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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 101 OF 1993.

Cuttack, this the 24th day of August, 1999.

Pramod Chandra Das. 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.
(SOMNATH SOM)
VICE-CHAIRMAN
1.8.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No.101 OF 1993 .

Cuttack, this the 9th day of August, 1999.

CORAM :

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

Pramod Chandra Das, aged about 27 years,
S/o. Dinabandhu Das, resident of New Sahi,
PO & PS-Khallikote, Dist. Ganjam. Applicant.

By legal practitioner: M/s. K. D. Kumar, N. Patra, A. K. Patra, Advocates.

- Versus -

1. Union of India represented through
Director General of Posts, Dak
Bhavan, New Delhi.
2. Assistant Superintendent of Post Offices,
Incharge Chatrapur Sub Division,
At/Po. Chatrapur, Dist. Ganjam.
3. Senior Superintendent of Post Offices,
Berhampur Division, At/Po. Berhampur,
Dist. Ganjam.
4. Sub Postmaster, Khallikote,
At/Po/Ps. Khallikote, Dist. Ganjam.
5. Bipra Charan Das, S/o. Sambaria Das,
ED Mail Carrier, Khallikote,
At/Po/Ps. Khallikote, Dist. Ganjam. Respondents.

By legal practitioner : Mr. S. Behera, Additional Standing
Counsel (Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

S. Som.
In this Original Application, under section 19
of the Administrative Tribunals Act, 1985, the petitioner
has prayed for quashing the appointment of Respondent
No. 5 to the post of Extra Departmental Mail Carrier and
to appoint the applicant to that post.

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2. Applicant's case is that he joined as substitute Extra Departmental Mail Carrier, at Khallikote Sub Post Office on 16-3-1991 as the vacancy in the post arose when the incumbent ED Mail Carrier was promoted to the post of Post man on regular basis. He worked as ED Mail Carrier from 16.3.91 to 13.12.1991. At annexure-2, applicant was informed that his name has been sponsored by the Employment Exchange for the post of Extra Departmental Mail Carrier, Khallikote Sub-Post Office and he was asked to submit his application with required documents. Accordingly, applicant send his application with necessary documentation but learnt that he has not been selected and one Bipra Charan Das, Respondent No. 5, who has never worked in that post, has been selected. This was known to the applicant, when a relieve order dated 13.12.91, Annexure-4 was issued to him. Applicant has stated that Res. No. 5 has never worked in any post of the Department whereas applicant has worked in the post for about nine months but his experience has not been taken into consideration. He has also stated that under the Departmental Rules, working ED agent should be given priority but this has not been done. Applicant handed over charge on 13.12.91 and filed a petition for consideration of his case for appointment as EDMC on regular basis by cancelling the appointment of Respondent No. 5 but no consideration was shown to his representation and that is how he has come up in this original Application with the prayer referred to earlier.

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3. Respondents, in their counter, have stated that the regular EDMC, of Khallikote Sub Post Office, Shri Chandra Sekhar Satpathy was selected as a Postman. He attended training from 17.3.91 by taking leave from the post of EDMC by providing applicant as his substitute. Leave was sanctioned in three spells by Shri Satpathy upto 13.6.1991 and applicant worked as a substitute. In the meantime, regular selection for the post of EDMC was processed but as it was not possible to finalise the selection before 13.6.91, applicant was appointed on provisional basis pending regular selection for the post. Employment Exchange sponsored twenty candidates out of which eight candidates, including the applicant and Respondent No.5 submitted their application. Respondents have stated that candidature of these eight persons were considered and Respondent No.5 being a candidate belonging to SC community was given preference for appointment as per ED Recruitment Rules. Respondents have further stated that appointment of Respondent No.5 was made strictly following the Rules and instructions and on the above grounds the Respondents have opposed the prayer of applicant.

4. Respondent No.5 was issued with notice but he did not appear nor did he file counter.

5. We have heard Mr. A.K. Patra, learned counsel for applicant and Mr. S. Behera, learned Additional Standing Counsel appearing for the Departmental Respondents and perused the records. Learned counsel for applicant has filed a rejoinder at the time of hearing after giving

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copy to other side, this has also been taken note of, as there was no objection from the side of the learned Additional Standing Counsel for taking this into consideration.

6. Before going into the submissions made by learned counsel for both sides, the averments made in the rejoinder can be noted. Applicant in his rejoinder has stated that prior to 1991 applicant was appointed to work as ED Mail Carrier provisionally at Khallikote Sub Post Office from 12.1.1988 to 11.4.1988, in order dated 25.5.1988, at Annexure- XI, in place of one Shri Bijay Chandra Bhuyan and again from 1.9.1988 in place of Shri Bhuyan. It is also stated that in the letter issued to the Employment Exchange, it was not mentioned that the post is reserved for SC and therefore, selection of Respondent No. 5 on the above ground that he belongs to SC is illegal. It is also stated that well settled position of law is that a single post can not be reserved and therefore, selection of Respondent No. 5 on the ground that he belongs to SC community is illegal. On the above ground applicant has re-iterated his prayer in his rejoinder.

7. The first point made by applicant is that his experience as a substitute and as ^a provisional appointee

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has not been taken into consideration. Experience of a person working as a substitute can not be taken into consideration because substitute is provided by an existing incumbent during his period of leave and the substitute works at the risk and responsibility of the existing incumbent. If experience of a substitute is taken into consideration, then it would always be upon for an existing ED employee to go on leave providing a relation of his as substitute and thereby giving additional undue advantage to him to steal a march over other candidates when regular selection is made. This contention of learned counsel for applicant, is therefore, held to be without any merit and is rejected.

8. As regards the experience of applicant as provisional appointee, applicant has not averred that he was provisionally appointed to the post through a process of selection where other candidates were also considered. In view of this, it can not be held that his experience as a provisional appointee should have been considered.

9. The next contention of learned counsel for applicant is that the post not having been declared to be reserved for a Member of the SC selection of Respondent No. 5 on the ground that he is being a member of SC is wrong. A single post also could not have been reserved. In the instant case, admitted there was no reservation but the Departmental instructions at Annexure-R/2 provides that amongst the candidates under consideration SC/ST persons should be given preference. In the instant case, even though there was no reservation, on the basis of the

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Circular at Annexure-R/2, Respondents are obliged to give preference to a SC candidate other things being equal for filling up of the required percentage. As we have already noted, both the applicant and Respondent No. 5 are failed HSC candidates. Departmental Respondents have noted in the check list that between the two, as failed candidates, Respondent No. 5 has got higher marks than applicant. In consideration of this, both being failed candidates and their position being equal, Departmental Authorities have done nothing wrong in giving preference to SC candidate in accordance with the Circular at Annexure-R/2.

10. In the result, therefore, we hold that the applicant has not been able to make out a case for any of the reliefs claimed in this original Application and the same is rejected. No costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

Somnath
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.