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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.617 OF 1993

Cuttack, this the 25<sup>th</sup> day of January 1993

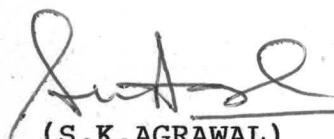
Bhimsen Behera ..... Applicant

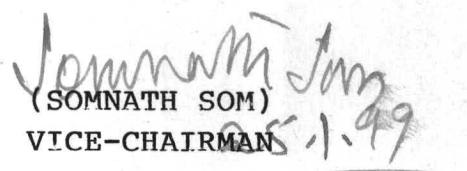
Vrs.

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.

  
(S.K.AGRAWAL)  
MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN  
25.1.93

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.617 OF 1993  
Cuttack, this the 25th day of January 1999

**CORAM:**

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)**

.....

Bhimsen Behera, aged about 32 years,  
son of Kshetrabasi Behera,  
Village & P.O-Madanpur,  
P.S-Ramachandrapur, Dist.Keonjhar .....Applicant

By the Advocates - M/s B.S.Tripathy, A.Deo  
and P.Panda.

Vrs.

1. Union of India, represented by  
its Secretary, Department of Posts,  
Dak Bhavan, New Delhi.
2. Chief Postmaster General, Orissa Circle,  
At/PO-Bhubaneswar, Dist.Khurda.
3. Superintendent of Post Offices,  
Keonjhar Division, At/PO/Dist.Keonjhar.
4. Judhistir Kabi,  
son of Makunda Kabi,  
Village & P.O-Madanpur,  
Dist.Keonjhar ..... Respondents.

By the Advocates - Mr.Ashok Mishra,  
Sr.Panel Counsel for  
Respondents 1 to 3  
&  
Mr.H.P.Rath for  
Respondent 4.

**ORDER**

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**SOMNATH SOM, VICE-CHAIRMAN**

In this application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has  
prayed for quashing the selection and appointment of  
Judhistir Kabi(respondent no.4) to the post of  
E.D.B.P.M, Madanpur B.O. and also for a direction to the  
respondents to appoint the applicant to the post of  
E.D.B.P.M, Madanpur B.O.

2. Facts of this case, according to the petitioner, are that for filling up of the post of E.D.B.P.M, Madanpur, the applicant's name was sponsored by the Employment Exchange and respondent no.3 in his letter dated 19.5.1993 (Annexure-1) directed the applicant to send his application in proper form with necessary documentation by 21.6.1993. Accordingly, the petitioner sent his application along with necessary papers by the due date. The petitioner submitted the marksheets of H.S.C.Examination and also marksheets for I.A. Examination, and the list of landed properties along with necessary documents. His case is that respondent no.4 did not submit his application by 21.6.1993 and along with the application, did not enclose the document at serial no.7 of the letter at Annexure-1, i.e., list of property(landed property and any other property) possessed by the candidate in his own name on the date of application. It is also stated that by the due date 21.6.1993 no landed property was in the name of respondent no.4. Notwithstanding this, respondent no.3 selected respondent no.4 on the ground that respondent no.4 had secured more marks than the applicant in the matriculation examination. Accordingly, order has been issued to the respondents and he has taken over charge of the post on 30.10.1993. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. The departmental respondents in their counter have stated that on superannuation of the existing incumbent the post of E.D.B.P.M, Madanpur, fell vacant and names were called for from Employment Exchange, Anandapur. Ten names were forwarded by the Employment Exchange and all the persons in the were asked in writing to submit application in the prescribed proforma along with

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necessary certificates and documents by 21.6.1993. In response, only two applications, one of the present applicant and the other by respondent no.4, were received within the stipulated date. Both the candidates submitted all the requisite documents except the list of landed property as mentioned in Annexure-1. At that time, the minimum qualification for the post of E.D.B.P.M. was Class VIII pass. But it is also laid down in the rule that Matriculates will be preferred and no weightage should be given for any qualification above matriculation. The departmental respondents have stated that the applicant had secured 321 marks out of 800 which works out to 40.12% whereas respondent no.4 passed matriculation in compartmental securing 335 marks which works out to 41.87%. It is also stated that in the income certificate of respondent no.4 which was received in time the annual income has been shown as Rs.5040/- from the agricultural land. On the question of submission of list of property the respondents have stated that the applicant has only submitted a piece of paper mentioning the list of property without his signature. This is at Annexure-R/5. Respondent no.4 has also submitted a similar piece of paper mentioning the list of property which is at Annexure-R/6 and which was received along with the application. Besides, respondent no.4 submitted an affidavit dated 16.6.1993 with his application indicating that two acres of land recorded in the name of his deceased father belong to him as he is the only legal successor in respect of the lands. The documents of respondent no.4 were found to be genuine on enquiry. Tahasildar, Anandapur, had also certified that the annual income of respondent no.5040/- and therefore, it cannot be urged that respondent no.4 had no landed property. The departmental respondents have

