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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.221 OF 1998.

Cuttack, this the 15th day of October, 1999.

PREM RANJAN SETHI.

....

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 SDM
VICE-CHAIRMAN
15/10/99

CE NTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BE NCH: CUTTACK .

ORIGINAL APPLICATION NO.221 OF 1998

Cuttack, this the 15th day of October, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

PREM RANJAN SETHI,
Aged about 27 years,
Son of Sudhir Chandra Sethy,
Vill./PO.Budamara (RS),
Via.K.M.Kata, Dist.Mayurbhanj,
Pin Code No. 757 081.

.... Applicant.

By legal Practitioner : Mr.P:C.Acharya, Advocate .

-Versus-

1. Union of India represented through its Secretary, Department of Post, Secretariat, Building, New Delhi.
2. Postmaster General, Orissa Circle, Bhubaneswar, Dist.Khurda.
3. Manoranjan Putty, Budamara (RS), At/Po.Budamara, Via.N.M.Kata, Dist.Mayurbhanj. Respondents.

By legal practitioner : Mr.U.K.Samal, Addl. Standing Counsel.

By legal practitioner for Res.No.3: M/s.M.Mishra, D.K.Patnaik, A.K.Nayak, Advocates.

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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 applicant has prayed for quashing the order at Annexure-3 rejecting his representation against the selection of Respondent No.3 to the Post of Extra Departmental Branch Post Master, Budamara Branch Post Office. Second prayer is for cancelling the appointment of Respondent No.3 (wrongly mentioned as Respondent No.4). The third prayer is for a direction to appoint the applicant to the above post.

2. For adjudication of this dispute it is not necessary to go into too many facts of this case. It is only necessary to note that the vacancy in the above post arose due to retirement of the original incumbent and the Employment Exchange authorities on being moved sponsored 27 candidates, who were asked to submit the detailed application with necessary documentation. Out of them eight persons including the petitioner and Respondent No.3 applied. Petitioner belongs to SC community and Respondent No.3 belongs to OBC. Departmental Authorities selected Respondent No.3 because he had got 422 marks in the matriculation as against 239 marks obtained by the applicant. Being aggrieved by his nonselection and selection of Respondent No.3, petitioner approached the Tribunal in Original Application No.792 of 1997. In accordance with the orders passed in that OA, the representation of applicant was considered by the Chief Postmaster General, Orissa Circle, Bhubaneswar who rejected the representation and

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declined to interfere in the matter on the ground that the selected candidate, had got highest percentage of marks in the matriculation examination. Being aggrieved by the order of the Chief Postmaster General, Orissa Circle, Bhubaneswar, at Annexure-3, applicant has approached this Tribunal with the prayers referred to earlier.

3. Respondents have opposed the prayer of applicant by stating that according to the Instructions of the DG P&T, selection is to be made from amongst the eligible candidates who has got highest percentage of marks in the matriculation examination. They have also stated that in the recruiting unit, there is shortfall in the representation of both SC and OBC and therefore, the person who has got highest percentage of marks in the matriculation examination of OBC community, has been rightly selected. On the above grounds, they have opposed the prayer of applicant.

4. Respondent No.3 has appeared through his counsel but has not filed any counter.

5. Applicant in his rejoinder, has reiterated the averments made in his original Application and his prayer and it is not necessary to recount the same once again.

6. We have heard Mr.P.C.Acharya, learned counsel for the applicant, Mr.M.Misra, learned counsel appearing for Respondent No.3 and Mr.U.K.Samal, learned Additional Standing Counsel appearing for the Respondents 1 and 2 and have also perused the records.

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7. The sole point urged by learned counsel for the applicant is that even though the original instruction dated 12.3.1993 of DG P&T provides that amongst the eligible candidates, person who has got highest percentage of marks in the matriculation or equivalent examination should be selected, according to the learned counsel for the applicant this instruction has undergone a change in letter dated 26.5.1995 gist of which has been printed in Swamy's compilation of ED rules and extract of which has been annexed at Annexure-4 to the rejoinder. The relevant paragraph according to learned counsel for applicant is the clarification given against query No.2(b). We have gone through this rule carefully. According to this para, clarification was issued whether the candidates belonging to SC/ST community are to be given preference over those belonging to OC irrespective of the fact that the candidates belonging to OC have obtained much higher marks in the examination which makes them eligible to seek appointment in case the selection is made on the basis of marks. On this point, the Director General of Posts has clarified that this has to be considered in the context whether there is adequate representation is available for candidates belonging to SC/ST in the recruiting unit. If it is not available, then the best course would be to make it clear in the notification issued to the Employment Exchange itself that preference would be given to candidates belonging to reserved communities. If this is done, there is every possibility that the Employment Exchange may nominate more than one candidate belonging to SC/ST.

In other cases, if SC/ST candidate satisfies all the minimum prescribed eligibility conditions including the educational qualification and the representation to that category is not adequate, the question of his competing with OC candidates does not arise. He has to be given preference over candidates irrespective of percentage of marks secured subject only to the condition that he satisfies all the other prescribed eligibility criteria. From this, it is clear that this condition is only applicable when there is shortfall in the representation of reserved categories in the particular posts. It is for the applicant to specifically aver that there is a shortfall in the representation of SC candidate amongst the EDBPMs. This the applicant has failed to do. Departmental Respondents in their counter have however indicated that there has been a shortfall in the representation of SC as also OBC candidates. It has been submitted by learned Additional Standing Counsel that in the requisition given to the Employment Exchange it was not indicated that any preference will be given to SC or any other reserved categories. In view of this, naturally, the Employment Exchange, did not sponsor names of particular category for which preference was to be given. Respondents have stated that amongst the OBC Category also there has been shortfall in the representation. It is submitted by learned counsel for the petitioner that in the clarification ^{it} relied upon by him, has been provided that SC/ST candidates should be given preference over other categories and this will include OBC candidate/category also. We are unable to accept the proposition because the OBC categories have been

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treated as a separate reserved category and on the basis of their level of representation, preference/reservation has also been provided to them. In the notice issued by the Postal Department, separate noting is being made with regard to SC/ST, OBC and OC candidates, and therefore, it can not be held that general restriction of other categories will cover the OBC candidates also. In the instant case in the requisition to the Employment Exchange, it was not indicated that the post is reserved for SC candidates. There was also no indication to the Employment Exchange that any preference will be shown and therefore, the Departmental action in selecting a person who has got highest percentage of marks in the matriculation examination amongst the candidates and also belongs to OBC, a deprived community, can not be found fault in.

8. In the result, therefore, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him in this Original Application. The Original Application is, therefore, rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN
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