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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 256 OF 1996  
Cuttack, this the 28th day of July, 2000

Subash Chandra Das

....

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.*

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(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som.  
(SOMNATH SOM)  
VICE-CHAIRMAN  
28.7.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 256 OF 1996  
Cuttack, this the 28th day of July, 2000

**CORAM:**

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

Advocate for applicant - Mr. Pradipta Mohanty

Vrs.

1. Union of India, represented by the Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices, Cuttack South Division, Cuttack-753 001.
3. Employment Officer, Jajpur Employment Exchange, At/PO/Dist. Jajpur.

4. Pabitra Kumar Mishra,  
son of Gokuli Mishra,  
At-Sasana Purushottampur,  
PO-Barchana, at present also  
working as EDSPM, Barchana SO  
At/PO-Barchana  
Dist.Jajpur

## Respondents

Advocates for respondents - Mr.Ashok Mohanty  
Sr.CGSC for R1 and 2;  
and  
Mr.K.C.Mohanty,GA  
for R-3  
&M/s S.Acharya  
SC Dutta & N.Lenka  
for R-4.

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

After filing of the O.A., the petitioner had filed M.A.No.418 of 1996 for amending the O.A. The amendment petition was allowed in order dated 2.7.1996. Consolidated petition was also filed by the applicant with copy to the other side. In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the departmental authorities to cancel the appointment of Pabitra Kumar Mishra (respondent no.4) as E.D.S.P.M., Barchana E.D.S.O. and for a direction to the departmental respondents to give appointment to the applicant in that post.

2. Facts of this case, according to the petitioner, are that he is a permanent resident of village Deulakur, which is within the area of operation of Barchana E.D.S.O and he was also prepared to provide space for holding the E.D.S.O. He has all the necessary qualification for appointment to the post of E.D.S.P.M. The applicant has further stated that when the post of E.D.D.A. in E.D.S.O., Barchana, fell vacant in 1992 his name was forwarded along with the name of one A.K.Mishra by the Employment Exchange, Jajpur (respondent no.3). Both the applicant and A.K.Misra were considered for appointment to the post of E.D.D.A. But ultimately, Shri Mishra was selected even though he was less eligible than the applicant. The applicant challenged this selection in O.A.No.22/93 which has also been heard along with this O.A. though separately and is being disposed of by a separate order. In O.A.No.22 of 1993 the Department filed a counter taking the stand that though the applicant was more qualified than A.K.Misra, the applicant did not enclose the

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copy of the marksheets of matriculation examination and for this he was not selected. The applicant states that this plea is totally false and is an afterthought. During the pendency of O.A.No.22/93 the post of E.D.S.P.M., Barchana S.O. fell vacant after retirement of the existing incumbent. On requisition made by respondent no.2 to respondent no.3, the latter sponsored the names of the candidates. The applicant states that even though according to Director General, P & T's letter dated 4.9.1982 the Employment Exchange was required to sponsor the names of candidates who are permanent residents of villages within the area of operation of Post Office, the name of the applicant was not sponsored but the names of other candidates who belong to outside the delivery area of the Post Office were sponsored. The applicant approached respondent no.3 personally, but his name was not sponsored. The applicant further states that respondent no.3 took the stand that as his case is subjudice in OA No.22/93, his name cannot be sponsored till the final disposal of that case. It is further stated that even though according to Director General, P & T's circular dated 19.1.1968 whenever a post of E.D.Agent is to be filled up, due publicity should be given by displaying a notice at the concerned Post Office, Police Station, Panchayat Office and other public place considered suitable. But in this case no such publicity was given. The applicant came to know about the vacancy and applied in a prescribed form along with all necessary documents to the prescribed authority on 27.1.1996. The applicant form is at Anexure-7 of the O.A. The applicant further states that he has come to know that his application was not processed only on the ground that his name has not been sponsored by the Employment Exchange because he has challenged the appointment of one Aswini Kumar Misra to the post of E.D.D.A. in O.A.No.22/93 which is pending for disposal. The departmental authorities

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ultimately selected respondent no.4 and the candidature of the applicant was ignored. Respondent no.4 had secured less marks than the applicant in the matriculation examination. He is also not a resident of the delivery jurisdiction of the Post Office and does not have adequate means of livelihood. In view of this, the applicant has come up with the prayer referred to earlier.

3. The departmental respondents in their counter have submitted that the post of E.D.S.P.M., Barchana E.D.S.O. was going to be vacant with effect from 2.1.1996. For filling up of the post, the Employment Exchange Officer, Jajpur, was addressed on 20.10.1995 to sponsor candidates by 8.12.1995. The Employment Exchange Officer sponsored forty candidates in his letter dated 5.12.1995 which was received on 13.12.1995. All the forty candidates were asked to apply in the prescribed form with required documents so as to reach respondent no.2 by 5.2.1996. Accordingly, applications were received and respondent no.4 was selected and appointed to the post. The applicant's name was not sponsored by the Employment Exchange, but the applicant submitted his application on 27.1.1996 directly along with the required documents. The departmental respondents have indicated that as the applicant's name was not sponsored by the Employment Exchange, his candidature was not taken into consideration. It has also been submitted that OA No.22 of 1991 filed by the applicant with regard to selection for the post of E.D.D.A., Barchana E.D.S.O. has nothing to do with the post of E.D.S.P.M. and respondent no.2 had not issued any instruction to Employment Exchange not to sponsor the name of the applicant because he has filed O.A.No.22/93. It is further stated that according to the circular of Director General, P & T, for filling up of the E.D.Posts names are to be

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called from the Employment Exchange. In case the Employment Exchange does not sponsor the names of the candidates within the time or fails to sponsor candidates three times the number of vacant post, then only the departmental authorities are required to issue public notice inviting applications from the open market. In this case, the Employment Exchange sponsored forty candidates and therefore, it was not necessary for the Department to invite applications from the general public. The departmental respondents have stated that the selection process has been done strictly following the departmental instructions and as such they have opposed the prayer of the applicant.

