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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 232 OF 1994.  
Cuttack, this the 8th of February, 2000.

BIKASH KUMAR MOHANTY.

....

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

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 232 OF 1994.

Cuttack, this the 8th day of February, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN;

A N D

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

...

BIKASH KUMAR MOHANTY,  
Aged about 29 years,  
Son of Mahendra Prasad Mohanty,  
AT/PO: Mouda, Dist: Bhadrak.

.... APPLICANT.

By legal practitioner: M/s. B. S. Tripathy,  
MP. J. Ray,  
Advocates.

-Versus-

1. Union of India represented by its Secretary in the Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices, Bhadrak Division, Bhadrak.
4. Sub-Divisional Inspector (Postal), Central Sub Division, Bhadrak.

... RESPONDENTS.

By legal Practitioner : Mr. A. K. Bose, Senior Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the Respondents to take into consideration the Income Certificate which has been issued in the name of his father. He has also prayed for a direction to take into consideration his past experience of working as E.D.B.P.M., Mouda Branch Post Office while considering his suitability for the post of E.D.B.P.M.

2. Facts of this case, according to the applicant are that the post of E.D.B.P.M. Mouda Branch post office fell vacant as the father of the applicant, who was holding the post, superannuated. After the retirement of the father of applicant, the applicant served in the post of E.D.B.P.M. for about seven months. For filling -up of the post, names were called for from the Employment Exchange, which only sent two names. Thereafter public notice was issued inviting applications. In response to the public notice, five candidates, including the applicant submitted their applications for the post of E.D.B.P.M., Mouda Branch Post Office. It is submitted

S. Som

that as per the solvency certificate, the applicant has shown his income from Agricultural land is Rs.14,000/- whereas one Bishnu Mohan Panda, had shown his income from Agricultural land including all sources as Rs.11,000/-. Applicant is a Matriculate but ignoring the income certificate and matriculation qualification, authorities have selected one Bishnu Mohan Panda illegally. After this, applicant challenged the said selection in Original Application No.294 of 1991 and the Tribunal, after hearing the parties, quashed the selection and directed for fresh selection for the post of E.D.B.P.M. Authorities took steps for fresh selection and asked the applicant to file a fresh Income Certificate and the applicant filed a fresh income certificate which was issued in the name of his father and the property is standing in the name of the family members. Res. No.4 i.e. S.D.I.P., Central Sub Division, Bhadrak, took the view, at the time of checking of the documents, that the income certificate produced by the applicant, in the name of his father, can not be taken into consideration. Applicant checked up the same with the Respondent No.3 i.e. Supdt. of post offices, Bhadrak and learnt that the Income Certificate, in the name of his father, being a defective one, will not be taken into consideration.

S. Jan.

Apprehending that, he has come up in this petition, with the prayer referred to earlier. He has also stated that he had worked as EDBPM from 27.8.1991 to 6.3.1992 and his past experience, should be taken into consideration. In the context of the above facts, applicant has come up with the prayers referred to above.

3. Respondents, in their counter, have stated that initially, after retirement of the father of the applicant from the post of EDBPM, Mouda, in September, 1990, Employment Exchange was asked to sponsor names but during the time fixed, no names were sponsored. Accordingly, public notice was issued on 24.10.1990. Eight candidates applied for the post but none of them were found suitable and thereafter, second notification was issued fixing the last date of receipt of application as 17-12-1990. In response to the second notification, six candidates submitted their applications. Applications of two persons, the present applicant and one Sarbeswar Panda were received on 18.12.1990 i.e. after the last date of receipt of applications i.e. 17.12.1990. Selection to the post was made without taking these two applications into consideration and one Shri BM Panda was provisionally selected and orders were issued for his appointment.

