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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.458 OF 1995

Cuttack, this the 3rd day of April, 1998

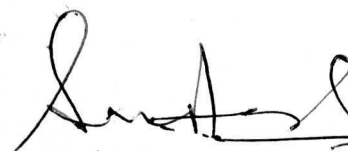
Mahendra Tanty Applicant


Vrs.

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 Tribunal or not? No .


(S.K. AGRAWAL) 3/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 3.4.98
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.458 OF 1995
Cuttack, this the 3rd day of April, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

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Mahendra Tanty
aged about 28 years
son of Jogeswar Tanty
at present working as Postal Assistant
Kotpad, under Koraput Postal Division,
District-Koraput Applicant

By the Advocate - Mr.D.P.Dhalsamant

Vrs.

1. Union of India,
represented by the Secretary,
Department of Posts,
Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar, Dist.Khurda.
3. Senior Superintendent of Post Offices,
Koraput Postal Division, Jeypore ... Respondents

By the Advocate - Mr.Ashok Misra
Sr.Panel Counsel.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 25.7.1995 (Annexure-2) in which services of the applicant were ordered to be terminated after giving one month's notice. By way of interim relief, it was prayed that the impugned order dated 25.7.1995 should be stayed. On the date of admission of the petition on 9.8.1995, operation of the order at Annexure-2 was stayed till

9

12.9.1995. On 12.9.1995 the stay was made absolute. The petitioner came up in M.A No.852/95 in which he submitted that notwithstanding the order dated 12.9.1995 making the stay absolute, the respondents in order dated 19.10.1995 (Annexure-3 to M.A.No.852/95) have terminated the services of the applicant. This order dated 19.-10.1995 was also stayed. The applicant had filed another M.A.No.402/96 in which he prayed for a direction to Senior Superintendent of Post Offices, Koraput (respondent no.3) to allow the applicant to join in his post. Learned lawyer for the petitioner was allowed to withdraw this MA No.402/96 in order dated 23.7.1996.

2. Facts of this case are that the applicant was appointed as Postal Assistant in order dated 22.9.1993 at Annexure-1. From 1993 he had worked satisfactorily, but he was served with a notice of termination in order dated 25.7.1995 in which it was mentioned that his services shall stand terminated after expiry of one month. The applicant's case is that this order of termination has been passed without any rhyme or reason and that is why he has come up with the prayer referred to earlier.

3. Respondents have filed a counter in which they have stated that Annexure-1 is not an appointment order. It is only an order requiring him to produce the necessary documents in original. After verification of his documents, the applicant was appointed as Postal

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Assistant, Jeypore H.O. in memo dated 10.1.1994, which is at Annexure-R/2 to the counter. The respondents' case is that the petitioner applied for the post of Postal Assistant and appeared at the test in the year 1993. The applicant belongs to Scheduled Caste as mentioned in his application as well as the caste certificate granted by the Tahasildar, Sadar, Sundargarh. But in the check-list of all the candidates who applied for the post of Postal Assistants, the petitioner was wrongly noted as belonging to Scheduled Tribe. The office assistant, one D.P. Dash committed this mistake and noted the community of the applicant as Scheduled Tribe instead of Scheduled Caste on the top of the check-slip. The Assistant Superintendent of Post Offices, Headquarters, also failed to detect this error. As a result, after the recruitment test, the applicant was shown as a Scheduled Tribe candidate and was selected even though as a Scheduled Caste candidate the marks obtained by him would not have entitled him to be selected. Due to clerical mistake, his name found place in the select list and accordingly he was appointed as a Postal Assistant. Because of this mistake, a Scheduled Tribe candidate was deprived of employment. After the error was detected, the applicant was given notice of one month in the impugned order dated 25.7.1995 at Annexure-2 of the O.A. This order was issued under sub-rule (1) of Rule 5 of Central

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Civil Services (Temporary Service) Rules, 1965. This was done to enable the next Scheduled Tribe candidate to occupy the post meant for the Scheduled Tribes. As the applicant was not entitled to be selected and as he got selected because of a clerical error, the respondents have stated that the order passed by them not is illegal. On the above grounds, the respondents have opposed the prayer of the applicant.

