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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 170 OF 1998
Cuttack, this the 22nd day of November, 1999

Pradeepta Kumar SatpathyApplicant

Vrs.

Union of India and othersRespondents.

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.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
22.11.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 170 OF 1998
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CORAM:

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

.....
Pradeepta Kumar Satpathy,
aged about 32 years, son of Baidyanath Satpathy,
Village/PO-Gadisagaa, P.O-Brahmagiri, District-Puri
..... Applicant

Advocates for applicant - M/s A.A.Dash
B.Mohanty

Vrs.

1. Union of India, represented through Secretary,
department of Posts, Central Secretariat, New
Delhi.
2. Chief Post Master General, Orissa, Bhubaneswar,
District-Khurda.
3. Senior Superintendent of Post Offices, Puri Division,
At/PO/District-Puri.... Respondents

Advocate for respondents - Mr.U.B.Moha-
patra, ACGSC

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 a direction to the respondents to appoint
him to the post of EDBPM, Gadisagada. The second prayer
is for quashing the notice at Annexure-4 inviting
applications for the above post.

2. According to the applicant, his
father retired from the post of EDBPM, Gadisagada Post
Office on 1.4.1997. During his incumbency the Post
Office was running in the house of the applicant and
the applicant was assisting his father in discharge of

his duties and had thus gained experience of the job. Before retirement of the applicant's father, the departmental authorities issued a notification dated 5.12.1996 (Annexure-1) inviting applications for the post. The petitioner is eligible for the post and he submitted his application with all the required documents. The last date of receipt of applications was 31.12.1996. Again on 6.1.1997 a second notification was issued inviting applications for the same post. On enquiry the applicant learnt that the first notification was not widely published and therefore the second notification was made. In response to the second notification (Annexure-2) the petitioner once again submitted his application for the post. The petitioner has stated that besides him there was only one other candidate for the post. The petitioner received notice to submit all his certificates and land records which were verified. He also gave an undertaking to provide a house for the functioning of the post office. On the day of verification the other candidate was absent and the petitioner was the lone candidate. The petitioner was expecting selection and appointment to the post. But again another notification was issued on 12.12.1997 (Annexure-4). After the notification dated 12.12.1997 was issued, the petitioner met Senior Superintendent of Post Offices, Puri Division (respondent no.3) and was told that though he had all the required documents the landed properties are jointly held by the applicant and his brothers. The applicant also submitted that he has landed property exclusively in his name and the copy of the registered sale deed had been handed over to the Sub-Divisional Inspector (Postal), Jatni, at the time of

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earlier verification, but these facts were not taken into consideration. The applicant has stated that in the earlier two notifications there was no stipulation that the landed property should be exclusively in the name of the applicant. He has stated that the third notification has been issued only to discriminate against the applicant and select some other person. Apprehending this, the petitioner has come up in this petition with the prayers referred to earlier.

3. Respondents have filed counter opposing the prayers of the applicant. According to them, the post of EDBPM, Gadisagada B.O. fell vacant on 2.4.1997 due to retirement of the regular incumbent, father of the present applicant. The Employment Exchange was originally addressed. But none of the candidates sponsored by the Employment Exchange fulfilled the basic conditions although all of them were addressed by registered post. As such a public notice was issued on 5.5.1996 fixing 31.12.1996 was the last date for receipt of applications. In response to this, three candidates including the petitioner applied for the post. The petitioner applied twice and thus there were four applications. Out of these two applications were received within the time limit. A check list was prepared which is at Annexure-R/1. The respondents have stated that none of the candidates including the petitioner fulfilled the basic property condition. The petitioner had submitted land records of his father. The respondents have stated that in the light of the Directorate's instruction dated 6.12.1993, copy of

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which is at Annexure-R/3 the candidates should have possessed landed property in their own name. None of the candidates fulfilled this condition and therefore all the candidatures were rejected, and a second public notice was issued on 6.1.1997 fixing 31.1.1997 as the last date for receipt of applications. In response to the public notice four candidates including the petitioner applied for the post. A check list was prepared on the basis of which it was found that the petitioner did not fulfil the property condition and had also secured less percentage of marks than the other two candidates. As such only the documents of the two candidates, who had secured higher percentage of marks were sent for verification. The respondents have stated that the candidature of the applicant was not considered because in accordance with the circulars at Annexures R/3 and R/6 the selected candidate must have property exclusively in his own name. It is stated that the applicant submitted a joint sale deed in response to the second notification and therefore he was not entitled to be considered. The applicant purchased the same land on 5.5.1997 exclusively in his own name and submitted the sale deed. But as the land has been acquired after the last date for receipt of applications on 31.1.1997 this could not be taken into account. In the meanwhile some of the local people complained that the public notice meant for publication in the Branch Office had not been displayed in the Branch Office Notice Board by the ex-EDBPM, the applicant's father with a mala fide intention so that none other from the village could apply and his son/daughter could be

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accommodated. The applicant's father also made complaint to Minister of Communication about non-selection of his son and further correspondence had to be made with the higher authorities with regard to this selection. The two candidates who had got higher marks than, the applicant and whose documents were sent for verification, did not respond and therefore it was decided to notify the vacancy again for the third time. The notice was issued on 12.12.1997 (Annexure-4) fixing 6.1.1998 as the last date for receipt of applications. As many as eight applications were received of which one was received after the due date. The respondents have stated that more meritorious and eligible candidates are there in the field. As a matter of fact one of the brothers of the applicant, who has secured more marks than the applicant, is also under consideration and no final decision regarding selection has been made. In view of this, the respondents have stated that the application is premature and they have therefore opposed the prayers of the applicant.

