

2

A

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.342 OF 1994

Cuttack, this the 26th day of February, 1999

Pravakar Mohanta ..... 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

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN

26.2.99

8  
CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.342 OF 1994  
Cuttack, this the 26<sup>th</sup> day of February, 1999

**CORAM:**

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

.....

Pravakar Mohanta, aged about 30 years, son of  
Dhanurjaya Mohanta, At/PO-Bankia,  
Via-Karanjia, District-Keonjhar ....Applicant

Advocate for applicant - Mr.B.S.Tripathy.

Vrs.

1. Union of India, represented through its Secretary,  
Ministry of Commuication,  
Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle,  
Bhubaneswar, District-Khurda.
3. Superintendent of Post Offices,  
Keonjhar Division, Keonjhar.
4. Sub-Divisional Inspector (Postal),  
Champua Sub-Division, Champua, Dist.Keonjhar.
5. Sunaram Patra, son of Maheswar Patra,  
At/PO-Bankia, Via-Karanjia, Dist.Keonjhar

.....Respondents

Advocates for respondents - Mr.Ashok Mishra,  
Sr.Panel Counsel for  
Respondents 1 to 4  
&  
Mr.D.P.Dhalsamant for  
Respondent 5.

O R D E R

Somnath Som, VICE-CHAIRMAN

In this application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has  
prayed for quashing the appointment of Sunaram Patra  
(respondent no.5) as E.D.B.P.M., Bankia B.P.O. He has

also asked for a direction to the departmental respondents 1 to 4 to consider the case of the applicant for the post of E.D.B.P.M., Bankia Branch Post Office.

2. Facts of this case, according to the petitioner, are that on the retirement of the existing incumbent the post of E.D.B.P.M., Bankia E.D.B.O. fell vacant and the departmental authorities called for names from the Employment Exchange. The Employment Exchange authorities sponsored the name of the applicant along with others and the applicant was asked to furnish his application in the prescribed form with necessary documentation which he did. The applicant has passed matriculation examination and along with his application, he submitted his marksheet showing that he has secured 365 out of 800 marks. According to the income certificate given by the applicant, his annual income is Rs.10,000/-. He fulfilled all other conditions of eligibility. It is submitted by the applicant that the selected candidate, respondent no.5 got less marks than the applicant and the income of respondent no.5 is also less than the applicant. He has further stated that respondent no.5 could not show that he would provide accommodation for holding the post office. In spite of all the above factors, respondent no.5 was selected on the ground that he belongs to SC community. The applicant has stated that giving such preference to SC candidate was wrong because there was no circular that SC/ST candidate would be given preference when the post in question was advertised. In view of the above, the applicant has come up with the aforesaid prayer.

*S. Jam.*

10 10

3. The departmental respondents in their counter have stated that Junior Employment Officer sponsored 13 names including the applicant and respondent no.5 and all the candidates were requested to submit application in the prescribed form along with necessary documentation. In response to this, five candidates including the applicant and respondent no.5 submitted their applications and their cases were taken into consideration. The departmental respondents have further stated that according to reservation instructions, 15% of the posts of EDBPM are to be reserved for SC community and according to the present staff strength, percentage of incumbents belonging to SC community is 7.08, and the employment of ST incumbents is 26.43 % as against the required 23% reservation. The respondents have stated that as the shortfall amongst the SC persons is quite large, preference has been shown to respondent no.5 who belongs to SC community. On the averment of the applicant that respondent no.5 is not in a position to provide free accommodation for the E.D.B.O., the departmental respondents have stated that in his application respondent no.5 agreed to provide free accommodation for holding the post office and subsequently informed in his letter at Annexure-R/14 that he has already started construction of a room for the post office and the same would be completed by 13.6.1994 for functioning of the post office from 14.6.1994.

4. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner, Shri Ashok Mishra, the learned Senior Panel Counsel appearing for the departmental respondents, and Shri D.P.Dhalsamant, the learned counsel appearing for respondent no.5. Respondent

S.Sm

no.5 has not filed any counter, but has adopted the counter filed by the departmental respondents. The learned Senior Panel Counsel appearing for the departmental respondents has produced the selection file relating to the post and we have perused the same.

