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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 867 OF 1996
Cuttack this the 31st day of March, 2003

Manorangan Pati

...

Applicant(s)

VERSUS

Union of India & Others

...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

31/03/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.367 OF 1996
Cuttack this the 31st day of March/2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

Sri Manoranjan Pati, aged 33 years,
S/o. Sri Damodar Pati, Vill/Dahigaon
Post : Kalapada, Via: Bentakar,
Dist-Cuttack

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Applicant

By the Advocates

M/S. P.K. Padhi

-VERSUS-

1. Union of India represented by its
Chief Post Master General (Orissa Circle)
At/PO-Bhubaneswar, Dist: Khurda-751001
2. Senior Superintendent of Post Offices,
Cuttack City Division, At: P.K. Parija Marg
PO-Cuttack GPO, Dist-Cuttack-753001
3. Assistant Superintendent of Post Offices I/C.
Cuttack East Sub Division
At/PO-Cuttack G.P.O., Dist-Cuttack-753001
4. Pradeep Kumar Naik (E.D. Packer),
At: Barabati Stadium Sub Post Office,
Po/Dist-Cuttack, 753 005

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Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.

ORDER

MR. B.N. SOM, VICE-CHAIRMAN : Shri Manoranjan Pati (applicant)
has filed this Original Application under Section 19 of the
A.T. Act, 1985, alleging that Respondent No.2, i.e., Senior
Superintendent of Post Offices, Cuttack City Division, with
mala fide intention did not select him to the post of E.D.
Packer, Barabati Stadium S.O. inspite of the fact that he is
more qualified than Pradeep Kumar Naik (Res.No.4), who was

selected to the post in question.

2. The facts of the case are that the applicant was one of the candidates for the post of E.D.Packer, Barabati Stadium S.O., the selection for which post took place on . The Respondents had obtained a list of 40 candidates from the Local Employment Exchange at Cuttack out of which 24 candidates submitted their applications including that of the applicant. In addition to these candidates the Respondents had also considered the applications of two other candidates in compliance of the directions of this Tribunal in Original Application Nos.104/93 and 436/92 and thus, Respondent No.4 was considered and selected for the post of E.D.Packer. Finally, Respondent No. 3 selected Respondent No.4 on the ground that he had been working as casual labour whether full time or part time for more than seven years since 1.3.1989. Besides, he had all the ~~eligibility~~ conditions for appointment to the post in question. The Respondents have further stated that in terms of D.G. Posts Lr.No.17-14/88-ED&Trg. dated 6.6.1988, the recruiting authority is empowered to give preference in the matter of appointment to such of the candidate(s) having more than one year experience of working in the Department. They have argued that although the applicant had better merit in so far as education and ^{other} qualification are concerned, but he had only one year's working experience in the Department in comparison to seven years working experience of Respondent No.4. It ^{is} their further stand that the

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selection of Res. No.4 to the post of E.D.Packer was also made in pursuance of a direction of this Tribunal in O.A. 436/92 (disposed of on 6.3.1993). The Respondents have also stated that there was no such direction in the case of Shri Manoranjan Pati from this Tribunal even though he had too approached the Tribunal in the matter.

3. In this connection we have also heard Shri P.K. Padhi, the learned counsel for the applicant and Shri A.K. Bose, the learned Senior Standing Counsel for the Respondents and perused the materials placed before us.

4. The main plea of the applicant is that although he was educationally more qualified than Res. No.4, the latter's selection was illegal and in contravention of the recruitment rules. Shri Padhi, for the applicant, harped on this point during oral argument. On the other hand, Shri Bose, Senior Standing Counsel emphatically submitted that no illegality was ever committed in selecting Respondent No.4, because, it was done in pursuance of a declared policy of the Department to give preference to the candidate(s) who might be in possession of working experience in the Department, and that is how Res. No.4 was adjudged more meritorious. In making selection to an E.D. Post all the eligibility conditions are required to be fulfilled and no particular condition is given precedence over the others, only exception being previous working experience in the Department. In the instant case, both the applicant and Respondent No.4 had fulfilled all the eligibility conditions for appointment, but Res. No.4 was given preference on the ground that he had seven years

past experience vis-a-vis one year's experience gained by the applicant.

5. On an overall consideration of the facts and circumstances of the case, prima facie, there appears to be no legal flaw in the selection process for the post of E.D.Packer, Barabati Stadium S.O., as explained by the Sr.Standing Counsel. However, we are constrained to make certain observations on the averments made by the Respondents in their counter. We have no hesitation to observe that certain averments made in the counter are not factually sustainable. The main thrust of submission made by the Respondents in their counter is that selection of Respondent No.4 to the post in question was made in pursuance of the direction of this Tribunal contained in O.A.436/92. However, the fact of the matter is that no such direction was issued by this Tribunal - more than to say that the applicant might file an application before the competent authority, who should consider the case of the petitioner for engagement. Respondents have also submitted at Page-3 of their counter that although the case of the applicant for regular appointment against a post was pending consideration within all the appointing units of Cuttack City Division in pursuance of order passed by this Tribunal in Misc. Application No.337/93 (arising out of O.A.286/91), the applicant's candidature was considered only for the post of E.D.Packer, Sikharpur N.D.P.S.O. on the ground that "it was perhaps not proper to consider the case of the same candidate in all the cases". They have further

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made the following submissions.

" While making final selection to the said post and in view of the judgment passed by the Hon'ble Tribunal in O.A. 104/93 filed by Shri Surendra Kr. Das and in O.A. 436/93 filed by Shri Pradeep Kr. Naik, it was observed that the Hon'ble Tribunal had laid more emphasis to consider the case of Shri P.K. Naik in O.A. 436/93 for his appointment in any other post. There was no such direction in the other cases referred to earlier".

6. We have perused our orders in the aforesaid Original Applications. We find that the Respondents have utterly failed to read and comprehend properly the orders passed by this Tribunal. In both these cases we had asked the Respondents-Department to consider the applications of both of them. In case of the applicant, the direction was given to Respondents to consider his candidature along with the other applicants for appointment in any of the Post Offices. Against these two directions, in one case the Respondents have gone too far to say that if Res. No. 4 was appointed to the post of E.D. Packer, Barabati Stadium S.O. that was done in compliance of the direction of this Tribunal and that if the applicant's candidature was not considered while filling up the post in other Post Offices other than Sikharpur that was their own decision based on convulated logic and in violation of the direction of this Tribunal. In substance, the counter was filed without application of mind and there was violation of the order of this Tribunal. However, Shri Bose, respectfully submitted that the errors and omissions committed in the counter deserve

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to be deplored. But because of the efflux of time it may not be possible for the Respondents to take exemplary action against those who are/were guilty of those errors and omissions. He has, however, assured us that the Respondents will be henceforth ever vigilant and careful not to commit any such error in the arena of decision making and shall leave no stone unturned to redeem themselves before the Tribunal.

7. Having regard to these facts and circumstances of the case and also the submissions made by the learned Standing Counsel, we are pleased to uphold the selection of Respondent No.4 to the post of E.D.Packer, Barabati Stadium S.O. We, however, direct the Respondents/Department to comply with the direction dated 20.1.1993 of this Tribunal issued in O.A.286/91 for considering the candidature of the applicant against any post in any of the Post Offices under the jurisdiction of Res.No.3 which may be available during the year.

8. The O.A. is accordingly disposed of. No costs.

M.R. Mohanty
31/03/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN

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