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further stated that there is no departmental instruction that marks secured in the compartmental examination should not be taken into consideration. As regards the applicant it is stated in the counter of the departmental respondents that according to the income certificate granted by Tahasildar, Anandapur, the applicant's income from landed property is Rs.520/- per annum, and the applicant has not submitted any other documentary proof in respect of landed property owned by him except the list at Annexure-R/5 referred to earlier. In view of this, the departmental authorities have stated that as the application of respondent no.4 was complete in all respects and he has got more marks in the matriculation examination he has been rightly selected. On the above grounds, they have opposed the prayers of the petitioner.

4. Respondent no.4 in his counter has submitted that the applicant has submitted false and wrong facts in the O.A. Respondent no.4 submitted all the necessary documents along with his application within time and he was duly selected following all rules. Respondent no.4 has also stated that his parents are dead and respondent no.4 produced the legal heir certificate which was accepted. It is further stated by respondent no.4 that he has been properly selected by the departmental authorities and in view of this, he has opposed the prayers of the applicant.

5. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner, Shri Ashok Mishra, the learned Senior Panel Counsel appearing for departmental respondents, and Shri H.P.Rath, the learned counsel appearing for respondent no.4 and have also perused the records. The learned counsel for the petitioner has filed written note of submission with copy to the other side which has also been taken note of.

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6. It has been urged by the learned counsel for the petitioner that respondent no.4 submitted his application after the due date, i.e. 21.6.1993. The departmental authorities have specifically averred that application of respondent no.4 was received within the due date. As a matter of fact, according to the departmental respondents, the application of respondent no.4 was received on 18.6.1993. In view of this, the contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

7. The second contention of the learned counsel for the petitioner is that along with his application, respondent no.4 did not submit the document mentioned at serial no.7 of Annexure-1, i.e., the list of landed property and any other property possessed by the respondent no.4 in his own name on the date of application. The respondents have stated that along with his application respondent no.4 submitted a list of landed property. This list is at Annexure-R/6. The departmental respondents have also stated that the applicant himself submitted a similar list along with his application which is at Annexure-R/5. In view of this, it cannot be held that the list of landed property was not submitted by respondent no.4 along with his application.

8. The third point urged by the learned counsel for the petitioner and mentioned in paragraph 5 of the written note of submission that the criteria for selection of E.D.B.P.M. is that the candidate who has got higher income as well as higher mark should be selected. But in the instant case, only higher income will have to be taken into account and higher qualification will come in for preferential category because the new rule came

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into force from 1.1.1994. The departmental instructions specifically provide that selection for the post of E.D.B.P.M. cannot be based on higher or lower income of the candidates under consideration. Rules merely provide that the departmental authorities should ensure that the person selected should have adequate means of livelihood so that he does not have to depend on allowances of E.D.B.P.M. for his sustenance. The departmental instructions specifically lay down that selection cannot be based on higher income of a particular candidate. In view of this, the contention of the learned counsel for the petitioner that the applicant should have been selected on the basis of his higher income compared to respondent no.4 is held to be without any merit. The second aspect is that prior to 1.1.1994 necessary qualification for the post of E.D.B.P.M. was Class VIII pass but it was also provided that matriculate should be preferred and any qualification higher than matriculation should be ignored. In view of this, it cannot be accepted that this selection having taken place prior to 1.1.1994 should have been based merely on higher income of different candidates.