5. From a reference to the Selection File, it is seen that the applicant has got 365 marks out of 800 marks in the matriculation examination which works out to 45.62% whereas respondent no.5 has got 291 marks out of 700 which work out to 41.57%. The other three candidates have got 43.14%, 43% and 39.28%. Thus amongst the five candidates, the applicant has got highest percentage of marks. His annual income is Rs.10,000/- whereas the annual income of respondent no.5 is Rs.4500/-, which, however, is not the deciding factor because the departmental instructions lay down that it has only to be ensured that EDBPM has independent means of livelihood and should not depend on ED allowance for his maintenance. It has also been laid down in the departmental instructions that the selection should not be made on the basis of higher or lower income of the candidates. According to the instructions, the selection of the candidates should be made from amongst the eligible persons strictly on the basis of percentage of marks obtained in the matriculation examination. Here the applicant has got higher percentage of marks than respondent no.5. Thus, the sole question for consideration is whether in the above background, the departmental respondents should have selected respondent no.5 ignoring the candidature of the applicant. The departmental respondents have pointed out that they have done so in order to give preference to the SC candidate. Amongst the five persons whose candidatures were

J.Jm

12  
12  
considered, Respondent no.5 alone belongs to SC category and there is large shortfall in the percentage of SC incumbents in the posts of EDBPM in the concerned Postal Division and that is why the departmental authorities have selected respondent no.5. It has been submitted by the learned counsel for the petitioner that when the vacancy of EDBPM was notified, it was not indicated that any preference would be given to SC candidates and therefore, at the stage of selection, an SC person, i.e., respondent no.5 should not have been preferred. The learned counsel for the petitioner has relied on the order of Calcutta Bench of the Tribunal in the case of Shibnath Dhara v. Union of India and others, OA No. 712/95, decided on 15.11.1996. Unfortunately, copy of this order has not been produced before us, but the gist of the order printed in **Swamysnews, September 1998** has been filed. In that case it was held that SC/ST candidate should be posted only if the notification is issued for appointment in favour of SC/ST candidate. If there is no indication in the notification in regard to the preference to be given to the SC/ST candidate, then the meritorious candidate amongst those who applied should be selected. The Tribunal held that even though there was no mention regarding the preference to SC candidate in the notification dated 23.5.1994 posting of Respondent no.3 in that case had not resulted in exceeding the percentage of minimum quota and hence no harm has been caused to the unreserved candidates by posting the reserved candidate, respondent no.3. We have gone through the selection file and we find that the requisition was sent to the Employment Exchange in Superintendent of Post Offices, Keonjhar's letter dated

SVW

13  
VB  
-6-

13.1.1994. As is usual this letter was accompanied by a form in which the details regarding the post were given. Column 5 of this form deals with qualification required and there are two headings under this, (i) Essential, and (ii) Desirable. In the essential head it has been mentioned "Matriculation Passed". In desirable head it has been mentioned "No Preference". From this it has been argued that in the requisition to the Employment Exchange, no preference was indicated to be given to SC/ST person. This is not correct because Column 13 of this form has the following question:

"13. Whether there is any obligation or arrangement for giving preference to any category of person such as ST/SC/Ex-serviceman/Physically handicapped person filling upto the vacancy to be filled by such category of applicant."

Against this column the Superintendent of Post Offices has clearly written "Yes". This form was sent along with the requisition. Therefore, it is clear that in the requisition sent to the Employment Exchange, it was indicated that preference would be given to SC/ST category persons. In this Division, there is no shortfall amongst the ST category whose incumbency is 26.43% against the requirement of 23% and therefore, preference has been shown to Scheduled Caste community whose actual percentage of incumbency is 7.08 against the requirement of 15%.

*S. Nam.*

6. It has been submitted by the learned counsel for the petitioner that if an SC category person was to be chosen, there was no need to call for names of other category persons. The requisition to the Employment Exchange could have easily mentioned that only SC category persons would be considered. We are not inclined to accept this submission because in case an SC category person is not available or does not apply even if his name is sponsored by the Employment Exchange, the departmental authorities have to choose a person belonging to general category. The departmental instructions also provide that preference has to be given to persons belonging to SC/ST communities. This does not mean that the posts should be categorically reserved for SC/ST categories.

7. In consideration of all the above, we hold that the applicant has not been able to make out a case for any of the reliefs asked for by him. The Original Application is, therefore, held to be without any merit and is rejected but, under the circumstances, without any order as to costs.

14  
(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
26.2.99  
VICE-CHAIRMAN