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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 235 OF 1998
Cuttack this the 25th day of February, 1999

PRONOUNCED IN THE OPEN COURT

Laxminarayan Das

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 235 OF 1998
Cuttack this the 25th day of February, 1999

COMRAM:

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

...

Laxminarayan Das,
aged about 38 years,
Son of Late Lokanath Dash,
At: Bentapur Sasan,
P.O. Brahmana Sarangi,
Dist: Khurda

...

Applicant

By the Advocates : M/s.Ganeswar Rath
S. Mishra
A. K. Panda
T.Ku. Praharaj

-Versus-

1. Union of India represented by
Secretary, Department of Posts,
Dak Bhawan, New Delhi
2. Chief Post Master General,
Orissa Circle, Bhubaneswar
Dist: Khurda
3. Sr.Superintendent of Post Offices,
Bhubaneswar Division,
At/Po: Bhubaneswar,
Dist: Khurda
4. Manoranjan Das,
aged about not known,
S/o. Jagabandhu Dash,
At/Po: Brahmana Sarangi
Via: Balipatna, Dist: Khurda

...

Respondents

By the Advocates : Mr.S.B. Jena
Addl.Standing Counsel
(Central)

...

ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 15.4.1998, in which Respondent No.4, viz. Manoranjan Das has been selected and appointed to the post of Extra Departmental Branch Post Master, Brahmana Sarangi Branch Office in account with Balipatna Sub-Office.

The admitted facts of this case are that existing incumbent of that Post Office was put off duty because of Savings Bank Account fraud case and therefore, steps were initiated by the departmental authorities to make a provisional appointment for the post of E.D.B.P.M. of Brahmana Sarangi Branch Post Office. Both the petitioner and Res. No.4 along with one more person were considered for the said post. It is also admitted that the petitioner secured highest percentage of marks in H.S.C. Examination amongst the three candidates. The petitioner secured 45% marks, Respondent No.4 33.6% and the third candidate secured 33.25% marks. The departmental authorities selected Respondent No.4 ignoring the case of the applicant on the ground that he had submitted Record of Rights showing landed property which was jointly recorded in case of some Record of Rights with his brother, in case of some Record of Rights along with his father's brother, his brother and himself. The departmental authorities took the stand that as the applicant has no landed property exclusively in his name, his case could not be considered, and therefore,

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Respondent No.4, who got the 2nd highest marks in H.S.C. Examination was selected.

2. Heard Shri Ganeswar Rath, learned counsel for the petitioner and Shri S.B.Jena, learned Addl.Standing Counsel appearing for Res. 1 to 3 and also perused the record. Respondent No.4 was issued with notice, but did not appear nor filed any counter.

The only point for consideration in this case is whether the departmental authorities were right in rejecting the candidature of the applicant even though he got the highest percentage of marks amongst the candidates under consideration solely on the ground that he had no landed property exclusively in his name. Learned Addl.Standing Counsel Shri S.B.Jena has submitted that for the appointment to the post of E.D.B.P.M. it has to be ensured that the selected candidate has adequate means of livelihood and for this it is necessary that exclusive landed property should have recorded in his name. In support of his contention learned Addl.Standing Counsel has relied on circular dated 6.12.1993 (Annexure-R/6). We have gone through the circular. This circular lays down that for appointment to the post of E.D.B.P.M. it has to be seen that the selected candidate has adequate means of livelihood. It has been specifically provided in this circular that adequate means of livelihood need not be quantified, but can be found out from derived landed property and immovable assets. In this case the petitioner has given several Record of Rights in which landed property is recorded in his name along with others. It is submitted by the learned

Addl.Standing Counsel that as the share of the applicant has not been mentioned in some of that Record of Rights, those Record of Rights cannot be considered that the applicant is having a share in his name. Under Mitakshara system which presumably governs the applicant, coparcener has a defined share in a coparcenary property. In view of this in the property recorded in the name of the applicant and his brother, it must be taken that the applicant has 50 per cent share. In the other Record of Rights in which the applicant's name has been recorded along with his brother and father's brother, applicant's share has been specifically mentioned. In consideration of this it cannot be said that the applicant has failed to show that he has no landed property in his name. It has also to be noted that what is required under the instructions is whether the applicant has adequate means of livelihood. We note that the applicant has filed solvency certificate and income certificate which show that he is solvent to the tune of Rs.60,000/- and his annual income is Rs.15,000/- from agricultural landed property. In view of this, it cannot be held that the applicant failed to prove that he has adequate means of livelihood. It is further submitted by the learned Addl.Standing Counsel that the selected candidate has higher level of solvency. This is not the determining factor, because there are instructions of D.G.(Posts) specifically providing that selection cannot be based on the higher level of solvency or higher income, and it has to be decided on the basis of higher percentage of marks

J. Jom.

amongst the candidates, who are otherwise eligible. This contention of the learned Addl.Standing Counsel is, therefore, held to be without any merit. Lastly it is submitted by the learned Addl.Standing Counsel that the vacancy has been caused as a temporary measure because the original incumbent is under put off duty and in case the original incumbent returns to duty after conclusion of the departmental proceedings against him, the need for the provisional appointment will cease. This may be so, but as long as the original incumbent has not returned to duty and the departmental authorities have taken steps to fill up the post of E.D.B.P.M., on provisional basis, they must strictly follow the departmental rules/instructions laid down by the D.G.(Posts) while undertaking selection. In consideration of the above, we quash the order dated 15.4.1998 appointing Res.4 to the post of E.D.B.P.M., Brahmana Sarangi B.O. and direct the respondents to make a fresh selection, strictly in accordance with rules, confining the zone of selection to the three candidates who were considered at the time of original selection within a period of 60 days from the date of receipt of this order.

3. In the result the application is allowed, but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
25.4.99