9. The next contention of the learned counsel for the petitioner is that both the applicant and respondent no.4 have passed Matriculation. But the applicant has passed Matriculation in one chance and respondent no.4 failed in the first chance and took the compartmental examination in the failed subjects and passed in compartmental. It has been submitted by the learned counsel for the petitioner that respondent no.4 has passed matriculation in compartmental and the applicant has passed in one chance. The marks obtained by respondent no.4 in the compartmental examination should

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not have been taken into account. In this connection, it has been submitted that the Tribunal in OA No. 481 of 1994 (Brahmananda Panigrahi v. Union of India and others) decided on 6.12.1994 has taken the view that passing in one chance is better than passing in compartmental. The departmental respondents have pointed out that there is no departmental instruction that marks of a candidate who has passed in compartmental should not be taken into account. In view of this, they have contested the submission of the learned counsel for the petitioner. We have looked into the record of OA No. 481 of 1994. In that case, the petitioner was initially selected for the post of E.D.Packer. But his selection was cancelled and he came up before the Tribunal. The departmental authorities in that case took the stand in their counter that the selection of the applicant as E.D.Packer has been vitiated by several serious irregularities. One of the irregularities urged by the departmental respondents was that another candidate who got higher marks than the applicant was not considered on the ground that he has passed matriculation examination compartmentally. In that case the respondents had pointed out that Ernakulam Bench in OA No.1522 od 1993 have held that the conclusion that a person who has obtained less marks in S.S.L.C.Examination is more meritorious than a person who has secured higher marks for the reason that the former passed the examination in the first chance while the latter passed it only in the second chance is unscientific and unjustified. A copy of the gist of the order reported in Swamy's News of 5/94 was also enclosed to the counter of the respondents in that case. We have gone through this and found that the Tribunal held that while making the selection, the S.D.I.(P) was influenced by a guideline issued by Superintendent of Post Offices,

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Malappuram, that while assessing the merits of candidates, a candidate who has passed the SSLC Examination in the first chance should be placed above a candidate who has passed the examination in the second chance even though the latter had obtained more marks in the examination. The Tribunal held that such a stand is unscientific and unjustified and irrespective of the number of chances the person who has got higher marks must be deemed to be more meritorious. In their order dated 6.12.1994 the Tribunal allowed OA No.481 of 1994, but there was no specific finding that a candidate who has passed in compartmental should be placed meritwise below the candidate who has passed matriculation in the first chance even though the former has got higher marks. The case of **Brahmananda Panigrahi**(supra) is clearly distinguishable because that was with regard to the post of E.D.Packer. It is also to be noted that there are no departmental instructions to the effect that a person who has passed Matriculation in one chance shuld be placed above the person who has passed matriculation in compartmental. In the instant case, both the applicant and respondent no.4 have passed matriculation and respondent no.4 has got higher marks than the applicant. In view of this, we find no infirmity in the action of the respondents in considering respondent no.4 to be more meritorious on the basis of marks obtained by him in the compartmental examination and in the original examination. When these marks are added, the marks obtained by respondent no.4 are higher than the applicant.

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10. The last point urged by the learned counsel for the petitioner is that the file pertaining to selection of E.D.B.P.M, Madanpur was put up before

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Superintendent of Post Offices (respondent no.3) who kept the file pending with him in order to show favour to respondent no.4 and ultimately on 3.9.1993 respondent no.4 was selected. This was commented upon by Director of Postal Services who mentioned in his order that the time gap in passing the order by the Superintendent of Post Offices provided scope for respondent no.4 to procure landed property in his name on 13.9.1993. In this connection, it must be noted that this point has been raised by the learned counsel only in his written submission. This was not urged in his O.A. In the counter the departmental respondents have specifically averred that both the applicant and respondent no.4 filed lists of properties in their own name along with their applications within the due date. The applicant has not filed any rejoinder contesting the same and urging these facts. Therefore, this contention raised for the first time in the written submission when the departmental respondents as also respondent no.4 have not got a chance to rebut this argument cannot be taken into account. Moreover, on the face of it, this submission does not appear to be tenable because the learned counsel for the petitioner has stated in his written submission that respondent no.4 was selected on 3.9.1993 and delay in making the selection gave respondent no.4 scope to purchase property in his own name by 13.9.1993, which is after 3.9.1993. In view of this, this contention is also rejected.

11. In the result, therefore, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The O.A. is, therefore, rejected but, under the circumstances, without any order as

to costs.

(S.K.AGRAWAL)

MEMBER (JUDICIAL)

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(SOMNATH SOM)  
VICE-CHAIRMAN  
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