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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No. 72 of 1994.

Cuttack, this the 24th August, 1994.

Ashok Kumar Sahoo ...

Applicant.

Versus

Union of India and others ...

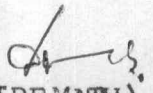
Respondents.

(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 Tribunals ? *no*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

24 AUG 94


(D.P. HIREMATH)
VICE-CHAIRMAN.

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CUTTACK BENCH.

Original Application No.72 of 1994.

Cuttack, this the 24th day of August, 1994.

CORAM:

THE HON'BLE MR.JUSTICE D.P.HIREMATH, VICE-CHAIRMAN

A N D

THE HON'BLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

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Ashok Kumar Sahoo, aged about 28
years, son of Nityananda Sahoo,
At/P.O.Rudrapur, Via-Sujanpur,
District. Jajpur.

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Applicant.

By Advocates M/s.Deepak Misra,
R.N.Naik, A.Deo,
B.S.Tripathy, P.Panda,
M.P.J.Ray.

Versus.

1. Union of India, represented by its Secretary
in the Department of Posts, Ministry of
Communications, Dak Bhawan, New Delhi.
2. Chief Post Master General,
Orissa Circle, Bhubaneswar, District. Khurda.
3. Director of Postal Services,
Office of the Chief Post Master General,
Orissa, Bhubaneswar, District- Khurda.
4. Superintendent of Post Offices,
Cuttack North Division, Cuttack-753001.
5. Chaitanya Mallik,
At/P.O.Rudrapur, Via-Sujanpur,
District-Jajpur.
6. Nanda Kishore Lenka, aged about 33 years,
son of Prana Krushna Lenka. At/P.O.
Rudrapur, Via-Brahmabarada, Dist- Jajpur.

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Respondents.

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By Advocate Shri Akhyay Kumar Misra,
Addl. Standing Counsel (Central) for
Respondents 1 to 4.

M/s. Ganeswar Rath,
S.Misra, for Respondent No.5.

Mr.P.K.Misra, for Respondent No.6.

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ORDER

D.P.HIREMATH,V.C., The petitioner herein has challenged the selection and appointment of Respondent No.5 as Extra-Departmental Branch Post Master, Rudrapur Branch Post Office on the ground that though he has secured more marks and possesses more property, Respondent No.5 has been given a preferential treatment and has been selected.

2. The facts are that at Rudrapur Branch Post Office one post of Extra-Departmental Branch Post Master fell vacant and on 7.2.1994 Respondent No.5 was selected from among 4 persons who vied for the post. The respondents have produced Annexure-R/1 showing the comparative merit of each of the candidates that appeared for viva-voce test. One Kalpayaru Sahoo's claim was rejected on ground that he had scored less marks among other candidates. When this application was pending, the intervenor-respondent No.6, Nanda Kishore Lenka also made a claim that he ought to have been selected as he had scored higher number of marks in the Matriculation examination. We may mention here the said Nanda Mishore Lenka has scored 319, Respondent No.5 scored

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255 and the present applicant who is at serial no.4 in the chart had scored 253. Incomewise Respondent No.5 had independent means of income to the tune of RS.3000/-, that of intervenor-Respondent No.6 is RS.6000/- and that of the petitioner, RS.18000/-. It would thus become clear that incomewise the petitioner ranked highest among the three candidates. Meritwise, the intervenor-respondent No.6 ranked highest. Thus, one would expect the competition between the Respondent No.5 and the intervenor-Respondent No.6, if merit alone became the guiding factor.

3. In the counter filed by the respondents, it is stated that in addition to the merit and income factor, the appointing authority took into consideration the fact that the Respondent No.5 is a Scheduled Caste person who had to be preferred as per the Rules.

Section III relating to method of recruitment in Swamy's compilation of Service Rules for Extra-Departmental Staff in Postal Department, which is referred to in almost all the cases, enumerates the qualifications required for being considered to be appointed as an Extra-Departmental Branch Post Master. The admitted position in the present case is that all the three candidates are Matriculates. Referring to certain orders relating to preferential categories the learned author has pointed out that there are four preferential categories according to the orders issued from time to time and they are Scheduled

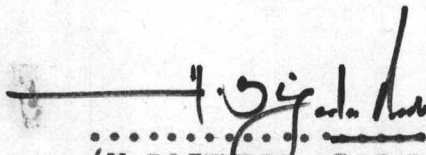
Caste and Scheduled Tribe candidates and educated unemployed persons. All that is required in respect of property is that of ["]adequate means of livelihood.["] Letter NO.43-14/72-Pen., dated 2.3.1972 has clarified that preference should be subject to the condition that the candidate selected should have an adequate means of livelihood. Letter NO.5-9/72-E.D. Cell dated the 18th August, 1973 clearly required that the candidates belonging to Scheduled Caste/Scheduled Tribes should be given preference over the candidates belonging to other communities, even if the latter are educationally better qualified, provided that the candidates belonging to Scheduled Castes/Scheduled Tribes are otherwise eligible for the post.

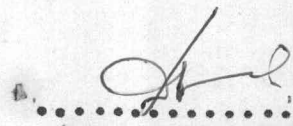
4. Precisely as Annexure-R/1 shows and as we have earlier pointed out the additional factor in favour of Respondent No.5 is that he was the only Scheduled Caste candidate. Mr. Akhyay Kumar Misra, learned Addl. Standing Counsel (Central) appearing for the respondents 1 to 4 has maintained that out of 479 posts of E.D.D.P.M in that particular recruiting Division ^{should be from Scheduled Caste and Tribes.} and 41 E.D.S.P.Ms, ^{Presently} there are 16 candidates from the Scheduled Caste communities and if Respondent No.5's selection is maintained, he becomes the 17th one. It is apparently clear that Respondent No.5 is qualified and eligible in all respect/ as he is a Matriculate and has adequate means of livelihood. But only the preferential factor in favour of the applicant is that he owns more property or has higher income than

that of other candidates. A person owning more property or having higher income should not be preferred to other candidates if they are in the preferential category. ^{Even if a candidate} ~~A person~~ ^{owning} income is much higher among the candidates in the same category, merit should always get a preference. If there is a Scheduled Caste candidate necessarily preference should go to that particular candidate even if he has not scored more number of marks than the candidates belonging to general category.

5. It was brought to our notice that letter of certain Member of Parliament for issuance of appointment letter in favour of Respondent No.5 weighed heavily with the appointing authority and therefore, his selection should be quashed on that score alone. Though at the outset we highly deprecate the ^{interference} ~~functioning~~ of such outside agency in the matter of selection of candidates for the E.D.B.P.M.'s post, ^{or for any post for that matter} which now a days has assumed a very large proportion, ^{we} We need not be carried away by the conduct of such indiscreet acts on the part of certain persons in power or bringing politicians to intervene in the matter of selection of a person who is otherwise competent to hold the post. For that reason we have completely ignored the part played by certain Member of Parliament or politician who ever ^{has} may be who tried to intervene in the matter of selection. Bereft of that influencing factor, Respondent No.5 is more suitable to be selected being a Scheduled Caste candidate and therefore, this petition has no merit

and the same has to be dismissed, accordingly is dismissed. No costs.


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(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
24 AUG 94


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(D. P. HIREMATH)
VICE-CHAIRMAN.

Sarangi.