, village and P.O-Nuagaon,
Via-Olavbar, P.S-Raj Kanika,
District-Kendrapara. Applicant

Advocates for applicant - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda.

Vrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, At/PO-Bhubaneswar, Dist.Khurda.
3. Superintendent of Post Offices, Cuttack North Division At/PO/District-Cuttack.
4. Sub-Divisional Inspector (Postal), Pattamundai Sub-Division, At/PO-Pattamundai, Dist.Kendrapara.
5. Niranjan Sethi, son of Sudhakar Sethi, Village/PO-Nuagaon, Via-Olavbar, P.S-Raj Kanika, District-Kendrapara Respondents

Advocates for respondents - Mr.Ashok Mishra,
Sr.Panel Counsel for
Respondents 1 to 4
&
M/s S.K.Dey,
B.B.patnaik
S.H.Ali
M.K.Naik for Respondent
no. 5.

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of

Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to quash the appointment of Niranjan Sethi (respondent no.5) to the post of E.D.B.P.M., Nuagaon Post Office and to direct respondents 3 and 4 to issue regular appointment letter in favour of the applicant.

2. Facts of this case, according to the petitioner, are that the post of E.D.B.P.M., Nuagaon, fell vacant and for filling up of the post, names were called from the Employment Exchange. The applicant having been sponsored by the Employment Exchange was selected and took charge of the post on 27.3.1992. The document indicating the applicant taking over charge is at Annexure-1. As no regular appointment was given, the applicant came up before the Tribunal in OA No. 359 of 1993, and the Tribunal directed that the applicant shall continue till final selection is made. After this direction, the applicant was expecting that his case would be considered and he would get regular appointment, but respondent nos. 3 and 4 have selected respondent no.5. According to the applicant, respondent no.5 has been selected as he belongs to Scheduled Caste community and on the ground that there is inadequate representation of S.C. in the postal Division. According to the applicant, his annual income is Rs.8000/- whereas respondent no.5's annual income is Rs.5,000/-. The applicant has received 291 marks whereas respondent no.5 has received less marks. Therefore, the applicant is more meritorious than respondent no.5. It is further stated that in Cuttack North Division there are 1402 posts of E.D.Aagents in total and if 15% reservation is computed, the reservation figure would be 210 whereas SC incumbents are 267 in number which far exceeds the

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reservation. In view of this, the applicant has stated that there was no need to show preference to an SC candidate and yet respondent nos. 3 and 4 have selected respondent no.5 ignoring the claim of the applicant who is more meritorious. In view of this, he has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that Nuagaon E.D.B.O. was opened only on 27.3.1992 and in order to man the post office it became necessary to give appointment to a person immediately. The applicant submitted a declaration on 27.3.1992 to the Sub-Divisional Inspector (Postal), Pattamundai, stating that he was willing to work as E.D.B.P.M., Nuagaon B.O. temporarily and he would give up the job as soon as the permanent appointment to the post is made. He further declared that he would not claim permanent absorption in the post. This declaration of the applicant is at Annexure-R/1. On the basis of that declaration, the applicant was ordered to work as E.D.B.P.M., Nuagaon, temporarily from 27.3.1992 on which day he joined the post. The selection process for regular appointment was completed and respondent no.5 was selected by respondent no.3, the appointing authority. The departmental respondents have admitted that the applicant has higher income than respondent no.5 and he has also got higher marks in the matriculation examination than respondent no.5. They have stated that respondent no.5 was chosen because he belongs to S.C. category. They have also denied the averment of the applicant that there is no shortfall in the representation of SC community in the posts of ED Agents in the Division. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. Respondent no.5 has filed counter with copy to the learned counsel for the petitioner in which he has submitted that there are 1402 posts in the Division, but these posts do not constitute only EDBPM but cover all EDDA, EDMC, EDBPM, EDSPM, ED Packer and ED Stamp Vendor, and for working out the reservation percentage the post of EDBPMs have to be taken separately in the Division as a whole. Respondent no.5 has submitted that representation of SC community in the cadre of EDSPM/BPM in the Division as a whole is only 3.4% which falls far short of the required percentage of 15%. According to him, out of 461 EDSPM/EDBPM posts, only 16 persons belong to SC category. In view of this, he has challenged the averment of the applicant that there is over-representation of SC incumbents in the Division. Respondent no.5 has further stated that he is a permanent resident of village Nuagaon and is a Matriculate and has independent source of income. It has been further submitted by respondent no.5 that after his selection he was directed by Overseer, Mails, Pattamundai, to join as EDBPM, Nuagaon, on 12.10.1993 by taking over charge from the applicant, but the applicant did not hand over charge and thereby deprived him of the post for which he was selected regularly. In view of this, respondent no.5 has opposed the prayers of the applicant.