4. Before proceeding further, it would be better to extract the relevant portions of the minutes of the Selection Committee, which are at Annexure-R/8 of the counter. The extract of the select lists for Scheduled Caste and Scheduled Tribe communities shown separately is given below:

<u>"S.C.COMMUNITY</u>				% of marks
1.	1/3115	Jagabandhu Dalai	SC	70.30
2.	2/2326	Kartik Chandra Das	SC	67.77
3.	3/448	Anjan Kumar Mallik	SC	67.62
4.	4/3353	Rashmi Prabha Sethi	SC	67.11
5.	5/1226	Suchitra Kaviraj	SC	66.66
6.	6/4895	Bidyadhar Jena	SC	66.33
<u>S.T.COMMUNITY</u>				
1.	1/2579	Lalita Kumar Konhar	ST	69.11
2.	2/4215	Jayamangal Roy	ST	62.10
3.	3/5227	Basanta Kumar Nayak	ST	61.33
4.	4/3214	Phul Kumar Ekka	ST	61.00
5.	5/2493	Nilamani Lakra	ST	60.00
6.	6/2103	Paresh Chandra		
		Hansada	ST	58.77
7.	7/2829	Umesh Chandra Nayak	ST	58.66
8.	8/3082	Pratap Chandra		
		Pradhan	ST	58.33
9.	9/2094	Pancharatna Nayak	ST	57.88
10.	10/2109	Mahendra Tanti	ST	57.55
11.	11/486	Bhimasen Senapati	ST	57.44 "

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The Selection Committee had also drawn up a waiting list at Part-B in the minutes. The relevant portion of the waiting list, so far as it relates to Scheduled Caste and Scheduled Tribe candidates is also quoted below:

"S.C.COMMUNITY

1.	1/385	Jiban Kumar Behera	SC	66.00
2.	2/2835	Krupasindhu Harijan	SC	64.88
3.	3/3086	Binay Kumar Majhi	SC	64.00
4.	4/2304	Budha Deb Jena	SC	63.90
5.	5/3792	Bhagaban Naik	SC	63.33
6.	6/3487	Srikanta Dash	SC	63.12
7.	7/816	Jagabandhu Jena	SC	62.25
8.	8/2099	Sukanta Digal	SC	62.22
9.	9/835	Duryodhan Sethi	SC	62.11
10.	10/2236	Madhusudan Sethi	SC	62.11
11.	11/3428	Jagat Ram Tajen	SC	62.00
12.	12/2120	Rabindra Nath Sarkar	SC	61.90
13.	13/1069	Bhagabati Behera	SC	61.88
14.	14/5367	Bijaya Kumar Sethi	SC	61.66
15.	15/380	Katikeswar Raul	SC	61.37
16.	16/1831	Iswar Chandra Mallik	SC	61.37
17.	17/2375	Radha Gobinda Mallik	SC	61.22
18.	18/509	Prakash Chandra Mondal	SC	60.77
19.	19/5460	Tripurari Gorada	SC	60.66
20.	20/381	Ganta Bindo Chandra	SC	60.44
21.	21/2056	Birendra Kumar Barik	SC	60.33
22.	22/4872	Kartik Chandra Mallik	SC	60.33
23.	23/771	Ashok Kumar Adhikari	SC	60.33
24.	24/2241	Kamalakanta Mallik	SC	60.22

ST COMMUNITY

1.	1/3903	Mangal Murumu	ST	57.00
2.	2/5115	Prabhat Kumar Nath	ST	57.00
3.	3/2653	Miss.Meenati Singh	ST	57.00
4.	4/5046	Paltan Kisku	ST	57.00
5.	5/3643	Khetramohan Hansada	ST	56.77
6.	6/2987	Kailash Chandra Nayak	ST	56.70
7.	7/4402	Samsuhear Hembram	ST	56.44
8.	8/1779	Miss.Sara Barla	ST	56.37
9.	9/1964	Bimacharan Tudu	ST	56.33
10.	10/463	Ananda Prasad Tagga	ST	56.22
11.	11/1980	Nanda Kishore Nayak	ST	56.22
12.	12/2181	Birsingh Kerai	ST	55.88
13.	13/4265	Ananta Prasad Mallik	ST	55.88
14.	14/4228	Bedabara Pradhan	ST	55.66
15.	15/5125	Jitraya Majhi	ST	55.55
16.	16/4546	Rabi Narayan Nayak	ST	55.33