4. This matter was fixed for hearing and final disposal at the stage of admission on 4.10.1999. When the matter was called for hearing on behalf of the learned counsel for the petitioner, a pass over was asked for and allowed. But till 1 O'clock the learned counsel for the petitioner or his associate did not turn up. In view of this, it was not possible to drag on the matter indefinitely. We have therefore heard Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have perused the records.

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5. From the above recital of facts by the parties it is clear that the controversy in this case is with regard to the condition about holding of property exclusively by the candidate applying for the post of EDBPM. In page 4 of the counter the respondents have made the following averments:

".....In the light of instructions contained in Directorate letter No.17-104/93-ED and Trg. dated 6.12.93, the candidate should have possessed landed property in his own name but not in the name of his guardian and also have independent source of income to maintain his livelihood. The xeroxed copy of the said Directorate letter No.17-104/93-ED & Trg. dated 6.12.93 is annexed as Annexure R-3 to this Counter....."

The relevant circular dated 6.12.1993, which has been enclosed by the respondents at Annexure-R/3, does not, however, say anything about possession of landed property exclusively in his own name by the candidate. The relevant portion of the circular is quoted below:

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"3. Against the aforesaid backdrop, the whole matter has been re-examined in this office in its entirety having regard to all the relevant considerations including the judicial pronouncement, proposals were formulated and placed before the Postal Service Board for its consideration/decision. The Postal Service Board after careful deliberation has decided as follows:-

i) It is not necessary to quantify "adequate means of livelihood". However it may be laid down that in the case of appointment of ED Sub Postmaster/Branch Postmaster, preference may be given to those candidates whose "adequate means of livelihood" is derived from landed property or immovable assets if they are otherwise eligible for the appointment....."

From the above it is clear that in this circular it has only been provided that preference should be given to such candidate whose independent means of livelihood is derived from the landed property. It is nowhere laid down in this circular that such landed property has to be

held by the candidate exclusively in his own name. The second circular relied on by the respondents is an earlier circular dated 20.10.1971 (Annexure-R/6) in which the opinion of the Ministry of Law has been quoted. The relevant portion is extracted below:

"Joint family immovable property cannot be sold with the same case as exclusive property. We presume that by joint family immovable property, the Department means joint Hindu family property. If this presumption is correct, the shares of the coparceners in a joint Hindu family property go on increasing or decreasing with the death or birth of coparcener."

It is necessary to note at this stage that copy of this circular which has been enclosed at Annexure-R/6 is hardly legible and with difficulty we have been able to decipher the above portion. It is well settled that under Mitakshara system a co-parcener has an identifiable interest in a joint family property which may go on increasing or decreasing, as has been mentioned in the opinion of the Law Ministry with death or birth of co-parceners. But at any point of time a co-parcener has an identifiable interest in the joint family property. This circular also does not mention anything about a candidate for the post of EDBPM requiring to have landed property exclusively in his own name. In view of the above, the contention of the respondents that a candidate must have landed property exclusively in his own name must be held to be without any merit. The departmental instructions provide that the candidate for the post of EDBPM should have independent means of livelihood and should not depend only on his allowances as EDBPM for his maintenance. The departmental instructions also provide for verification of the fact if the candidate has independent means of livelihood. This is not the same as

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saying that such independent means of livelihood must be derived from the landed property held exclusively in his own name by the candidate. This contention of the respondents is therefore held to be without any merit.

6. The case of the applicant, therefore, has to be considered in the context of the above. In response to the first public notice, according to the applicant himself, there were only two candidates in the field, the applicant and another. The instructions provide that there should be at least three candidates within the field of choice and therefore in response to the first public notice the applicant could not have been selected, being one of only two. So far as the second public notice is concerned, the respondents have stated that it was not published in the Branch Office Notice Board by the then EDBPM, the father of the present applicant, with a view to ensuring that his son or daughter could only apply and get selected. As the process of selection in pursuance of the second notice has been cancelled because of non-publication of the notice in the Branch Office Notice Board, the action of the respondents in this regard cannot be found fault with. In response to the third notice the applicant and seven others have applied and the selection is yet to take place. It is also to be noted that by the time of receipt of applications in response to the third notice the petitioner has also applied. The respondents have pointed out that there are candidates who have secured higher marks in the HSC Examination than the applicant. It is stated that one of the brothers of the applicant is also a candidate and he has secured more marks than the petitioner. The second prayer of the applicant is to

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quash the third public notice at Annexure-4 and the process of selection. As we have pointed out that the applicant could not have been selected on the basis of his application in response to the first notice because there were only two candidates and the selection process in pursuance of the second notice has been cancelled because of non-publication of the notice in the Branch Office Notice Board by the applicant's father, the then EDBPM. It is also to be noted that in response to the third notice the petitioner has made an application. It is therefore not open for him to pray for quashing the third notice at Annexure-4, after having applied in response to the notice. This prayer of the applicant is therefore held to be without any merit and is rejected.


7. So far as the first prayer of the applicant is concerned, he has prayed that the respondents should be directed to select him for the post. The departmental instructions provide that amongst the eligible candidates the person with the highest percentage of marks in the HSC Examination has to be selected. In view of this, no direction can be issued to the departmental authorities to appoint the applicant straightaway to the post moreso when the respondents have averred that there are candidates including a brother of the applicant who have got higher marks than the petitioner in the HSC Examination. In view of this, we dispose of the Original Application with a direction to the respondents to complete the process of selection initiated through the third notice at Annexure-4 within a

period of 90 (ninety) days from the date of receipt of copy of this order. We express no opinion about the merits of the candidates including the applicable and leave it to the departmental authorities to complete the selection strictly in accordance with rules. The departmental authorities should also take note of our finding that possession of landed property exclusively by the candidate is not mandated under the departmental instructions.

8. With the above observation and direction, the Original Application is disposed of but without any order as to costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)
22.11.99
VICE-CHAIRMAN