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5. We have heard Shri A.Deo, the learned counsel for the petitioner, Shri Ashok Mishra, the learned Senior Panel Counsel appearing for respondents 1 to 4, and Shri B.B.Patnaik, the learned counsel appearing for respondent no.5, and have also perused the records.

6. In OA No.359 of 1993 the Tribunal had directed that the applicant shall continue in the post of E.D.B.P.M, Nuagaon, till final selection is made. Thereafter even though respondent no.5 was selected, the applicant refused to hand over charge and has continued purportedly by virtue of the above order in OA No.359/93.

7. The first point to be noted in this connection is that the applicant's initial engagement from 27.3.1992 is purely on provisional basis and he has himself given a declaration that he would not claim regularisation in that post and he would vacate the same when the regular candidate is selected. His declaration is at Annexure-R/1. In view of this, the applicant cannot take any credit of his service in the post of E.D.B.P.M, Nuagaon, from 27.3.1992.

8. During the regular selection, the candidatures of the applicant and respondent no.5 were considered. The admitted position is that the applicant has higher income and has got higher marks than respondent no.5 in the Matriculation examination. The fact that the applicant has got higher income than respondent no.5 is not the deciding factor because the departmental instructions lay down that to be eligible to be considered for the post of EDBPM the candidate should have independent means of livelihood so that he does not have to depend upon the ED allowance for his maintenance. The departmental instructions specifically provide that the selection should not be made on the basis of higher or lower annual income amongst the candidates, but it should be based only on the percentage of marks obtained in the matriculation examination. In this case, the applicant has got more marks in Matriculation examination than

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respondent no.5, but respondent no. 5 has been selected because he belongs to Scheduled Caste community.

9. The sole question for consideration in this case, therefore, is whether the departmental authorities have acted correctly by showing preference to an SC candidate. The applicant has stated that in the Cuttack North Division there are 1402 posts in total and 15% reservation against the posts will work out to 210 as against which SC persons in position are 267. Accordingly, it has been claimed that percentage of SC incumbents far exceeds the reservation quota and therefore, no preference should have been shown to respondent no.5. The departmental respondents in their counter have denied the above averment and have stated that there is shortfall in the representation of SC candidates. Respondent no.5 in his counter has stated that while working out the percentage of SC/ST candidates in E.D. posts, all categories of posts of E.D. Agents cannot be taken together. Separate categories of E.D. posts like EDSPM, EDBPM, EDDA, ED Packer, etc. will have to be taken into account. Respondent no.5 has further stated that if EDSPM/BPM category is taken separately for the Division as a whole, the percentage of SC incumbents in the posts of EDSPM/BPM works out to 3.4 which falls far short of the required percentage of 15%. We have considered this aspect carefully. The contention of the applicant that out of 1402 ED posts, the SC incumbents are 267 as against the required number of 210. According to the departmental instructions, while computing the percentage the posts of EDSPM/BPM have to be computed separately and all the ED posts cannot be taken together. In view of this, the contention of the petitioner that as against 1402 ED

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posts, SC incumbents are 267 in number does not have any bearing on the question under consideration. Respondent no.5 has, however, categorically stated in his counter that amongst the EDSPM/BPM the percentage of SC incumbents works out to 3.4 as against the requirement of 15%. This specific contention in the counter of respondent no.5 has not been denied by the applicant by filing a rejoinder or even at the time of hearing. The departmental respondents have also stated that there is shortfall in the engagement of SC persons. In view of this, it is not possible to accept the contention of the applicant that in the SC category amongst the EDBPMs the incumbency is more than the required percentage of 15%. This contention of the applicant is, therefore, rejected.

10. As regards the contention of the petitioner that the departmental respondents have acted illegally in giving preference to an SC candidate, i.e., respondent no.5, we are not inclined to accept the contention because it has been specifically stated by respondent no.5 that the representation of SC incumbents in the cadre of EDSPM/BPM in the Division as a whole is only 3.4 which shows a very large shortfall in the engagement of SC persons in the rank of EDSPM/BPM. The departmental instructions also provide for giving preference to SC/ST candidates, if they are eligible, over candidates belonging to general category even though such general category candidates have got higher percentage of marks. In view of this, we hold that the departmental respondents have not acted illegally by giving preference to the SC candidate (respondent no.5) over the applicant who belongs to general category.

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11. In consideration of all the above, we hold that the applicant has not been able to make out a

case for any of the reliefs claimed by him. The Original Application is, therefore, held to be without any merit and is dismissed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN

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