

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.78 OF 1995
Cuttack, this the 8th day of March, 1996

Shri Abhimanyu Lenka ... Applicant

Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

1) Whether it be referred to the Reporters or not? *NO*

2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO*

.....
(N.SAHU)
MEMBER(ADMINISTRATIVE)

8/3/96.

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ORIGINAL APPLICATION NO. 78 OF 1995
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CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

Shri Abhimanyu Lenka,
aged 46 years,
son of late Raghunath Lenka,
Vill-Kuanrpur,
P.O.Bhera, Via-Mouda,
Dist.Cuttack,
at present working as
E.D.B.P.M., Bhera B.O.

.... **Applicant**

By the Advocates

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M/s S.Kr.Mohanty,
S.P.Mohanty &
P.K.Lenka.

-versus-

1. Union of India, represented by
its Secretary, Department of Posts,
Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Cuttack
South Division, Cuttack-1.
3. Chief Post Master General, Orissa Circle,
Bhubaneswar **Respondents.**

By the Advocate

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Mr.Ashok Misra,
Sr.Central Govt.
Standing Counsel.

O R D E R

N.SAHU, MEMBER(ADMINISTRATIVE) This application under Section 19 of the
Administrative Tribunals Act is directed against the order
dated 31.1.1995 (Annexure-1) by which the provisional appointment
given to the applicant on 24.8.1994 was terminated on the
ground that the applicant did not possess the requisite
qualification for the post of E.D.B.P.M. It is mentioned in

that letter that the applicant's case for compassionate appointment is under consideration by the Circle Relaxation Committee. When the application was heard for admission on 7.2.1995, this Tribunal stayed the removal order and the stay continues till date.

2. The applicant's father, late Raghunath Lenka, B.P.M., Bhera B.O., was on leave from 16.3.1994 to 31.3.1994. He nominated his son, Shri Abhimanyu Lenka, the present applicant, as his substitute as per E.D.Rules. While on leave, Shri Raghunath Lenka died on 19.3.1994. On the persistent demand of the local people and others for his retention, the applicant could not be relieved of his substitute duties. He continued in the same post. Thus the Sub-Divisional Inspector (P) deputed to demit him from office, was compelled to continue the applicant. He was also asked to apply for compassionate appointment and he was provisionally allowed to continue as E.D.B.P.M. till the orders of the Circle Relaxation Committee. In the meanwhile, when the papers reached respondent No.2, the Superintendent of Post Offices, he found that the applicant did not have the minimum educational qualification of Matriculation to be eligible for the post of E.D.B.P.M. Accordingly, respondent No.3, the C.P.M.G. directed the Superintendent of Post Offices, Cuttack South Division to terminate the arrangement of the applicant forthwith and the impugned letter dated 31.1.1995 was issued and subsequently stayed by this Tribunal.

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3. It is contended by Shri S.Kr.Mohanty, learned counsel for the applicant that initially the qualification for the post of E.D.B.P.M. was only 10th Class whereas the applicant is a failed Matriculate. This requisite qualification of Matriculation is relaxable for a period of two years at the discretion of the authority as per Rule 4(e) relating to compassionate appointment at Chapter 55, page 254 of Swamy's Complete Manual on Establishment and Administration for Central Government Offices. He supplements this by citing the Rules of compassionate appointment of dependants in case of death of E.D. Agents, at page 116 of Swamy's Compilation of Service Rules for E.D. Staff. It is also averred that the applicant had prepared himself to qualify in the Matric examination within the period of two years. It is urged that the applicant's appointment was on compassionate grounds and his termination deprived him of his source of livelihood, particularly after he served for one year. On behalf of the Respondents, learned Senior Standing Counsel, Shri Ashok Misra, submitted that the applicant initially worked as a substitute in place of his father even before his father's death. But after that, it is also admitted, he continued on compassionate grounds by the S.D.I.(P). Under the extant Rules the qualification of the E.D.B.P.M. has been prescribed as Matriculation or equivalent examination since 1.4.1993. Admittedly the applicant did not possess this qualification. Shri Ashok Misra stated that wherever the death of the employee occurred on or after 1.4.1993 the condition of Matriculation qualification for E.D.B.P.M.

and E.D.S.P.M. is insisted upon and as the applicant's father died after this date, the Circle Relaxation Committee has no powers to relax this condition. It is next stated by Shri Misra that as another son of late Raghunath Lenka, brother of the applicant, is employed, the rejection of the applicant's case is also on the ground that the **indigence** test has not been fulfilled. In an additional counter filed, Shri Misra urged that the lack of minimum educational qualification of the applicant was the reason for rejection of his claim for compassionate appointment. Shri Misra finally stated that the present application is directed against the removal order dated 31.1.1995 and the applicant cannot convert it into a plea for compassionate appointment.