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8

4. Applicant filed Original Application No. 294/91 in which the Tribunal directed to allowed the applicant to continue as EDBPM until further orders. It is necessary to note that the father of applicant, who had already attained the age of superannuation availed leave unauthorisedly, providing his son as a substitute in his place. By virtue of the order of the Tribunal, applicant was allowed to continue as EDBPM. The Tribunal disposed of the Original Application on 31-1-1992 and the process of selection was quashed by the Tribunal & direction was given to consider the candidature of all the candidates, including the applicant and accordingly, fresh selection was made taking all the applications into consideration. Shri Sarbeswar Panda, who fulfils all the required conditions satisfactorily was provisionally selected. Being aggrieved by this, Shri BM Panda, one of the candidates filed Original Application No. 481 of 1992 challenging the selection of Shri Sarbeswar Panda to the post of EDBPM, Mouda. In the meantime, Shri S. Panda expressed his unwillingness to join as EDBPM, Mouda. This fact was brought to the notice of the Tribunal through the Senior Standing Counsel. In their judgment dated 2-12-1993<sup>in</sup> OA No. 481/92, the Tribunal directed fresh selection to be conducted and the cases of all the candidates sponsored by

9

-6-

the Employment Exchange and those who have made applications from the Open market including ~~the~~ ~~applicant~~ and Bikash Kumar Mohanty, present applicant, before us and S. Panda, OP No. 5, if he makes an application, be considered. Respondents have stated that amongst four candidates, who submitted their applications and documents within a stipulated time, ~~the~~ the present applicant, before us, has got highest percentage of marks i.e. 41.8%. He has also submitted ~~home own~~ income certificate for Rs.14000/- in his own name and another income certificate for Rs.14000/- in the name of his father. On an enquiry, made by the Departmental Authorities, it was found that applicant Bikash Kumar Mohanty, does not have any landed property in his own name and the income shown in the Income certificate is derived from the landed properties owned by his grand-father. Respondents have stated that according to the instructions of DG(Posts), dated 6.12.1993, at Annexure-R/7, the Income and property in the name of the guardians can not be taken into consideration and as the applicant does not have any landed property in his own name, his Income certificate submitted in his own name can not be considered. Accordingly, the person who has got second highest percentage of

J. J. M.

marks was selected and he had already joined the post. On the above grounds, Respondents have opposed the prayer of applicant.

5. We have heard Mr. A. Deo, learned counsel for the applicant and Mr. A. K. Bose, learned Sr. Standing Counsel (Central) appearing for the Respondents and have also perused the records. One of the prayer of applicant is that while considering his suitability for the post of EDBPM, Mouda, the period of service rendered by him as E.D.B.P.M. should be taken into consideration.

6. It has been decided by a Full Bench of this Tribunal in OA No. 315/1990 (R.N. Naik Vrs. Union of India and others) that experience of a substitute can not be taken into consideration while making regular selection for the post. This is because a substitute works at the risk and responsibility of the regular incumbent and he is not selected by the Department. If the experience of a substitute is taken into account, then it would always be open for an incumbent to go on leave by inducting one of his relatives as his substitute and thereby giving <sup>him</sup> an unfair advantage over all other candidates in a regular selection process.

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-8-

Because the applicant was inducted as a substitute, illegally, after the regular incumbent, the father of the applicant is superannuated. After his superannuation, without handing over the charge, he proceeded on leave, which was not due to him and therefore, the experience gained as substitute, by the applicant, can not be taken into consideration for selection to the post of E.D.B.P.M.

7. Other prayer of applicant, in this case is that the Income Certificate issued in the name of his father should be taken into account. Respondents, in their counter have indicated that the applicant has produced another Income certificate in his own name but the prayer of applicant is to go by the Income Certificate issued in the name of his father. Instructions dated 6-12-1993 specifically provide that Income certificate in the name of guardians can not be taken into consideration and therefore, the prayer of the applicant that the Income certificate issued in the name of his father should be taken into consideration, more so when the applicant has not challenged the vires of the said circular dated 6-12-1993 is held to be without any merit and is rejected.

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8. In view of the above, we hold that the application is without any merit and the same is rejected but in the circumstances, without any order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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(SOMNATH SOM)  
VICE-CHAIRMAN

KNM/CM.