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11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 211 OF 1995.  
Cuttack, this the 30th day of August, 2001.

JAGABANDHU MOHANTY.

....

APPLICANT.

:VERSUS:

UNION OF INDIA & ORS.

....

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  
30.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 211 OF 1995.  
cuttack, this the 30th day of August, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

..

SHRI JAGABANDHU MOHANTY, Aged about 28 years,  
S/o. Sri Hrushikesh Mohanty, At and Po;  
Khambarigam, via; Patrapur, Pin; 761 004. .... APPLICANT.

By legal practitioner : M/s. S. P. Mohanty, P. K. Benka, Advocate.

: VERSUS :

1. Union of India represented through its Secretary, Department of posts, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Berhampur Division, Ganjam.
3. Postmaster General, Berhampur Region, Berhampur.
4. Chief Postmaster General, Orissa Circle, Bhubaneswar.
5. Krishna Ch. Mohanty, EDBPM, Khambarigam, BO, At/Po: Khambarigam, Dist: Ganjam. ....

RESPONDENTS.

By legal practitioner : Mr. A. K. Bose,  
Senior Standing Counsel (Central).

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J. Som.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for quashing the order dated 3-4-1995 cancelling his selection to the post of EDBPM, Khambarigam BO. The second prayer is for a direction to the Departmental Respondents to appoint the applicant to the post of EDBPM or to any other post on compassionate ground.

2. The case of the applicant is that his father's brother Kalandi Charan Mohanty, passed away on 27.12.1994 while working as EDBPM, Khambarigam BO leaving behind his widow and one son. The son of Kalandi Charan Mohanty is working as teacher in UP School in Koraput District and is living there with his family neglecting the widow of the deceased EDBPM. Applicant has stated that the widow treats the applicant as his son and had represented to appoint the applicant in the post of EDBPM, Khambarigam Branch post Office on compassionate ground. The applicant was selected through a process of selection to the post of EDBPM in letter dated 28.2.1995 (Annexure-4) but again in the impugned order dated 3-4-1995, the selection was cancelled. In the context of the above facts, the applicant has come up with the prayer referred to earlier.

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3. Departmental Respondents have filed counter opposing the prayer of the applicant. Private Respondent No. 5 who appeared as an intervenor-respondent has also filed counter opposing the prayer of applicant and applicant has filed rejoinder. We have perused the pleadings.

14

14

4. For the purpose of considering the prayer of applicant, it is not necessary to refer to all the averments made by the Respondents in their counter because these will be referred to while considering the submissions made by learned counsel for both sides. We have heard Shri S.P. Mohanty, learned Counsel for the Applicant and Shri A.K. Bose, learned Senior Standing counsel appearing for the Respondents. Learned counsel for the applicant has also filed written note of submission which has been taken note of. Learned counsel for the applicant has relied on the following decisions: (1) Deepak Kumar Das. Vrs. UOI -1995/1 Swamy's Case Laws Digest, page 242, Sl. 163; (2) Brahmananda Panigrahi -1995/1 Swamy's Case Laws Digest 424 at Sl. 276 and (3) A. Chinnakaruppan Vrs. UOI - 1995/1 Swamy's Case Laws Digest, page 444 at Sl. No. 291 and we have perused the same.

5. Admittedly, applicant was provisionally selected for the post of EDBPM, Khambarigam Branch Post Office in the vacancy which had arisen on the death of the previous incumbent. For this, *Sham* Employment Exchange was notified and persons sponsored by the Employment Exchange were asked to submit their detailed application with necessary documentation by 15-2-1995. Applicant and Respondent No. 5 were two of the four candidates whose cases were considered. The candidature of res. no. 5 and another Sh. M. Mohapatra were rejected on the ground that they have registered their landed property exclusively in their own name on 6.2.1995 and 7.2.1995. Departmental Instruction provides that if any of the candidates has acquired landed property in his own name after submission of his application but before the last date of submission of application, then his candidature will be taken into consideration. In this *Sham*

instant case, Respondent No.5 has registered the property in his own name on 6.2.1995 when the last date of receipt of application was 15.2.1995. Thus, the candidature of Res.no.5 should not have been rejected on this ground in accordance with instructions. Respondents have stated that the widow of the deceased EDB PM, the uncle of the applicant applied for consideration of the applicant for appointment in the vacant post of her late husband on compassionate ground. Accordingly synopsis etc. along with relevant documents were collected and the matter was sent to PMG, Berhampur for consideration of the matter by the Circle Relaxation Committee. But before any view could be taken by the Circle Relaxation Committee, the applicant approached the Tribunal in this Original Application. Respondents have stated that of the four candidates, the applicant has got 238 marks in HSC out of 700 marks representing 34% whereas Respondent No.5 has got 298 marks in HSC out of 700 representing 42.57%. Two other candidates also got marks in HSC more than the applicant but as they have not before us it is not necessary to consider their cases.

6. Applicant admittedly was selected for the post as is evident from the letter dated 23.2.95 at Annexure-4 of Supdt. of Post Offices, Berhampur but before he could be actually appointed and he could join the matter was reviewed and his appointment was cancelled. We find that there were other persons within the zone of consideration, Res.No.5 being one of them who was wrongly left out of consideration on the grounds noted by us earlier. He has got more marks in HSC than the applicant. According to instructions amongst the eligible candidates, the candidate who has got highest percentage of marks in HSC examination has to be considered as the most meritorious. In view



16

of this we find no illegality in the action of the Departmental Authorities in cancelling the selection of applicant that too before he had joined and in selecting Respondent No.5 who was more meritorious than the applicant. In view of this the prayer of the applicant for quashing the appointment of Respondent no.5 and for a direction to the Respondents to give him appointment is held to be without any merit.

7. In the case of Deepak Das (supra) and A. Chinnakaruppan (supra) it was held by the Calcutta and Madras Bench of the Tribunal that before termination of service of EDBPM who got selected and appointed a show-cause notice is necessary even if there has been a procedural irregularity in the matter of selection. In the instant case, the applicant has never been appointed. In his O.A. he has made no averment that he has joined the post of EDBPM after being selected and therefore, giving of show cause notice to him is not necessary. Case of Brahmananda Panigrahi (supra) deals with the status of a candidate in the post of EDBPM who has passed HSC in compartmental examination. This decision is of no relevance in the present case where the candidature of applicant no.1 and res. no.5 are being considered.

J. J. M.

8. The third prayer of applicant is that he should be considered for compassionate appointment in any post. We are not inclined to consider this prayer at this stage because this is premature. Respondents have stated that the prayer of applicant has been forwarded to the Postmaster General, Berhampur for consideration by the C.R.C. but without waiting for the same, the applicant has come up in this O.A. This counter has been filed in July, 1995. There is nothing in the pleadings if in the meantime, the

prayer of the applicant for compassionate appointment has been disposed of and with what result. In view of this, we dispose of this prayer of the applicant with a direction to the Departmental Authorities that final decision with regard to this prayer of the applicant should be taken if not already taken within a period of 90 (ninety) days from the date of receipt of a copy of this order. In case a view has already been taken by the C.R.C., the same should be communicated to the applicant within a period of 30 (Thirty) days from the date of receipt of a copy of this order, if not already done.

9. With the above observation and direction, the Original Application is disposed of. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*30.8.2001*

KNM/CM.