4. I have carefully considered the rival submissions. It is not possible to agree with Sri Misra's contention that this application does not cover a plea for compassionate appointment. In the counter-affidavit it is clearly mentioned at paragraph 4 that the S.D.I.(P) on the demand of the local people continued the services of the applicant as a substitute to that of E.D.B.P.M. on compassionate grounds and allowed him to function till the impugned letter of termination was issued. Thus since the applicant was continued on compassionate grounds, it is appropriate to examine the merits of his candidacy on that count.

5. It is clear that for every appointment there are some prescribed conditions and criteria. The

provisions of normal recruitment Rules have been examined at length and relaxed wherever necessary by the Postal Department, but it is made clear that the condition for Matriculation qualification for E.D.B.P.M/E.D.S.P.M. should be insisted upon in cases where the death of the incumbent has taken place on or after 1.4.1993. In Note (3) of the copy of the Directorate's letter No.17-85/93-ED & Trg. dated 2.2.1994 it is stated that the local authorities will encourage the dependants appointed as E.D.As. in relaxation of the minimum educational qualifications to attain the prescribed minimum educational qualifications within the stipulated period as per letter dated 12.3.1993. It is also mentioned that the dependants of the deceased E.D.As. who have been already appointed, albeit on temporary basis, pending completion of the requisite formalities and formal approval of the Circle Relaxation Committees, may be allowed to continue to hold the posts of E.D.As. if the competent authority formally approves their appointments on compassionate grounds, provided the appointments are prior to 1.4.1993. When there is already an earning member in the family and the request is for appointment to the second dependant of the deceased E.D.A. on compassionate grounds, the instructions are that the same may be examined by the Circle Relaxation Committee on merits of each case.

6. The applicant initially joined as substitute on 16.3.1994 and continued after his father's

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death on 19.3.1994 with the knowledge and approval of the postal authorities, as E.D.B.P.M. on compassionate grounds till the matter is reviewed by the Circle Relaxation Committee. The Circle Relaxation Committee held him ineligible on the ground of lack of qualification and also on the ground that his brother is an earning member. I have no doubt in my mind that a qualification is essential pre-requisite, there is no power of relaxation, and for an E.D.B.P.M. Matriculation is an essential qualification. After going through all the averments, I direct as under. In paragraph 5 of the application filed on 6.2.1995 the applicant states that he has taken all steps to privately qualify himself as a Matriculate within the prescribed period of two years commencing from 1994. It is not clear the as to whether he qualified himself. I would fix/date as 1.4.1996 on which date the applicant shall show proof of his having qualified in Matriculation examination or its equivalent and address an application to respondent No.2, the Superintendent of Post Offices, Cuttack South Division, with a copy to respondent No.3, the C.P.M.G., Orissa Circle, Bhubaneswar. If he has qualified himself as a Matriculate by that date, the Circle Relaxation Committee shall reconsider him for appointment to the post of E.D.B.P.M., Bhera B.O., Cuttack District. If he has not qualified himself, he shall stand removed from the post of E.D.B.P.M., Bhera B.O. with effect from 1.4.1996. I further direct that if he has not qualified himself for the post of E.D.B.P.M., respondent No.3 and the Circle Relaxation Committee, which he heads, shall consider him for any

other suitable E.D. post for which he is qualified by prescribed relevant standards of education as well as experience. This decision shall be made after due consideration by the Circle Relaxation Committee and respondent No.3 shall communicate the decision to the applicant by 15.6.1996.

The application is disposed of in the above manner without any order as to costs.

Narashmha N. 8/3/96,
(N.SAHU)
MEMBER (ADMINISTRATIVE)

Nayak, P.S.