

4
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 325 of 1994

Cuttack this the 28th day of September, 1994

Abhaya Kumar Sahu

Applicant(s)

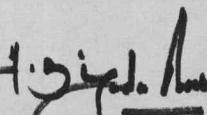
Versus

Union of India & Others

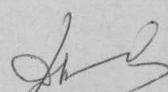
Respondent(s)

(FOR INSTRUCTIONS)

- ✓ 1. Whether it be referred to reporters or not ? *yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *no*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

28 SEP 94


(D. P. HIREMATH)
VICE-CHAIRMAN

.5
CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 325 of 1994

Cuttack this the 28th day of September, 1994

C O R A M:

THE HONOURABLE MR.JUSTICE D.P. HIREMATH, VICE - CHAIRMAN

AND

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

...

Abhaya Kumar Sahu,
S/o. Ramachandra Sahu,
Aged about 20 years
Vill/PO:Renedepatna
Via:Bhuban,
Dist:Dhenkanal(Orissa)

... Applicant/s

By the Advocate:M/s.Ganeswar Rath
S.N.Mishra

Versus

1. Union of India represented by
its Secretary, Communication,
Dak Bhawan, New Delhi
2. Chief Post-master General,
Orissa Circle, Bhubaneswar
3. Superintendent of Post Offices,
Dhenkanal Division, Dhenkanal
4. Bimal Kumar Rout,
S/o.Ramachandra Rout aged about
28 years of vill/PO:Renddepatna
Via:Bhuban, Dist:Dhenkanal

... Respondent/s

By the Advocate:Mr.Ashok Mishra,
Sr.Standing Counsel
(Central) for Res. 1 to 3

By the Advocate:M/s.Ashok Mohanty
Sisir Das
G.B.Dash
T.Rath, for Res. 4

....

O R D E R

D.P.HIREMATH, V.C.: The applicant herein a candidate for the post
of Extra Departmental Branch Post Master, Renedepatna in
Account with ~~Bhuban~~ Bhuban Sub Post Office has challenged
the appointment of 4th respondent and his ^{exclusion} leaving from

zone of consideration by the appointing authority. The undisputed facts are that the applicant is a matriculate who has secured more number of marks than Respondent 4 in matriculation examination, but Respondent 4 is a graduate in Arts. It is now undisputed at the Bar that irrespective of a higher qualification, the marks secured in the matriculation examination would rule the ~~rest~~^{rest}. The other qualifications for being considered to the post of E.D.B.P.M. are the candidate having adequate means of livelihood and having fixed place of residence at the place to which he seeks appointment. While applying for this post the applicant furnished an income certificate as required of him which showed that his father had agricultural income of Rs.9000/- per year and salaried income of Rs.3000/- per year and that his father Ramachandra Sahu was a resident of village ~~R~~ Kuninda in the district of Dhenkanal. Thus the certificate issued by the Tahasildar specially stated that this Ramachandra had an annual income of Rs.12,000/- from the sources specified above. Though the applicant had secured more number of marks in the matriculation examination he was kept out of zone of consideration for the reason that he had no adequate means of livelihood. In this application short point for our consideration is what exactly could be considered as "Adequate Means of Livelihood".

2. The learned counsel for the applicant

invited our attention to a copy of the letter referred to as Annexure-A/1 regarding income and ownership of property condition for the recruitment of E.D. Agents to the Posts of EDBPM/EDSPM. Therein it is stated that proof of financial status is not only subject to manipulation but is also detrimental to merit. When the Constitution of India guarantees equal opportunity to all for their advancement, the reasonable course would be to offer ED appointments to the person who secured maximum marks in the examination which made him eligible for the appointment provided the candidate has prescribed minimum level of property and income so that he has adequate means of livelihood apart from the ED allowance. (Emphasis supplied).

