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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A. No. 185 of 1994

Cuttack this the 12<sup>th</sup> day of August 1996.

Radha Ballav Sahu .. . . . . Applicant

Versus.

Union of India & Others. .. . . . Respondents

( FOR INSTRUCTIONS )

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be referred to all the Benches of the Central Administrative Tribunal or not? No,

*Radha Ballav Sahu*  
( N. SAHU )  
MEMBER (ADMINISTRATIVE)

( A. K. CHATTERJI )  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O. A. NO. 185 of 1994

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CORAM:

THE HONOURABLE MR. JUSTICE A. K. CHATTERJI, VICE-CHAIRMAN  
A N D

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

..

Radha Ballav Sahu, aged about 33 years,  
Son of late Raj Kishore Sahu,  
At/Po. Susua, Via. Arnapal,

District: Bhadrak.

...      ...

APPLICANT

BY the Applicant : M/s. A. Deo, B. S. Tripathy, P. Panda, Advocates.

- Versus -

- 1) Union of India represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
- 2) Chief Postmaster General, Orissa Circle, At/Po. Bhubaneswar, District-Khurda.
- 3) Superintendent of Post Offices, Bhadrak Division, At/Po/Dist. Bhadrak.
- 4) Mrutunjaya Narayan Mohanty, S/o. Dullavananda Mohanty, At/Po. Susua, Via. Arnapal, Dist. Bhadrak.

...      ...      ...      RESPONDENTS

By the Respondents : Mr. Ashok Mishra, Senior Counsel (Central).

...

O R D E R

MR. N. SAHU, MEMBER(ADMINISTRATIVE) : This application is filed under section 19 of the Administrative Tribunals Act, 1985 praying for quashing of the selection and appointment of Respondent No.4 as Extra Departmental Branch Post Master in Susua Branch Post Office and to direct the Respondent Nos. 1 to 3 to give appointment to the applicant in the same post. The facts leading to the present dispute are briefly as under .

2. The Post of Extra Departmental Branch Postmaster of Susua Branch Post Office in account with Arnapal Sub Post Office fell vacant as the regular incumbent was suspended on account of alleged fraud. On being approached, the Junior Employment Officer, Bhadrak submitted a list of four candidates namely S/Shri Radhaballav Sahu , Satyanarayan Mishra, Pitambar Bej and Mrutyunjaya Narayan Mohanty. Shri Mishra and Shri Bej did not submit any Income certificate granted by the Revenue Authority and therefore, they were taken out of consideration. The applicant and Shri Mrutyunjaya Narayan Mohanty were considered for selection to the Post. In the meantime,

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as directed by the Central Administrative Tribunal, Cuttack Bench in Original Application No. 187 of 1990, one Shri Bhikari Charan Nayak retrenched E.D. Postmaster of Lunia Branch Post Office was asked to submit the required documents for consideration as Extra Departmental Branch Post Master, Susua. He lost interest because he was elected as ' SARPANCHA '. Thus, the applicant and one Shri M. N. Mohanty were asked to submit copies of the Marksheets, Income certificate and list of landed properties owned by them.

3. According to the counter-affidavit, the applicant had secured 334 marks out of 800 in the Annual High School Certificate Examination whereas Shri M.N. Mohanty, Respondent No.4 had secured 320 marks out of 800. The applicant's Annual Income is Rs. 12,000/- from the Agricultural land whereas Respondent No.4 has Annual income of Rs. 11,875/- from agricultural land as certified by the Tahasildar Bhadrak. On the ground that the applicant had no landed property in his name but in the name of his late father Raj Kishore Sahu, and some other properties in the name of late Raj Kishore Sahu and Lambodhar Sahu, the uncle of the applicant jointly he lost the selection. As per the instructions contained in the letter of Director General of Posts, Delhi dated 6-12-1993, the candidates concerned should

have adequate means of independent livelihood. Further, Respondent No.4 was the regular Extra Departmental Delivery Agent - Cum- Extra Departmental Mail Carrier in the said Branch Post Office for a long time and had gathered immense experience for the job. According to the instructions of Director General of Posts dated 12-9-1988, when an E.D. Post falls vacant and one of the existing EDs prefers to work against the post, he may be allowed to be appointed against the vacant post without coming through the Employment Exchange provided he fulfills the eligibility criteria.