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17.	17/2299	Mohan Sundar Murumu	ST	55.25
18.	18/3036	Loka Nath Singh	ST	54.55
19.	19/2786	Lusa Kisan	ST	54.50
20.	20/2211	Saroj Kumar Marandi	ST	54.30
21.	21/08	Ghatam Soren	ST	54.11
22.	22/2440	Madhumadhavi Pradhan	ST	54.00
23.	23/3018	Manshingh Majhi	ST	53.88
24.	24/2500	Parashnath Singh	ST	53.80
25.	25/2346	Jasdeb Nayak	ST	53.66
26.	26/4541	Narayan Tudu	ST	53.66
27.	27/2210	Pradeep Kumar Nayak	ST	53.66
28.	28/263	Rajendra Kumar Nayak	ST	53.44
29.	29/1749	Panchu Ram Soren	ST	53.33
30.	30/3188	Rajendra Nayak	ST	53.22
31.	31/4723	Hemendranath Hansda	ST	53.00
32.	32/1001	Gobind Chandra Murumu	ST	53.00
33.	33/4513	Surabhi Pradhan	ST	53.00 "

5. We have heard Shri D.P.Dhalsamant, the learned lawyer for the petitioner and Shri Ashok Misra, the learned Senior Panel Counsel appearing on behalf of the respondents, and have also perused the records.

6. It has been submitted by the learned lawyer for the applicant that as the petitioner has been given appointment as Postal Assistant under Scheduled Tribe quota, even though he belongs to Scheduled Caste, not because of any fault on his part or any misrepresentation, he must be deemed to have been duly selected and his services cannot be terminated. The respondents have admitted in their counter, as has been noted by us earlier, that the petitioner in his application form had clearly mentioned that he belongs to Scheduled Caste and had also given a Scheduled Caste certificate. By mistake of the dealing clerk, he was noted as Scheduled Tribe candidate and this error was also not detected by the checking officer. The point is whether because of this fault, the petitioner can be said to have acquired any right to the post of Postal Assistant which is reserved for S.T.candidate. In support of his contention, the learned

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lawyer for the petitioner has relied on a large number of decisions. Some of those decisions, which are relevant to the point at issue, are discussed below.

In the case of Kuldip Kumar Bamania v. Union of India and others, (1991) 16 ATC 360, the petitioner was wrongly included in the panel by the Railway Recruitment Board in place of a candidate having higher merit. He was given the job. He was trained as an apprentice for two years and thereafter was in regular service for another two years when his service was sought to be terminated. Apprehending termination, he had approached the Tribunal. In that case, the petitioner belonged to Scheduled Caste and the Tribunal held that if a person with higher merit has not been included in the panel, the respondents should provide for him by making suitable adjustment in the existing vacancies and such person cannot be found a berth by dispensing with a service of a selected person who has been in regular service for over two years after having been trained for two years as an apprentice. The case of the present petitioner is, however, different. In the case of Kuldip Kumar Bamania (supra), it was between two S.C. candidates where by mistake of the Railway Recruitment Board, the person with higher merit was not put in the panel. In the instant case, the petitioner is a Scheduled Caste candidate and he has occupied a post meant for an S.T. candidate thereby depriving a Scheduled Tribe candidate to his post. Therefore, the decision in the case of Kuldip Kumar Bamania (supra) is not attracted.

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In the case of Azad Singh and another v. Union of India and another, decided by the Division Bench of the Tribunal at Delhi and reported in (1992)20 ATC 674, it was held that even though initial appointment was irregular, equity applies to such appointments also. In that case, persons were appointed as casual labourers in the Ministry of Defence. They were subsequently disengaged on the ground that they were over-aged at the time of their initial engagement. In that case, relying upon the decision of the Hon'ble Supreme Court in the case of H.C.Puttaswamy v. Chief Justice of Karnataka High Court, 1991 Supp.(2) SCC 421, it was held that the order for termination of service of the petitioners on the ground their being over-aged at the time of initial recruitment was wrong and was accordingly set aside. This case has no relevance to the facts of the present case. The point decided by the Hon'ble Supreme Court in H.C.Puttaswamy's case(supra), which was followed by the Tribunal in Azad Singh and another's case (supra), is that even in such cases of irregular appointments, equity should apply. This presupposes that before termination, notice has to be issued. In the instant case, notice has been issued to the applicant in the order at Annexure-2 and subsequently, in the order daated 19.10.1995, his services have been terminated.

