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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 672 OF 1996
Cuttack, this the 25th day of January 1999

D. Babula Reddy Applicant

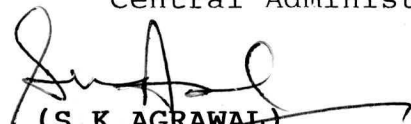
Vrs.


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)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
25.1.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.672 OF 1996

Cuttack, this the 25th day of January 1999

CORAM:

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

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D.Babula Reddy, son of
D.Kankeya Reddy,
At/PO-Kalyanpur, P.S-Chatrapur,
District-Ganjam

Applicant

By the Advocates -

M/s R.C.Panda
B.P.Tripathy
P.C.Panda.

Vrs.

1. Union of India, represented by
Director General, Postal Service-cum-
Secretary to Government of India,
Department of Communication, New Delhi.
2. Chief Post Master General, Orissa Circle,
Bhubaneswar, District-Khurda.
3. Senior Superintendent of Post Offices,
Berhampur (Ganjam) Division,
At/PO-Berhampur, District-Ganjam.
4. Kailash Chandra Muduli, s/o Hadu Muduli,
presently at Jharapadar, PO-Kalyanpur,
Via/District-Ganjam Respondents

By the Advocates - Mr.Akhaya Ku.Mishra
Addl.C.G.S.C.
&
M/s P.V.Ramdas &
P.V.B.Rao
(For respondent 4)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Act, 1985, the petitioner has prayed for a declaration that selection and appointment of respondent no.4 as E.D.B.P.M.,Kalyanpur B.O., are illegal and void.

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The applicant has also prayed for a declaration that he is suitable for the above post and for a direction to the departmental respondents to appoint him to that post.

2. Facts of this case, according to the petitioner, are that he is a permanent resident of Kalyanpur village. Senior Superintendent of Post Offices, Berhampur, called for names from Chatrapur Employment Exchange for the post of E.D.B.P.M., Kalyanpur, in response to which the Employment Exchange sponsored some names including that of the applicant and respondent no.4. The departmental authorities in their letter at Annexure-1 directed the petitioner to submit the application form in the proforma enclosed to the letter along with attested copies of two character certificates from Gazetted Officer, School Leaving Certificate & Marksheet, and annual income certificate from the competent revenue authority and documents in support of landed property owned by the applicant. In response to this, the petitioner submitted his application on 18.12.1995 before the last date (20.12.1995) indicated at Annexure-1. Again in letter dated 26.12.1995 (Annexure-2) the applicant was asked to submit the residential certificate, income certificate, land documents in his own name, the declaration showing that he would provide building/house for functioning of P.O., and the conduct/character certificate. He was asked to send his papers by 10.1.1996. The applicant in his letter dated 6.1.1996 (Annexure-3) submitted all the papers. This letter dated 6.1.1996 was sent by registered post and the postal authorities acknowledged receipt on 8.1.1996 vide receipt at Annexure-4. The applicant lives in a joint family with his parents and submitted the income certificate of his father issued by the local Tahasildar on 6.1.1996. This certificate is at Annexure-5. In June

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1996 during a personal meeting with the applicant, respondent no.3 again asked the applicant to submit the income certificate in his own name. The applicant submitted an income certificate in his own name by registered post on 24.7.1996 which is at Annexure-6. The applicant further states that though he lives with his parents, he holds some landed property in his own name. The copy of the sale deed showing purchase of property in the name of the applicant is at Annexure-7. The applicant has passed H.S.C.Examination getting 320 marks vide marksheet at Annexure-8. He has further stated that respondent no.4 has got less marks than the applicant. It has been further submitted that ignoring the fact that respondent no.4 has got less marks than the applicant and has not been able to produce any document showing landed property in his own name, the departmental respondents have arbitrarily selected respondent no.4 ignoring the legitimate case of the applicant. It is further submitted that respondent no.3 who had recently joined his post appointed respondent no.4 by manipulating the process though his predecessor who retired on superannuation had insisted on the criterion of higher percentage of marks in the H.S.C.Examination. The applicant sent registered letter complaining about this to Post Master General, Berhampur Region, on 10.8.1996 at Annexure-9 and that is how he has come up with the prayers referred to earlier.