4. We have carefully considered the submissions of the learned Senior Counsel Shri Ashok Mishra for the Respondents and Shri B. S. Tripathy, learned counsel for the Applicant. It is admitted by the Respondents that the applicant submitted the Income certificate granted by the Tahasildar, Bhadrak showing the income from the agricultural land for Rs. 12,000/-. Admittedly, the applicant had secured higher marks than the Respondent No.4. Properties are in the name of a joint family of which the father is the 'Karthi' and the applicant is the heir to the said properties and he is entitled to an undivided share. If Tahasildar has certified that he earns Rs.12,000/- by way

of income, it is the income as per the share from out of quondam properties. If it is joint property, the father can not alienate the said properties and the applicant if so insistent, he can ask for partition of the said properties at any time. The Respondents should have accepted the Income Certificate given by the Tahasildar, Bhadrak as a conclusive evidence to prove independent means of livelihood. What the instruction requires is for adequate means of livelihood. It is not necessary that only landed properties should be the source of income of livelihood. Where the enjoyment of income from properties is accepted and quantified and the right to the properties is un-questioned and the share to the properties is undisputed, the Respondents were unjustified in rejecting the candidature of the applicant on the ground that there was no evidence of properties in his name.

5. It has been decided by a series of decisions of the CAT Benches that where all other conditions remain same, one of the factors that will give an edge is the marks secured in the qualifying examination, although as rightly pointed out in the counter applicant's higher I.A. qualification is of no consequence. It is true that the applicant is stated to have another brother by name Shri Brajabandhu Sahu. Even so, the right to a share of

the properties can not be denied. There is an averment by the applicant that he is the only son of his parents. Admittedly, he secured higher marks, he should have been considered for the post of Extra Departmental Branch Post Master, Susua Branch Post Office. The Respondents' rejection of the applicant on the ground that there are no properties in his name, but in the name of his father is patently erroneous and accordingly the selection of Respondent No.4 is improper and is quashed.

6. Even so, the above discussion does not leave a simple option to us, <sup>after</sup> to quash <sup>ing</sup> the appointment of Respondent No.4, ~~and~~ direct the appointment of the applicant, as there are only two candidates in the field. The counter affidavit has repeatedly highlighted the 'Long experience' of the <sup>Respondent No.4</sup> ~~applicant~~ as EDDA/EDMC and also as EDBPM. How long was the experience was not made clear? Was it five years, ten years or five months? However, the departmental instructions do allow weightage to past experience and the Respondents can not be faulted for giving weightage to this factor. That departmental experience should be given proper weightage is approved by a Full Bench decision of the Central Administrative Tribunal

also in the postal case of a similar nature ( G. S.

PARVATHY VS. THE SUB DIVISIONAL INSPECTOR ( POSTAL )

AND OTHERS, ATR 1992 (1) CAT 395: 1992 (1) SLJ (CAT)

540 (Ernakulam date of judgment 8-11-1991). The Full Bench ruled that even if the experience is gained by way of a fortuitous provisional appointment, the value of such experience is not diminished. As to how to go about the process of selection, the Full Bench has stated as under:

" The apprehension that a provisional appointment may become, automatically, on account of the weightage given to experience, permanent appointment is not justified, if the exact import to be given to the weightage for previous experience is well understood. Weightage means only that some consideration has to be given to experience as an additional qualification. Previous experience is not to be the sole decisive factor in making selection. Only if it reduces to naught the other qualifications of competing candidates, the apprehension expressed that all provisional appointments would get practically converted into regular appointments would be justified. If experience is considered only as a qualification among others, a candidate with previous experience will be selected only, if all others, things are equal, which will not occur always. If a system of marks is allotted, previous experience will have to be allotted some percentage of marks along with other factors found to be relevant. The weightage to be given to previous experience will also depend on the quantum of experience. Thus weightage should be given to previous experience and such experience shall be taken into account alongwith other relevant factors, but will not operate as a sole decisive factor in the process of selection."

8. We no doubt quash the selection because the only ground on which the applicant is rejected is improper and invalid. But it does not ipso facto follow that the applicant shall automatically be appointed. We see that selection of one amongst two candidates is a very narrow range, whatever might be the reasons that ultimately led to this situation.

9. While cancelling the selection, we direct Respondent No. 3, the Superintendent of Post Offices, Bhadrak Division to call for fresh nominations from the Employment Exchange and if less than three are received, by a notification from the general public and conduct the selection afresh, within twelve weeks from the date of receipt a copy of this Order. Till selection is complete and the appointment order is issued, Respondent No. 4, who has been discharging the duties since last two years, shall continue to function as EDBPM, Susua. While making the selection, Respondent No. 3, shall give proper weightage to marks obtained and experience gained by the applicant.

10. The Original Application is disposed of as above without any order as to costs.

*Barasamha...m.*  
( N. SAHU ) 12/18/96  
MEMBER (ADMINISTRATIVE)

*A. K. Chatterji*  
( A. K. CHATTERJI )  
VICE-CHAIRMAN