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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.792 OF 1994
Cuttack this the 24th day of December, 1999

Naba Kishora Dhal

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 25-
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.12.99

G. Narasimham
(G.NARASIMHAM)
MEMBER(JUDICIAL)
24.12.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.792 OF 1994
Cuttack this the 24th day of December, 1999

CORAM:

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

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Naba Kishore Dhal
S/o. Late Narayan Chandra Dhal
At: Anaka, PO: Krushnapur Sasan
PS: Badchana, Dist: Jajpur

...

Applicant

By the Advocates : M/s.B.Nayak
P.Khatua
K.K.Mohanty
A.C.Behera

-Versus-

1. Union of India represented through
Ministry of Communication, New Delhi
2. Superintendent of Post Offices
Cuttack North Division,
Cuttack
3. Sub-Divisional Inspector(Postal)
Dharmasala-755008
4. Sri Dhoi Charan Sahu
S/o. Purna nanda Sahu
At: Anaka
PO: Krushnapur Sasan
PS: Badachana
Dist: Jajpur

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Respondents

By the Advocates : Mr.J.K.Nayak
Addl.Standing Counsel
(Central)

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ORDER

✓ MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application challenging the selection and appointment of Res.4(Dhoi Charan Sahu) to the post of Extra Departmental Mail Carrier, Krushnapur Sasan Branch Office, facts are not in controversy are : originally this post was being managed by one Narayan Ch. Dhal, the late father of the applicant, who on account of illness died on 16.2.1990. By then the applicant, as son was in charge of that post as substitute arranged by his father. By order dated 6.1.1990(Annexure-R/1), the applicant was provisionally appointed to that post with effect from 16.2.1990 till regular appointment is made, with a stipulation that he should have no claim for appointment to that on termination on account of regular appointment. Subsequently his case for compassionate appointment was considered by the Circle Relaxation Committee and was rejected. Thereafter he preferred Original Application 99/92 challenging the rejection order of the Circle Relaxation Committee. On 17.11.1992 the Original Application was disposed of with the following observations:

"In the circumstances stated above, we would direct that in case there has been no order of regular appointment passed in favour of anybody and in case nobody has not taken charge of the post in question, then the selection process be taken up without any further delay and case of all the candidates including that of the petitioner (who would make an application within 15 days from to-day) be considered to adjudicate the suitability of different incumbents and he/she, whosoever is found to be suitable, appointment order be passed in his/her favour. Before we part with this case, we must say that the case of the petitioner must be sympathetically considered keeping in view that he has lost his father and he has gained a good bit of experience in the post in question. The fact that an order of termination was passed against the petitioner should not weigh with the selecting

authority. Till the regular appointment is made the petitioner should continue. Thus the application is accordingly disposed of. No costs."

Thereafter through regular selection, after considering the case of the applicant with others, the Department selected and appointed Res.4 as E.D.M.C., who took over the charge on 17.8.1994.

The case of the applicant is that since the death of his father he continued to function as E.D.M.C. till Res.4 joined and in this way he served in that post for more than three years and as such his services could not have been terminated. Moreover, the selecting authority completely disregarded the direction of this Tribunal to take into account the death of his father and his previous experience in that post.

2. Respondent No.4 in his counter asserted that his selection to the post in question is in accordance to law inasmuch as he has passed H.S.C. Examination securing more marks than other candidates.

3. The departmental respondents in a separate counter submit that as per recruitment rules, 8th Class passed is a pre-condition for selection to the post of E.D.M.C. Applicant had only studied upto Class-II and cannot even write Oriya properly. Res.4, among all the candidates secured higher percentage of marks in the H.S.C. examination and accordingly he was selected as per rules. It is not as though the case of the applicant that he was not considered sympathetically, but as he lacked requisite educational qualification, he could not be selected. In anyway the direction of the Tribunal in Original Application 99/92 has been disregarded.

4. No rejoinder has been filed by the applicant.

5. We have heard Shri B.Nayak, learned counsel for the applicant and Shri J.K.Nayak, learned Addl.Standing Counsel appearing for the departmental respondents. Also perused the records.

As per recruitment rules, one must have passed 8th Class to be eligible to become F.D.M.C. Yet passing the H.S.C. examination will be given more preference. The applicant has read upto Class-II and as such has no minimum requisite qualification for the post of F.D.M.C. In case of death of an F.D.Agent, while in service, only his widow is exempted from passing the 8th Class standard in case of appointment to the post requiring passing the 8th Standard, provided she is literate vide D.G.(Posts) Letter dated 2.2.1994. Any other relation of such deceased F.D.Agent must have minimum educational qualification for being appointed, even in case of compassionate appointment.

It is true that this Tribunal directed the Department totake the previous experience of the applicant into account while considering his candidature along with others for the post. There is, however, no direction of this Tribunal that the applicant shall have to be selected, even if he has no requisite qualification. In **G.S.Parwati vs. Sub-divisional Inspector & Ors.** decided by the Ernakulam Bench constituted of five Members and reported in 1992(1)(CAT) All India Services Law Jouornal 540 it has been held that whenever there is question of giving weightage to previous experience it would mean only that some consideration has to be given to experience as an additional qualification and previous experience is not

to be the sole decisive factor in making selection. Hence the Departmental respondents were not unjustified in not selecting the applicant.

We are aware that the applicant served as E.D.M.C. for more than three years, but such service was not after through regular selection. He was provisionally appointed without any selection and when there was order of termination of his service, even two years thereafter the Circle Relaxation Committee rejected his case for compassionate appointment, he approached this Tribunal and through order of the Tribunal he continued till Res.4 was selected. In other words, it is not as though the department allowed him to continue for more than three years. Hence Rule-6 of the E.D.Agents(Conduct & Service) Rules will not come to the rescue of the applicant.

In the result, we do not see any merit in this application which is accordingly dismissed, leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 24.12.79
B.K.SAHOO

24.12.79
(G.NARASIMHAM)
MEMBER(JUDICIAL)