

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 344 OF 1995.
Cuttack, this the 20th day of June, 2000.

PURNA CHANDRA DASH.

.....

APPLICANT.

VRS.


UNION OF INDIA & ORS.

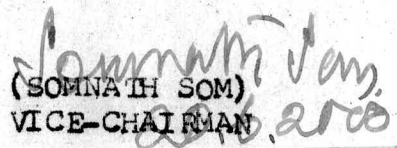
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RESPONDENTS.

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**


(J.S. DHALI WAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 344 OF 1995.
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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. J.S. DHALIWAL, MEMBER (JUDICIAL).

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Shri Purna Chandra Dash,
Aged about 31 years ,
Son of Shri Dibakar Dash,
Village Similipatna,
PO/PS. Chandaka,
DIST: KHURDA.

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Applicant.

By legal practitioner: M/s. A.K. Mohapatra, Ashok Das, Advocates.

-Versus-

1. Union of India represented through the
Secretary, Ministry of Communication,
Department of Post, Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Orissa,
At/Po: Bhubaneswar,
Dist: Khurda.
3. Senior Superintendent of Post Offices,
Cuttack City Division,
Cantonment Road, Cuttack.
4. Sri Jiban Kumar Sahoo,
Father's name not known,
Asst. Superintendent of Post Offices,
Cuttack East Division,
At/Po/Dist: Cuttack.
5. Shri Bishnu Charan Singh,
Father's name not known,
Overseer Mail,
Cuttack East Division,
At/Po/Dist: Cuttack.
6. Sri Prakash Chandra Dash,
Father's name not known,
Branch Post Master, Chandaka,
Branch Post Office,
At. Similipatna, Po. Chandaka,
Dist: Khurda.

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Respondents.

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

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for declaring the selection and appointment of Respondent No. 6 to the Post of E.D.B.P.M., Chandaka Branch Post Office as illegal and for quashing the order dated 23.11.1994 of Respondent No. 3 appointing the Res. No. 6 as EDBPM, Chandaka Branch Post Office. The third prayer is for a direction to the Senior Superintendent of Post Offices, Cuttack City Division, Cuttack (Res. No. 3) to make fresh selection for the post of EDBPM, Chandaka BO out of the candidates named in the statement at Annexure-3 and the last prayer is for a direction to the Respondent No. 3 to appoint the applicant to the post of E.D.B.P.M., Chandaka Branch Post Office with all consequential service and financial benefits.

2. According to the applicant, the vacancy in the post of EDBPM, Chandaka BO arose due to superannuation of the regular incumbent on 15.6.1993. For filling up of the said vacancy, requisition was sent on 4.11.1993 to the employment Exchange which sponsored 23 names including the applicant on 21-12-1993. The name of Prakash Chandra Dash, Respondent No. 6 was not sponsored by the employment exchange. All the sponsored candidates were asked to submit their applications in proper form with necessary documentation. It was indicated that incomplete applications are liable to be rejected. The intimation letter was returned undelivered from seven candidates whose names have been mentioned by the applicant, of the rest 16, 9 candidates including applicant

submitted their applications within the stipulated date. Applicant has stated that according to the instructions dated 12-3-1993 of Director General of Posts, at Annexure-4, laying down qualification for the post of E.D.B.P.M, applicant had the requisite qualifications for the post. After getting back the undelivered letters from seven candidates, no fresh intimation was also sent to them. None of the seven candidates belonged to the post village. On 16-3-1994, Respondent No.5, who is over-seer mail, Cuttack East Division, then, visited Chandaka Branch Post Office and verified the documents of all the candidates. After verification of the documents, he informed the candidates that Respondent No.4, Assistant Superintendent of Post Offices would again visit to Chandaka Office on 16.3.94 for verification of documents. Ultimately, on 12.4.1994, Respondent No.4, Assistant Superintendent of Post Offices, visited Chandaka Branch Post Office, verified the documents and verbally informed the applicant that he has been duly selected for the post and appointment order will be issued within a week. Applicant has stated that Respondent No.4 demanded a sum of Rs. 10,000/- from the applicant for getting selected for the post but the applicant refused to pay the amount. Respondent No.4, thereafter got annoyed with the applicant and threatened that he would get Respondent No.6, the son of an ED Agent of Saruthenga Branch Post Office appointed to the post, if the applicant refuses to fulfil the demand. Applicant has stated that out of 9 candidates, who have submitted their applications, in time, six persons did not belong to the post village. That apart, they had also not submitted the necessary documents alongwith their

