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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 705 OF 1994.

Cuttack this the 30th day of July, 1993.

Laxmidhar Tripathy.

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Applicant.

-Versus-

Union of India & Others.

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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)
30.7.98

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CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 705 OF 1994.

Cuttack this the 30th day of July, 1994.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

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

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Laxmidhar Tripathy, aged about 26 years,
S/o. Harihar Tripathy, At/Po. Majhihara,
Via. Banamalipur, Ps. Balipatna, Dist. Khurda. Applicant.

By legal practitioner :- M/s. B. Nayak, A. K. Dora,
Advocates.

- Versus -

- 1) Union of India represented through the Secretary
Ministry of Communication (Department of Posts)
At. Dak Tar Bhawan, New Delhi.
- 2) Chief Postmaster General, Orissa Circle,
At/Po. Bhubaneswar, Dist. Khurda.
- 3) Senior Superintendent of Post Offices,
Bhubaneswar Division, Bhubaneswar,
Dist. Khurda, PIN-751 001.
- 4) Dharanidhar Choudhury, aged about 35 years,
S/o. late B. K. Choudhury,
At-/Po- Majhihara,
Via. Banamalipur,
Ps-Balipatna,
Dist. Khurda.

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Respondents.

By legal practitioner :- Mr. Ashok Mishra,
Senior Counsel (Central).

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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 petitioner has prayed for quashing the appointment of Respondent No. 4 as Extra Departmental Branch Post Master, Majhihara Branch Post Office and with a further direction to the Respondents 1 & 2 to appoint the applicant to the said post in question.

2. Facts of this case, according to the petitioner, are that being sponsored by the employment exchange, Bhubaneswar, Respondent No. 3 called for application from the petitioner for the post of Extra Departmental Branch Post Master, in his letter dated 14-02-1994 at Annexure-1, addressed to the petitioner. In response to this, letter, the petitioner submitted his application, alongwith required certificates. Thereafter, Respondent No. 3 in his letter dated 28.4.94 directed the petitioner to furnish details of immovable assets if any, belonging to the petitioner. Again on 16.9.94, copy of letter at Annexure-A/3, all the candidates, including the petitioner, were directed to file original deed and documents, copy of which had been submitted by the applicants.

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alongwith their applications and revenue records available regarding possession of landed property by them. The case of the petitioner, is that he has all the necessary qualifications for the post of EDBPM. According to him, he is the fittest candidate amongst the persons, who were under considerations as he is a graduate with knowledge of typing and his income is more than the other candidates. It is submitted by the petitioner that Respondent No. 4, the selected candidate is a criminal against whom several cases are pending and there are public complaints. It is also submitted that Respondent No. 4, on the date of selection was acting as Elected President of Majhihara Primary Agricultural Society Ltd. and on receipt of the written allegation from the public, Respondent No. 2 ordered an enquiry which is still pending. But inspite of that, during the pendency of that enquiry, Respondent No. 3 without considering the candidature of other candidates, particularly the petitioner, on merit, has given appointment to the Respondent No. 4 as EDBPM on 16-11-1994 and that is how, the petitioner, has come up in this Original Application, with the aforesaid prayer.

3. Respondents, in their counter-affidavit, have pointed out that on the superannuation of the regular incumbent the post of E.D.B.P.M., fell vacant and the Employment Exchange, on being requested, sponsored six candidates, out of which only four applied for the post with all necessary particulars. The Petitioner and Respondent No. 4 were amongst those four candidates. It is submitted by the Departmental Respondents that as the petitioner has passed Matriculation in compartmental, his marks were not taken into account and amongst other three candidates, Respondent No. 4 got the highest mark in the Higher Secondary Education and he has also all the necessary qualifications and means of livelihood and accordingly, it is submitted by the Departmental Respondents that Respondent No. 4 has rightly been selected for the Post. On the above grounds, Respondents have opposed the prayer of the applicant.

4. Petitioner has filed a rejoinder, in which it has been submitted that while going by the higher percentage of marks, secured in HSC Examination, the Departmental Authorities have ignored all other criterias. It is further submitted that against Respondent No. 4, there are public

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complaints and therefore, he should not have been selected for the post in question. It is further submitted that the Appointing Authority has not applied his mind and has been guided by ~~one~~ of the Clerks of his Office namely Shri S.K. Mishra, who has prepared the check list in his own hand. The case of the petitioner is that the check list should have been written by the Appointing Authority. It is further stated that in the check-list, correct figures have not been noted with regard to the Assets and Income of the petitioner and Respondent No. 4 and thereby Assets of Respondent No. 4 has been shown as higher. It is further submitted that applications were called for from all the candidates with a stipulation that the same should be received within 21(twenty one) days but the application submitted by the Respondent No. 4 to the Departmental Authorities was received after this date and therefore, should have been summarily rejected. It is further submitted that the land particulars submitted by Respondent No. 4 involves submission of certified copy of the compromise decree which according to the petitioner, has been obtained fraudulently and this decree is also under challenge by certain other persons.

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It is also submitted by the learned counsel for the petitioner that the property which is subject matter of compromise decree, are the endowment property and the applicant has no right to the same. On the above grounds, it is submitted by the learned counsel for the petitioner that the selection of respondent no. 4 is illegal and has been done arbitrarily.

5. We have heard Shri B.K.Nayak, learned counsel for the petitioner and Shri Ashok Mishra, learned Senior Counsel appearing on behalf of the Respondents and have also perused the records. Respondent No. 4, who has been served with notice, has chosen not to appear and therefore, we are not able to hear him.