Shri Ganeswar Rath, learned counsel appearing for the applicant emphasised that if this letter is taken into consideration it follows that the departmental circular or letter was intended to ^{lay} ~~lessen~~ stress on ~~the~~ merit aspect in the first instance but it would be noted that the first clause in this sentence is governed by the second clause under the proviso which states that "provided the candidate has a prescribed minimum level of property and income". The intention behind this requirement is made clear in a large number of cases and to repeat, it may be stated that the E.D.B.P.M. who is to handle public money should not be in needs so as to be a victim of temptation to commit breach of trust. Thus "the adequate means of livelihood" does

and should exist side by side ~~for~~ ^{of} requirement of merit.

If that basic aspect in this letter is ~~to go away~~ ^{borne} in mind, ~~it is not exact~~ ^{that} what could be considered for adequate means of livelihood ~~be to be~~ the next point for consideration.

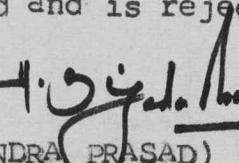
3. In Annexure-R/2 which relates to income and property qualification prescribed for appointment of various categories of Extra Departmental Agents, the Government at para 4 of this letter clarified that ~~the~~ ^{the} candidates concerned should have adequate means of independent livelihood and income or property in the name of their guardians will not make them eligible for consideration of appointments as E.D Agents. Even for a moment we are not attaching much importance to the loosely worded "property" in the name of their guardians" and it is for obvious reasons. The property in the name of a guardian could assume importance or become relevant only if the manner^s of appointment is to be considered which by any stretch of imagination cannot be an instance ^{case of} ~~in~~ the case of appointments ^{of a minor} to a government post. It appears that "guardian" has been loosely used and perhaps the intention could be to mean ~~that~~ the property of the head of the family. That apart the applicant herein when filed income certificate clearly showed that the property from which he was deriving adequate means of livelihood was of his father and income was only Rs.9000/- .

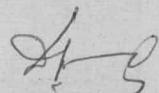
The second source of income was salaried income of

Rs.3000/-. If that be so, on his own showing the applicant has made it ~~simply~~ clear that he was depending on the income of his father either from agriculture or from salary. This, by any stretch of imagination cannot be considered as adequate means of livelihood of the applicant ~~himself~~. We have also held in some of the cases coming before us that the joint family income in which the applicant has got joint interest either by birth as in the case of coparcenary or in the case of joint acquisition could constitute adequate means of livelihood. It is not possible to generalise what exactly could be adequate means of livelihood viz., whether it should be independent sole income of the candidate or income derived from the joint interest that he has in the property ~~of~~ a family in view of there being no uniform pattern of ~~family~~ ^{systems} ~~societies~~ in this country. The concept of income of a particular candidate differs from community to community and if it is a case of joint Hindu family, necessarily the concept of coparcenary interests and joint acquisition do come into picture under ~~the~~ ["] civil rules. In the case of other communities, when such a status is not recognised the things may be altogether different. In the instant case whether he belongs to a Hindu community recognising joint interest or coparcenary interests ^{is not made clear} ~~or another~~ What he has furnished is nothing but the income of his father and

10

and not of himself. It is no doubt true that mention is made in the counter about some inquiry being held about his property by certain postal official, that by no means could improve the situation or give any benefit to the applicant as far as the income part of his application is concerned. The applicant, ~~at~~ ^{on} his own ~~saying~~ ^{showing} has made it amply clear that he would ~~rely~~ ^{on} produce a certificate showing the income of his father either by agriculture or from ~~salaried income~~ ^{salary}. That being so though he has secured more number of marks in the matriculation examination, as he has failed to show that he ~~got~~ ^{has} adequate means of livelihood, it cannot be said the appointing authority kept him out of ~~at~~ the zone of consideration unreasonably. We find no merit in this application. The same deserves to be rejected and is rejected. No order as to cost.


 (H. RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)
 28 SEP 94


 (D. P. HIREMATH)
 VICE-CHAIRMAN

B.K.Sahoo//