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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 18 OF 1998.

Cuttack this the 3rd day of July, 1998.

GAHAKI SUNA.

....

APPLICANT.

-VERSUS-

UNION OF INDIA & 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.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE- CHAIRMAN 98

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 18 OF 1998.

Cuttack this the day of 3rd July, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

&

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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Gahaki Suma,  
E.D. Branch postmaster,  
Birjam, Via-Ghess,  
Dist. Bargarh.

...

Applicant.

By legal Practitioner: Mr. D.P. Dhalsamant, Advocate.

-Versus-

1. Union of India represented through  
Chief Postmaster General, Orissa Circle,  
Bhubaneswar-751 001.

2. Postmaster General Sambalpur Region,  
Sambalpur-768 001.

3. Superintendent of Post Offices,  
Sambalpur Division, Sambalpur-1.

4. Sub Divisional Inspector (Postal),  
Padmapur Sub Division,  
At/Po. Padmapur, Dist. Bargarh.

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Respondents.

By legal practitioner: Mr. U. B. Mohapatra, Additional Standing  
Counsel (Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the Respondents to return the order of appointment and charge report to the applicant. There is also a prayer for a direction to the Respondents to draw and disburse his pay and allowances for the period which he had already worked.

2. Short facts of the case, according to the petitioner are that the Post of Extra Departmental Branch Post Master, Birjam Branch Post Office had fallen vacant on superannuation of the previous incumbent and a public notification was issued by the Respondent No. 3, i.e. Superintendent of Post Offices, Sambalpur Division, Sambalpur calling for applications from general public. In response to this, applicant submitted his application intime. He was duly selected, undergone training and joined as Extra Departmental Branch Post Master of Birjam Branch Post Office on 31.5.1997. Subsequently, his appointment order and charge report were taken away from him. The petitioner submitted that he has continued as EDDEPM and that is how, he has come up with the aforesaid prayer.

3. In their counter, the respondents have submitted that the petitioner was duly selected after considering the candidature of different persons as he was the most suitable candidate, he was given training and he joined the post in

question on 31.5.97. Respondents have further stated that subsequently, on 26.11.97, it came to the notice that the father of the applicant Shri Chaturbhuja Suna is also working as EDMC of Birjam-Sanimal-Ghess Line and he is conveying mails from Birjam BO where the applicant has been appointed as EDEPM. Respondents have further stated that in accordance with the DGP & T Circular dated 17.10.1966 appointment of very near relative as EDEPM, EDMC/EDDA in the same office should be avoided. Copy of the gist of the circular, dated 17.10.1966 as published in the Swamy's publication has been annexed to the counter as Annexure-R/1. It has further been averred by the Respondents that in view of the above circular, it was held that the appointment of the applicant as EDEPM, Birjam Branch Post Office was irregular and as such the SDIP was directed on 9.12.97 to relieve the petitioner <sup>from</sup> the post of EDEPM. That having been done, the petitioner has come up before this Tribunal in this original application with the aforesaid prayer.

4. We have heard learned counsel for the applicant Shri D.P. Dhalsamant, and learned Additional Standing Counsel, Shri Uma Ballav Mohapatra, appearing on behalf of the Respondents and perused the records.

5. It is submitted at the time of hearing by the learned counsel for the applicant that the allowances payable to the applicant by the Department have already been disbursed to him and he does not press for his second prayer regarding

payment of allowances.

6. AS regards, the prayer for returning the appointment order and charge report, obviously the respondents have treated the appointment as irregular. Even though there should have been a formal order cancelling the order of selection, but this has not been done. AS regards the stand of the Respondents that the appointment of the petitioner as EDBPM, Birjam BO is irregular because his father is working at Birjam Sanimal Ghess line as EDMC, the action of the Respondents in holding the appointment of the applicant as EDBPM, Birjam BO, is irregular on the ground of his father is working as EDMC, Birjam Sanimal Ghess line, is not in accordance with law as laid down by Their Lordships' of the Hon'ble Supreme Court in the case of BALIRAM PRASAD - Vrs. - UNION OF INDIA REPORTED IN AIR 1997 SC 637. In this decision, Their Lordships of the Hon'ble Supreme Court have held as follows:-

J. Jm.

"But to refuse to appoint a more meritorious candidate only on the ground that his cousin brother was working in the same post office, would, in our view, be totally an arbitrary exercise of power which can not be countenanced on the touchstone of Article 14 of the Constitution of India".

At the time of hearing of this matter, before the Hon'ble Supreme Court, the circular dated 17.10.1966 issued by the DGP&T, New Delhi, which is at Annexure-R/1 was also placed before the Hon'ble Supreme Court. In view of this, it is clear that the action of the Respondents in cancelling the appointment of the petitioner as EDBPM, Birjam BO in the guise

his  
of taking away ~~the~~ / appointment order and charge report is  
illegal and can not be sustained.

7. In consideration of this, it is ordered that the charge report and the appointment order of the applicant should be returned to him within a period of 15 days and the petitioner should be allowed to continue as EDPM, Birjam BO in terms of the appointment order issued to him already.

8. With the above directions, the Original Application is allowed leaving the parties to bear their own costs.

9. Before parting with this case, we are constraint to note that even though the decision of the Hon'ble Supreme Court has come on 17.12.1996, the above circular of the DGP & T, have not been withdrawn and revised instructions have not been issued to the Departmental Authorities and even now the candidature of persons have been rejected on the ground of employment of near relatives in the same post office. In view of this, we feel that the Director General of Posts, New Delhi should take urgent step to issue revised instruction to the Departmental Authorities not to follow the instructions issued vide letter dated 17.12.1966. A copy of this order be sent to the

J. Som.

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Director General of Posts, New Delhi for taking further necessary action in the matter.

(G. NARASIMHAM)  
MEMBER(JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN  
3.7.98

KNM/CM.