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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 461 OF 1996
Cuttack, this the 8th day of September, 1999

Sri Sushanta Kumar 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
8.9.99

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 461 OF 1996
Cuttack, this the 8th day of September, 1999

CORAM:

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

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Sri Sushanta Kumar Das, aged 24 years,
son of Shrinibas Das,
Vill/Post-Barha Damodarpur,
District-Kendrapara

Applicant

Advocates for applicant - Mr.P.K.Padhi

Vrs.

1. Union of India, represented by its Chief Post Master General (Orissa), At/PO-Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices, Cuttack North Division, At-P.K.Parija Marg (Cantonment Road), P.O-Cuttack G.P.O, district-Cuttack-753 001.
3. Sri Bijoy Kumar Das, aged 24 years, son of Gayadhar Das, Vill/PO-Barha Damodarpur,
District-Kendrapara Respondents

Advocates for respondents-Mr.U.B.Mohapatra
ACGSC for R 1 & 2
Mr.B.B.Patnaik
for R-3.

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 selection of respondent no.3 as EDBPM, Barha Damodarpur and for a direction to respondent no.2 to give appointment to the applicant as EDBPM, Barha Damodarpur.

2. The departmental respondents and private respondent no.3 have filed counters opposing the prayer

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of the applicant. We have heard Shri P.K.Padhi, the learned counsel for the petitioner, Shri U.B.Mohapatra, the learned Additional Standing Counsel for the departmental respondents, and Shri B.B.Patnaik, the learned counsel appearing for respondent no.3, and have also perused therecords. The applicant has filed a rejoinder to the counter filed by the departmental respondents and we have taken note of the same.

3. For the purpose of considering this petition it is not necessary to go into too many facts of the case. The admitted position is that for the post of EDBPM, Barha Damodarpur, candidatures of the applicant, respondent no.3 and another person were considered. It is also admitted that the applicant got 62.85% of marks in the HSC Examination whereas respondent no.3, the selected candidate got 52.71% of marks, i.e., less than the applicant. The departmental respondents in their counter have stated that even though the application of the petitioner was received before the last date of receipt of applications, along with the application the attested xerox copy of the income certificate was not enclosed. The departmental respondents have stated that that is why the applicant's case was kept out of consideration as he had not submitted all the documents he was required to submit and between the other two candidates, respondent no.3, who got the highest percentage of marks, was selected and appointed.

4. Thus the sole point of controversy in this case is whether the petitioner along with his application enclosed a copy of the attested xerox copy of the income certificate. For ascertaining this point we called for the selection file which was produced by the learned Additional Standing Counsel, Shri U.B.Mohapatra

and verified the same. The application submitted by the petitioner is at page 145. In Column 4 of this application the petitioner has listed out six documents which he has purportedly enclosed to his application. Against serial no.3 he has mentioned to have enclosed "attested xerox copy of income certificate". This application has been sent by the petitioner on 8.3.1995. The applicant has made an averment that this application was received in the office of respondent no.2 on 13.3.1995. At the bottom of this application some official has made the following endorsement:

"Income certificate though entered at sl.3 of the applicant has not received".
It has been submitted by the learned counsel for the petitioner that the petitioner had actually enclosed the attested xerox copy of the income certificate but this has been deliberately misplaced after receipt of the application of the petitioner in the office of respondent no.2 only for the purpose of disqualifying him. The applicant has stated that he had carefully checked up his application and all the enclosures and had gone to the office of respondent no.2 on 10.3.1995 to hand over the application along with the documents personally. But the concerned person there refused to accept the application and wanted it to be sent through Registered Post. Accordingly, the applicant went to G.P.O. on 10.3.1995, i.e., on the same day and sent his application with all the accompanying documents through Registered Post under R.L.No.674, dated 10.3.1995 which was received in the office of respondent no.2 on 13.3.1995. The applicant has also stated that before sending the application through registered post he had verified all the enclosures including the income certificate. The applicant has

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further stated that even though he was asked to send his application through Registered Post and he did that, the application of respondent no.3 has been received by hand in the office of respondent no.2. After going through the selection file we find that in the concerned file only the application has been kept and the enclosures have been separated from the application and kept at different places in the same file. Normally an application along with its enclosures must be kept in the file together and page marks are to be given. But against page no.145 is only the application of the petitioner and other enclosures which admittedly he had submitted are not kept immediately below the application. The second aspect of the matter is that it is clear that the application of respondent no.3 has been received by hand and an endorsement to that effect has also been made on the application of respondent no.3. But the petitioner's application has come through Registered Post. It has been alleged by the petitioner that he wanted to hand over his application personally, but the concerned person refused to accept the application and he was asked to send it by Registered Post. The departmental respondents have not denied the averment of the applicant that he was asked to send his application by post. From this it is clear that the application of respondent no.3 has been treated more favourably by being received by hand whereas the petitioner's application was asked to be sent by Registered Post. This is a circumstance which goes to support the stand of the applicant.

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5. The second aspect of the matter is that the petitioner received the income certificate on 4.3.1995 prior to submission of his application on 10.3.1995. In other words the applicant was in possession

of the income certificate on the date of making the application. Thirdly, so far as respondent no.3 is concerned, his application was received by hand on 15.3.1995 as against the last date of receipt of applications on 17.3.1995 and on receipt of the application of respondent no.3 the documents enclosed by him were verified and endorsement was made by the same official on 15.3.1995 that all the documents have been received. As the petitioner's application had to be sent by Registered Post and was received on 13.3.1995 the endorsement was made on 13.3.1995 about non-receipt of the income certificate but the applicant did not have a chance to furnish the income certificate because he was not informed of this fact even though there was time for him to submit the income certificate before the last date of receipt of applications even if it is taken for argument's sake that he did not submit the income certificate. From the above it does appear that the persons who have dealt with the applications of the petitioner and respondent no.3 have not dealt with both of them evenly.

6. There is one last point which also casts doubt over the manner of selection. The case of the departmental respondents is that the applicant's candidature was rejected because of non-submission of the income certificate. There were two other candidates. Respondent no.3 having secured highest percentage of marks between the two was selected. It is however seen that even though 17.3.1995 was the last date of receipt of applications and according to the applicant's averment verification of documents was made in May 1995 the order of appointment was issued to respondent no.3 only in May 1996, i.e., after a gap of one year. The petitioner in

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his OA has made an averment that the matter was unnecessarily delayed and his candidature was unfairly rejected. There is no averment in the counter of the departmental authorities with regard to the delay. In the matter of making appointment to public post, the authorities handling the papers must act fairly and in an open and aboveboard fashion. In view of our discussion above, we are constrained to hold that this has not been the case here.

7. The selection of respondent no.3 suffers from one more infirmity. According to the circulars of Director-General, Posts, selection has to be made out of at least three candidates. In this case after the candidature of the applicant was rejected, there were only two candidates in the field, respondent no.3 and another. In view of this, it must be held that the element of competition required under the circular of Director General, Posts, was lacking in this case.

8. In consideration of all the above, we have no hesitation in holding that by the action of the departmental authorities the selection procedure has been vitiated. Therefore the selection and appointment of respondent no.3 to the post of EDBPM, Barha Damodarpur, are hereby quashed. The departmental authorities are directed to issue fresh requisition to the Employment Exchange and public notice inviting applications and take up selection for the post afresh in accordance with rules.

9. In the result, the Original Application is allowed in terms of the observations and direction given above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
29.9.99