4. Employment Exchange Officer (respondent no.3) has also filed a counter in which it has been stated that after getting the requisition from respondent no.2, respondent no.3 sponsored forty candidates in his letter dated 5.12.1995. This letter is at Annexure-R-3/2. The Employment Exchange Officer (respondent no.3) has further submitted that subsequent to 5.12.1995 the applicant got his name registered as a Graduate on 8.12.1995. Respondent no.3 has denied that he was approached by the applicant to forward his name. On the above grounds, respondent no.3 has opposed the prayer of the applicant.

5. Respondent no.4, who was added as a respondent after the O.A. was amended, has also filed a counter in which he has taken the same stand as the departmental authorities. He has stated that according to the residential certificate issued by Tahasildar, Darpan, respondent no.4 is a resident of Sasan Purusottampur which is within the delivery jurisdiction of Barchana S.O. Respondent no.4 has taken the stand that he has been validly selected and therefore, he has opposed the prayer of the applicant.

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6. We have heard the learned counsel of both sides and have also perused the records. The learned counsel for the petitioner has filed a xerox copy of the order dated 12.8.1996 passed by the Tribunal in OA No.185 of 1994 which has also been taken note of.

7. It has been submitted by the learned counsel for the petitioner that the name of the applicant was not forwarded by the Employment Exchange because he had filed OA No.22 of 1993 with regard to selection for the post of EDDA. It is also submitted that respondent no.2 had instructed respondent no.3 not to sponsor the name of the applicant because of the pendency of OA No.22/93. The departmental respondents have denied that any instruction was issued to the Employment Exchange Officer not to sponsor the name of the applicant. The Employment Exchange Officer in his counter has pointed out that in response to the requisition of respondent no.2 he had forwarded 40 names in his letter dated 5.12.1995 and the applicant registered his name as a Graduate only after that on 8.12.1995. At the time the names were forwarded by respondent no.3 the applicant's name was actually registered in the Employment Exchange though not as a graduate. As a matter of fact, the applicant's name was forwarded by the Employment Exchange Officer in 1992 for the post of EDDA along with Aswini Kumar Misra, the candidate selected as EDDA and another person. The selection file in that case has been produced before us in OA No.22/93, and from that selection file we find the letter dated 8.6.2992 of the Employment Exchange Officer, Jajpur, sponsoring three names including the name of the applicant for the post of EDDA. In this letter the applicant's registration number has been mentioned as  
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992/92. The Employment Exchange Officer has not mentioned in his counter that the applicant's registration made in 1992 had lapsed or it was not renewed. Therefore, the conclusion is inescapable that the applicant's name was registered in the Employment Exchange at a time when names of forty candidates were sponsored for the post of E.D.S.P.M. The registration made by the applicant on 8.12.1995 in the Employment Exchange is a registration as a Graduate, as has been mentioned by respondent no.3 in his counter and this is in no way relevant for the present purpose. But the applicant cannot claim that just because his name has been registered in the Employment Exchange, his name must have been forwarded. As earlier noted, respondent no.3 forwarded forty names. This letter is at Annexure-R-3/2. The names of 40 candidates along with their registration numbers have been mentioned in the enclosure to this Annexure-R-3/2. From this we find that all the names forwarded are names registered in 1985 and 1986. There is one name registered in 1990 and another in 1991. But strangely enough the name of Pabitra Kumar Mishra (respondent no.4) is not in the list. In other words, the name of Pabitra Kumar Mishra (respondent no.4), the selected candidate does not appear to have been sponsored by the Employment Exchange. Respondent no.4 in his counter has stated that he was asked in letter dated 3.1.1996 at Annexure-R/4 to apply in the prescribed application form with necessary documentation by 5.2.1996 and in this letter it has been mentioned that his name has been forwarded by the Employment Exchange. The departmental authorities in paragraph 4 of their counter have stated that forty names were received from the Employment Exchange and all the forty candidates were asked to apply in the prescribed form with necessary documentation. Accordingly, applications were

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received and one Pabitra Kumar Mishra (respondent no.4) was selected and appointed. As we have earlier noted, from enclosure to Annexure-R-3/2 it is clear that the name of Pabitra Kumar Mishra (respondent no.4) was not amongst the forty candidates sponsored by the Employment Exchange. It is, therefore, clear that the departmental authorities have considered respondent no.4 whose name was not sponsored by the Employment Exchange, but have not considered the candidature of the applicant even though he applied before 5.2.1996, on the ground that his name was not sponsored by the Employment Exchange. This obviously is discriminatory treatment which cannot be countenanced. In view of this, the selection and appointment of respondent no.4 to the post of E.D.S.P.M., Barchana, is quashed and the departmental authorities are directed to consider the candidature of the candidates sponsored by the Employment Exchange as also the candidature of the applicant and select the most suitable person strictly in accordance with rules. As regards respondent no.4, the departmental authrities should find out how his name has crept in when his name was not forwarded by the Employment Exchange and when no public notice was also issued inviting applications from the general public. In case respondent no.4 had also made direct application within the time and not in response to Annexure-A/4 which has proceeded on the wrong assumption that the name of respondent no.4 has been sponsored by the Employment Exchange, then the candidature of respondent no.4 should also be considered along with the candidates sponsored by the Employment Exchange and the applicant. This process should be completed within 90(ninety) days from the date of

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receipt of copy of this order.

8. In the result, therefore, the Original Application is allowed in terms of the observation and direction given in paragraph 7 of this order but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)  
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VICE-CHAIRMAN