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applications and two others though belonged to the Post Village, they did not furnish all the documents. Thus, only the applicant had all the essential qualification and his application was complete in all respect. It is stated that on the refusal of the applicant to pay the demand amount of Rs.10,000/-, Respondent No.4 persuaded three persons and the father of another person to file complaint alleging that the letters sent to them requiring them to apply, were not delivered to them deliberately though they were present in the Village. Applicant has stated that Res.No.4 himself dictated the complaint petition of these four persons. Apprehending that Respondent No.4 will play some mischief, applicant submitted a representation to the Respondent No.3 stating the entire facts. Three other candidates, who had submitted their applications within time, also makes similar representations. One Pradosh Kumar Samantray, from whom a complaint petition was procured by Respondent No.4 made a representation to the Respondent No.3 withdrawing his complaint petition. In this letter, Shri Samantray, specifically mentioned that he lodged the complaint at the instance of Respondent No.4 who had dictated the complaint petition and he was in fact absent from the village from 1.2.1994 to 9.2.1994 for which the letter could not be delivered to him. It is stated that Respondent No.4 persuaded Respondent No.3 to keep the selection in abeyance and issue a fresh advertisement inviting applications from the general public so that Respondent No.6 would submit an application for his eventual selection. This notice inviting applications was issued on 6.12.1993 by which time revised instructions of Director

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General of Posts dated 6.12.1993 had come into force. Being aggrieved by the aforesaid development, applicant submitted a representation to the Chief Postmaster General, Respondent No. 2 as also to Respondent No. 3 but without any result. It is further stated that Respondent No. 6 did not submit any list of landed property owned by him along with his application and as such, he should not have been selected. In the context of the above facts, applicant has come up with the prayers referred to earlier.

3. Respondent No. 6, Prakash Chandra Das, Res. No. 4 Assistant Superintendent of Post Offices and Respondent No. 5, Overseer Mail, who have been impleaded by name were issued with notices but these three Opposite Parties neither appeared nor filed counter.

4. Departmental Respondents in their counter have stated that the vacancy in the post of Extra Departmental Branch Post Master, Chandaka BO arose due to retirement on superannuation of the existing incumbent Shri Dibakar Dash, father of the present applicant. On requisition, the Employment Exchange, sent 23 candidates including the applicant who were intimated under Regd. Post by Res. No. 3 to submit their applications in proper form with necessary documentations. In response, eight candidates including the applicant submitted their applications and documents within time and seven letters were returned undelivered. On receipt of certain allegations from the sponsored candidates regarding non-delivery of letters sent by Regd. Post with AD, detailed enquiry was made. On enquiry it was revealed that the Regd. letters were returned back with an ulterior motive to deprive the sponsored candidates to apply for the post of EDBPM, Chandaka Branch Post Office.

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Basing on the enquiry report, a local notification was issued requiring intending candidates to apply for the post in pursuance of Director General of Posts letter dated 4.9.1982 at Annexure-R/3. Applicant challenged the issuing of notification by filing Original Application No. 573 of 1994 but the O.A. was dismissed in order dated 4.10.1994 at Annexure-R/4. In response to the local notification, five candidates submitted their applications and documents. After getting the particulars verified, all the 13 candidates i.e. eight candidates who had applied earlier including the applicant and five fresh candidates, were considered and Respondent No. 6 was found suitable as he has secured the highest percentage of marks in the HSC amongst all the 12 candidates and accordingly, he was selected for the post of EDBPM, Chandaka Branch Post Office. Departmental Respondents have stated that the applicant had submitted false income certificate. Departmental Respondents have also denied the allegations of the applicant on the ground that Respondent No. 4 had no authority to give appointment to the applicant to the post of EDBPM. Departmental Respondents have further stated that Respondent No. 6 had submitted the required income certificate and record of landed property alongwith the application received in due time and the allegations of the applicant that Respondent No. 6's application was incomplete is not correct. On the above grounds, the Departmental Respondents have opposed the prayers of applicant.

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5. Applicant has filed voluminous rejoinder in which he has reiterated the averments made by him in the Original Application. Other averments made in the rejoinder would be considered at the time of considering the submissions made by learned counsel for both sides.

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6. As regards the earlier Original Application No. 578/1994, applicant mentioned in his rejoinder that the OA No. 578/94 was rejected by the Tribunal holding that the application is premature. The Original Application was not dismissed on merits. On the above grounds, applicant has reiterated his prayers in his rejoinder.

7. We have heard Mr. A.K. Mohapatra, learned counsel for the applicant and Mr. A.K. Bose, learned senior Standing Counsel (Central) appearing for the Departmental Respondents and have also perused the records.