6. The first point to be noted in this connection is that Respondents have taken the stand that as the petitioner has passed matriculation examination in compartmental, they have not taken his mark-sheet into consideration as in certain other decisions, this Tribunal has held that a person, who has passed matriculation in regular examination, should be given priority over a person who has passed Matriculation in compartmental examination. This view has been

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challenged by the learned counsel for the petitioner. In consideration of this, we have directed the learned counsel for the petitioner to produce the mark-sheet of the petitioner. It has been submitted by the learned counsel for the petitioner that he has got less mark than Respondent No. 4 in the HSC examination and therefore, this point is of no relevance in the present context. Learned counsel for the petitioner has challenged the selection of respondent No. 4 on the sole ground that the selection process has not been fairly conducted and in the selection process, the relevant merits of different candidates have not been fairly judged. It has also been submitted that the selecting authority had committed an error going only by the percentage of marks. It is further submitted that as the assets and income of the petitioner is higher than that of the Respondent No. 4 and as he has a higher educational qualification, the petitioner should have been selected. Taking into consideration the last point that the petitioner should have been selected because of his higher qualification of graduation, the Departmental instruction specifically provides that for the post of EDEPM, the qualification is

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Matriculation and no weightage need be given to any qualification higher than the Matriculation. Gist of the circular is quoted at page 67 of the Swamy's compilation of ED Agents and Service Rules for Extra Departmental Staff. Therefore, the fact that the petitioner is a graduate could not have been taken into consideration by the Departmental Authorities. The second aspect of the matter is that the petitioner, according to him, has higher assets and income than Respondent No. 4. In course of his submission and also in the rejoinder, a case has sought to be made out by the petitioner that Respondent No. 4 is without any asset and income but from para-4(iii) of the O.A., we find that the petitioner has taken a stand that his income is more than the income of other candidates. Under the heading 'grounds', for relief, also the petitioner mentioned that the income of the applicant is Rs. 32,000/- whereas the income of Respondent No. 4 is Rs. 22,000/-. Departmental instruction specifically provides that persons to be selected for EDBPM must have adequate means of livelihood so that he does not depend on the ED allowance as source of sustenance.

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Departmental instruction also provides that while selecting EDBPM, the Authorities, should not go by the consideration of persons having higher income or higher assets as being more qualified - rather Departmental instruction specifically provides that persons having highest percentage of marks in the H.S.C. examination, should be selected. This is an objective criteria basing on which the selection for the post of EDBPM is done.

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The petitioner has not stated in his Original Application regarding the compromise decree and allegedly false declaration with regard to the property & income, submitted by the Respondent No. 4. As he has not raised this in the O.A, at the stage of filing of rejoinder, he should not have raised/brought any additional facts when the departmental authorities could not have any chance to reply to this allegation. The next point urged by the learned counsel for the petitioner is that the selecting authority had not applied his mind because the check list had been written by the Clerk. The job of ministerial staff is to provide assistance to the higher authorities and writing out the check list indicating in a tabular form the names and

qualifications of various persons does not in any way prove that the selecting authority, had not applied his mind. Rules and instruction, nowhere provides that the check list should be prepared and written by the selecting authority/appointing authority in his own hand. Further it is submitted by the learned counsel for the petitioner that in the checklist the asset and income of the applicant and respondent No. 4 have been incorrectly mentioned. We have already noted that Assets and higher quantum of income is not the consideration for the purpose of consideration, according to the departmental instructions. It has further been submitted by the learned counsel for the petitioner that application of Respondent No. 4 was received after the stipulation period of 21 days as required by the Departmental Authorities and as such, his case should have been summarily rejected and should not have been taken into consideration. The Departmental Authorities, in para-8 of counter, have, on the other hand specifically mentioned that alongwith others Respondent No. 4 on being addressed to send application within 21 days on receipt of Annexure-R/6 submitted his

application duly filled in within 21 days. In view of the above specific assertion of the Departmental Authorities, it is not possible for us to hold on the mere assertion of the petitioner that the application of Respondent No. 4 was received beyond the stipulated period. This contention, of the learned counsel for the applicant, is therefore, held to be without any merit and is rejected.

Another point urged by the learned counsel for the petitioner is that the appointment order has been issued to Respondent No. 4 while his conduct and behaviour was under enquiry. Departmental Authorities have fairly submitted in para-6 of the counter, that the selection and appointment of Respondent No. 4 has been done subject to further verification of his character and antecedents. In many public offices, appointments are made and persons are allowed to join pending verification of character and antecedents. Therefore, just because a complaint has been made and the matter has been ordered to be enquired into, can not be a bar on the Departmental Authorities to appoint the Res. No. 4. There are several other averments made by the learned counsel for the petitioner which have been denied by the Respondents in their counter and it is

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not necessary to refer to all of the points. To give an example, it has been submitted that Respondent No. 4 is working as President of Majhihara Primary Agricultural Society Ltd. In any case, Respondents in their counter-affidavit have pointed out that according to the report of the Cooperative Extension Officer, Respondent No. 4 is not working as the President of the Cooperative Society. In any case, holding an elected office of the cooperative society, can not be a bar for appointment as EDBPM. In view of the above discussion, we hold that the submissions made by the learned counsel for the petitioner are without any merit and we therefore, hold that the petitioner has failed to make out any case for the relief asked for by him. The Original Application, is therefore, rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

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(SOMNATH SOM)
VICE-CHAIRMAN
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