The facts of the case of Dr.(Mrs.) Anita Ganju and others v. Union of India and others, (1988) 7 ATC 234 are widely different from the facts of the present case and it is not necessary to refer in detail to this decision.

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The decision in the case of Prahallad Charan Swain v. Union of India and others, decided by the Division Bench of the Tribunal at Cuttack, cited by the learned lawyer for the petitioner does not go to support his case. That case related to an E.D. Employee and not a regular Government servant of the Postal Department. In that case, it was held by the Tribunal that improper selection is an administrative ground to warrant action under Rule 6 of P&t ED Agents (Conduct and Service) Rules, 1964.

The case of Swami Nath Sharma v. Union of India and others, (1987) 5 ATC 663, relied upon by the learned lawyer for the petitioner deals with the effect of failure to notify vacancies to the Employment Exchange. Obviously, nothing further need be said about this case.

7. From the pleadings of the parties, it is seen that the petitioner secured 57.55% of marks and was the 10th person in the list of candidates of Scheduled Tribe community and the last person in the select list from the Scheduled Tribe community, one Bhimasen Senapati got 57.44% of marks. In the select list for S.C. candidates, the last person is Bidyadhar Jena who got 66.33% of marks. Therefore, on the basis of his marks, the petitioner could not have been put in the select list for Scheduled Caste community. Moreover, in the waiting list drawn up for Scheduled Caste community there are as many as 24 names of persons who got marks varying from 66% to 60.22% which is the mark of Kamalakanta Malik, the last person in the

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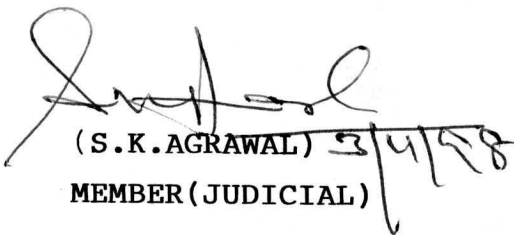
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waiting list for Scheduled Caste community. In the waiting list for S.T.community, there are thirty-three names of persons getting marks ranging from 57% to 53%. From this it is clear that by the mistake of the Department for which the applicant is no way responsible, the applicant has been put in the select list as Scheduled Tribe candidate with 57.55% of marks whereas these marks would not have entitled him to be included in the select list or in the waiting list for the S.C.community. By occupying a post meant for S.T.community, the applicant has deprived a Scheduled Tribe candidate of his rightful place. Therefore, it cannot be held that because of the fault of the Department, he has acquired a right to hold a post reserved for S.T. This contention of the learned lawyer for the petitioner is, therefore, rejected.

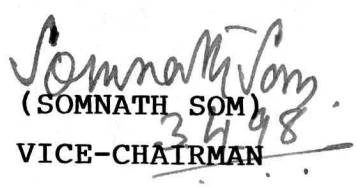
8. The second ground urged by the learned lawyer for the petitioner is that in accordance with Ministry of Home Affairs' instructions dated 24.9.1962 and 25.3.1970, a Scheduled Caste candidate can occupy a post meant for Scheduled Tribe candidate and vice-versa and therefore, he has urged that the petitioner should be allowed to continue in the post of Postal Assistant meant for S.T. by quashing the impugned order. The question of a Scheduled Caste person occupying a post meant for S.T. would arise according to these circulars only when no Scheduled Tribe candidate is available to fill up that post. In the instant case, there are a large number of Scheduled Tribe candidates in the waiting list and therefore, these circulars can have no application to the case of the petitioner. It has been urged by the learned

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lawyer for the petitioner that in a similar case, OA No. 306 of 1993, disposed of by the Division Bench on 14.7.1993, the Tribunal took the view, going by the circular dated 24.9.1962, that a Scheduled Caste person can be appointed against a post reserved for S.T. candidate and vice-versa. But, as we have noted already, that situation will arise only when an S.T. candidate is not available for appointment to the post reserved for Scheduled Tribe person. In this case, there is a long list of S.T. candidates and therefore, the decision of the Tribunal in O.A.No.306 of 1993 can have no application to the facts of this case.

9. In the result, therefore, we hold that the petitioner has failed to make out a case for the relief sought in his Application which is rejected but, under the circumstances, without any order as to costs. The stay order granted during the pendency of this Application stands vacated.


(S.K.AGRAWAL) 3/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 3/4/98
VICE-CHAIRMAN

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