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3. The departmental respondents in their counter have stated that the Employment Exchange sponsored sixteen candidates who were asked to apply by 20.12.1995 in prescribed form with necessary documents. In reply, nine candidates submitted their applications, but only three had submitted all the required documents. As such, six defaulters including the applicant were

asked on 26.12.1995 (Annexure-2) to submit the wanting documents by 10.1.1996. According to the departmental respondents, the applicants failed to submit the income certificate in his own name. Because of this, the application of the petitioner along with five others were not considered for selection and of the three remaining candidates, respondent no.4, who had secured more marks in the HSC Examination and had all the eligibility criteria, was selected as E.D.B.P.M. The departmental respondents have further stated that the applicant had not submitted the income certificate in his own name but in the name of his father. Income certificate of Rs.18,000/- granted by Tahasildar, Chatrapur, in the name of his father D.Kankeya Reddy issued on 25.5.1994 (Annexure-R/2) was submitted. He was again asked in letter dated 26.12.1995 to submit income certificate in his own name fixing the last date on 10.1.1996, but the applicant did not submit income certificate in his name. He submitted an income certificate granted by the Tahasildar, Chatrapur, on 6.1.1996 in the name of his father for Rs.40,000/- which is at Annexure-4 of the application. The respondents have stated that because of this, his candidature was cancelled. On the above grounds, the departmental respondents have opposed the prayers of the applicant.

4. Respondent no.4 was issued notice and he also appeared through his learned counsel, but no counter has been filed by him.

5. We have heard Shri R.C.Panda, the learned counsel for the petitioner, Shri Akhaya Kumar Misra, the learned Additional Standing Counsel for respondent nos. 1 to 3, and Shri P.V.Ramdas, the learned counsel for respondent no.4, and have also perused the records.

6. The only point urged by the learned counsel for the petitioner is that in the letter dated 26.12.1995 received by the applicant, xerox copy of which is at Annexure-2, he was asked to send land document in his own name. This is borne out by the fact that even though the letter at Annexure-2, which is apparently a cyclostyled form, lists six types of documents, only serial no.3, i.e., "land document in own name" has been tick-marked. The words "in own name" have been added in hand after the words "Land document" in this letter. On this basis, it was urged by the learned counsel for the petitioner that the applicant was not asked to send income certificate in his own name and therefore, his candidature should not have been rejected. It is further submitted that in any case in his letter dated 6.1.1996 he again sent all the six documents by way of abundant caution though only one document, i.e, the land document in his own name was called for, but even then his candidature was rejected. The respondents have also enclosed at Annexure-R/3 the xerox copy of the same letter dated 26.12.1995. On a comparison between Annexure-2 filed by the applicant and Annexure-R/3 filed by the respondents which are xerox copies of the same letter, we find substantial difference between the two. As earlier noted, in the copy of this letter sent to the applicant, only serial no.3 showing land document was tick-marked and the words "in own name" were written in hand against that entry. In the copy furnished by the departmental respondents at Annexure-R/3 it is seen that besides serial no.3, which is tick-marked in the respondents' copy and against which entry the words "in own name" have also been written in hand, serial no.2 has also been tick-marked. Against this serial, "Income