8. Learned counsel for the applicant has strenuously urged that the applicant was originally selected but only because of his refusal to pay the illegal bribe to Respondent No. 4, his selection was not finalised and a fresh notification was issued. In support of his contention, it has been submitted by learned counsel for the Applicant that on 15.4.1994, applicant had submitted a representation to Respondent No. 3 (Annexure-5) in which he has mentioned about the demand of Respondent No. 3 and his refusal to pay the bribe and in this application he has specifically mentioned that Respondent No. 3 has told him that he would arrange to appoint Respondent No. 6 to the post. It has been submitted by learned counsel for the applicant that Respondent No. 6 came to the picture only after he applied by 15.9.94 in response to the public notice issued on 25.8.1994 (Annexure-8). Thus, at the time when he submitted his application dt. 15.4.1994, at Annexure-5 complaining against Respondent No. 4 he had no means of knowing that public notification will be issued on 25.8.1994 and Respondent No. 6 will apply in response to that notification. But in this application the applicant has mentioned that Respondent

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No. 4 told him that he would arrange to appoint Respondent No. 6 to the post, if the applicant does not meet the demand of Respondent No. 4. This according to the learned counsel for the applicant goes to show that Respondent No. 4 actually made such a demand and did make a statement regarding appointment to be given to Respondent No. 6. As regards issuing of fresh notification on the ground that seven Regd. Letters were deliberately not delivered to the candidates and were returned unserved, it has been submitted by learned counsel for the applicant that these seven candidates in any case did not belong to the post village and moreover, even during the fresh selection these candidates were not sent intimation for making application. In view of this it has been urged that issuing of fresh notification on the plea that Regd. Letters to seven candidates were not deliberately delivered is merely an eye wash and the real purpose of issuing the fresh notification is for giving appointment to Respondent No. 6. Thirdly it has been submitted by learned counsel for the applicant that so called complaint petitions given by three of those seven candidates and father of fourth one were actually dictated and written at the instance of Respondent No. 3 and three of the persons submitted letters to the Respondent No. 3 withdrawing their complaints and specifically stating that Respondent No. 4 dictated the complaint petition and at his instance these persons signed the complaint petitions.

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9. We have considered the above submissions carefully. The fact of the matter is that seven Regd. letters to candidates sponsored by Employment Exchange were returned undelivered, the matter was enquired into by the Departmental Authorities and it was found that these letters were deliberately suppressed. Whether or not these seven candidates were eligible for being

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appointed is not material. Moreover, the ground on which applicant has stated that these seven candidates are not eligible is also not correct. Residency in the post village is not an essential qualification for the post of EDBPM. Earlier this requirement was there but that requirement has been struck down by the Courts and the Departmental instructions provide that selected candidate may belong to any village but he must be prepared to take up a house in the post village on his appointment and he should also be prepared to provide rent free accommodation in the village for holding the post office. In view of this on a finding of the Departmental Authorities that the Regd. Letters to seven candidates were returned undelivered a fact which is also admitted by the applicant, the Departmental Authorities were right in issuing fresh notification calling for applications for the post. In any case, the earlier OA of the applicant challenging the issue of fresh notification calling for applications has also been rejected by the Tribunal and issuing of notification can not be challenged by the applicant any further.

SDM : 10. In the fresh selection the case of the applicant alongwith seven others who applied in response to the earlier notification, intimation was sent to them and five candidates who applied in response to the later public notice were all considered and out of 13, Respondent No. 6 was selected as he secured the highest percentage of marks in the HSC exam. This is strictly in accordance with the Departmental instructions and therefore no fault can be found with the selection of Respondent No. 6 as he has secured highest percentage of marks. Respondents have denied the

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averments of the applicant that application of Respondent No.6 was incomplete. In view of this we hold that the prayer of the applicant to quash the appointment order issued to Respondent No.6 is without any merit and the same is rejected.

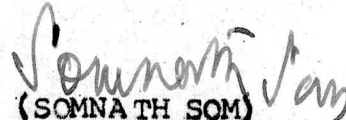
11. There is also no merit in his prayer for conducting fresh selection.

12. The point regarding allegation made against Respondent No.4 still remains. It is to be noted that the applicant has repeatedly made this allegation in his written representation to the higher Authorities. Respondents in their counter have not stated that the allegations has been enquired into. They have merely stated that as Respondent No.4 did not have the authority to appoint the applicant, the allegation is not believable. This, we are afraid, is not the correct approach. In his representation dated 15.4.1994 long before the public notification was issued and Respondent No.6 applied in response to that applicant has stated that Respondent No.4 has mentioned to him that he would arrange to appoint Respondent No.6. In view of this, while appointment of Respondent No.6 can not be challenged because he has secured highest percentage of marks amongst the candidates under consideration, we do feel that the allegations made by applicant against Respondent No.4 require a thorough probe. In view of this we direct Respondent No.2 to get a thorough probe conducted into the allegation within a time period to be fixed by him and to take such further action as he may be deemed proper.

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13. In the result, the Original Application is rejected with the observations and directions indicated above. No costs.


(J.S. DHALI WAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN, 2000

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