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Certificate" have been mentioned and after that, the words "in own name" have been written in hand. Both the xerox copies have been certified as true copies by the learned lawyer for the applicant in case of Annexure-2 and by the Senior Superintendent of Post Offices, Berhampur, for Annexure-R/3. As there was important difference in the xerox copies of the same documents filed by both sides, after conclusion of the hearing, we directed the learned Additional Standing Counsel, Shri Akhaya Kumar Mishra to produce the file relating to selection for this post so that the original of the letter dated 26.12.1995 in possession of the official respondents could be verified by us. Accordingly, the selection file has been produced and on verification we find that at running page 20 of this file, this letter dated 26.12.1995 is there in original. In the original, which is in the respondents' file both serial nos. 2 and 3 have been tick-marked and against both the entires, Income Certificate and Land Document, the words "in own name" have been added in hand. From this it appears that in respondents' copy of Annexure-R/3 both these items have been tick-marked. But that does not conclude the point much less against the applicant because even according to the respondents both income certificate and land document in his own name were called for in letter dated 26.12.1995. But the departmental respondents in their counter have stated that in letter dated 26.12.1995 the applicant was asked to submit income certificate in his own name by 10.1.1996 vide Annexure-R/3. But from the copy of Annexure-R/3 it appears that if we go by the version of the departmental respondents, then both income certificate and land document were asked for in this letter dated 26.12.1995 by 10.1.1996. Therefore, it is difficult to rely on the original of this document, copy

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of which has been filed at Annexure-R/3. The applicant has submitted copy of the same document received by him in which only serial no.3 has been tick-marked calling upon him to submit the land document in his own name. At the time of hearing, the learned counsel for the petitioner has filed the original of Annexure-2 and from this it is seen that in the original of Annexure-2 received by the petitioner only land document in his own name has been tick-marked. Obviously, therefore, Annexure-R/3 has been interpolated. From this, it is clear that the applicant has not been asked to submit income certificate in his own name by 10.1.1996 whereas the other candidates have been asked to submit the wanting documents by 10.1.1996. In view of this, it must be held that the departmental respondents should not have rejected the candidature of the applicant on the ground of non-submission of income certificate in his own name by him when the same was not asked for from him though other candidates were asked to submit the wanting documents by 10.1.1996. Because of this, we have no hesitation in holding that rejection of the candidature of the applicant has been done unfairly and cannot be sustained. Learned counsel for respondent no.4 has in his memo of submission, mentioned that as the applicant had failed to submit "income certificate (land document in his own name)" , his candidature has been rightly rejected by the departmental authorities. Learned counsel for respondent no.4 had also mentioned that he adopts the counter filed by the departmental respondents. In his written note of submissions, the learned counsel for respondent no.4 has tried to make out the point that the income certificate and land document in his own name are

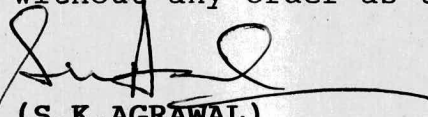
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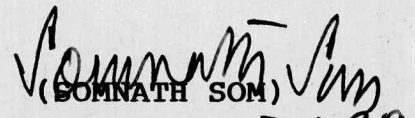
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one document as is borne out by the extracts of the written submission quoted by us. But on perusal of records, it is clear that these are two different documents and only the land document was called for from the applicant and not income certificate in his own name. In any case the applicant has subsequently submitted the income certificate in his own name on 24.7.1996. As the departmental authorities have not asked the applicant to submit the income certificate in his own name, though they have asked him to submit the land document in his own name and have also asked other candidates to submit wanting documents by 10.1.1996 and as the applicant has submitted the land document in his own name by 6.1.1996, we hold that the respondents should not have rejected the candidature of the applicant on the ground of non-submission of income certificate in his own name when the same was not asked for from him. In view of this, the selection of respondent no.4 for the post of E.D.B.P.M, Kalyanpur B.O., is quashed and the departmental respondents are directed to consider the candidatures of all the candidates who had submitted the required documents by 10.1.1996 and select the most suitable person amongst them. As the applicant was not asked to submit the income certificate in his own name and as on his own he has submitted the income certificate in his own name on 24.7.1996, this income certificate should be taken into account and his candidature should not be rejected on the ground of non-submission of income certificate in his own name. This process of fresh selection should be done and completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

7. In the result, therefore , the Original

Application is allowed, but, under the circumstances,
without any order as to costs.


(S.K. AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 1.99

AN/PS