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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 240 OF 1998
Cuttack this the 1st day of May, 1999
*June
P.Som*

Chinmayee Behera

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*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
1.6.99

6-1-6-29
(G.NARASIMHAM)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUAL,

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 240 OF 1998

Cuttack this the 1st day of ^{June} May, 1999
S. No. ,

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Chinmayee Behera,
aged about 20 years,
D/o. Ghanashyam Behera,
At: Bachhada, PO: Jagannathpur Bachhada
Via: Anantapur, Dist: Bhadrak

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Applicant

By the Advocates : M/s.S.Behlera
S.Mohanty, D.Ray,
S.N.Biswal

Versus

1. Union of India represented through the Secretary, Department of Posts, Dak Bhawan, New Delhi
2. Post Master General, Postal Department, At/Po: Bhubaneswar, Dist: Khurda
3. Superintendent of Post Offices, At/PO/Dist: Balasore
4. Bhaskar Chandra Mallick, S/o. Purna Chandra Mallick At: Jagannathpur, PO: Jagannathpur Bachhada Dist: Bhadrak

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application seeking quashing of selection and appointment of Res.4, Bhaskar Chandra Mallick to the post of Extra Departmental Branch Post Master, Jagannathpur Bachhada. Respondent No.3, viz. Superintendent of Post Offices, Balasore in letter dated 17.12.1997(Annexure-R/1) requested the District Employment Officer, Bhadrak to sponsor the names for selection and appointment to the post of E.D.B.P.M., Jagannathpur Bachhada Branch Office. Corresponding to Column No.9 of the requisition, Respondent No.3 mentioned "S.C., S.T., O.B.C. candidates may be sponsored". In response to this letter dated 31.12.1997, the District Employment Exchange in letter dated 14.1.1998 (Annexure-R/2) sponsored the names of six candidates including the name of applicant and Res.4. Respondent No.3 thereafter sent application forms to these six candidates by Regd.Post with A.D. on 16.1.1998 instructing them to apply for the post by 6.2.1998. In response to this only four candidates including the applicant and Res.4 applied for the post in time. Applicant ~~Shinmayee~~ Behera secured highest percentage of marks in ~~Matriculation~~ Examination than Res.4, who is a Scheduled Caste candidate and was ultimately selected on the basis of his caste. These facts are not in controversy.

2. In her application the applicant avers that she is a candidate from S.E.B.C. category and sent the concerned certificate along with her application to Res.3. The post is not a post exclusively reserved for S.C. candidate. She having secured better marks in H.S.C. examination than Res.4 and having regular income should

have been preferred for selection to the post than Res.4. Selection of Res.4, according to her is contrary to law.

3. Respondent No.4 though duly noticed had not entered appearance and contested the application. The departmental respondents in their counter take the plea that the vacancy arose on 8.11.1997 as the then E.D.B.P.M. of that Branch Post Office was placed under off duty because of commission of fraud in certain Savings Accounts. As necessity arose for an adhoc appointment, the process of selection was initiated. District Employment Exchange Officer sponsored names of three O.C candidates including the applicant and three S.C. candidates including Res.4 under Annexure-R/2. Only four candidates including applicant and Res.4 applied for the post. Res.4 is the sole S.C. candidate of these four. As there has been short fall in minimum fixed percentage of representation of S.C. candidates amongst the B.P.M.s of that Postal Division, Res.4 being an S.C. candidate was given preference and was selected, in view of the instructions of D.G.(Posts) letters dated 8.10.1989 and 26.5.1995(Annexures-R/3 and R/4). They specifically deny the applicant as belonging to O.B.C. and she having sent any such certificate along with her application.

Applicant filed rejoinder more or less reiterating the facts as in the O.A. especially emphasising that she belongs to S.E.B.C. class which is otherwise known as O.B.C.

4. We have heard Shri D.Ray, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel appearing for the respondents and also perused the records.

There is no dispute that the applicant secured higher marks than Res.4 in the H.S.C. Examination. She has also income certificate to establish that she has adequate means of livelihood. Hence under the Rules, in normal course, she ought to have been given preference in selection and appointment than Res.4. The Department, as earlier indicated, preferred Res.4 on the ground that he is a Scheduled Caste and comes under the preferential category and that there was short fall in representation of S.C. candidates amongst the B.P.M.s of that Postal Division. However, there has been no mention anywhere in the counter as to the number of S.C. candidates serving then as B.P.M.s in that Division in comparasion to the number of other candidates. Hence we are not inclined to accept this bald statement of the Department that there was short fall in representation of S.C. amongst B.P.M.s in that Postal Division.

When requisition was sent to the Employment Exchange under Annexure-R/1, there has been no mention that the post is reserved for S.C. candidate. There is also no mention in that requisition that preference will be given to S.C. or other reserved class. There was only mention that S.C., S.T., O.B.C. candidates may be sponsored. The Employment Officer under Annexure-R/2 sponsored six names wherein the applicant and two others have been described under general category. Yet, it is the case of the Department that all these six candidates have been issued with application forms with instruction to submit their applications by 6.2.1998. It is not their case in those letters addressed to the candidates they

have been intimated that preference would be given to SC/ST/OBC candidates. In fact on the other hand, in the intimation sent to the applicant under Annexure-3 (not denied in the counter) there has been no indication at all that preference would be given to the reserved community. Had the post been intended to be reserved for reserved class or preference to be given to reserved class, then in normal course, they would not have sent intimations to the three general candidates sponsored by the Employment Exchange asking them to submit their applications. It was too late for the Department to give preference to S.C. candidate even though he is less meritorious. In fact instructions in Circular dated 11.12.1995 of the D.G.(Posts) (Annexure-R/4) goes against them. Under Item 2(b) it has been stipulated that such preference can be given only when it is made clear in the notice issued to the Employment Exchange itself that preference would be given to candidates belonging to reserved communities.

5. We have, therefore, no hesitation to hold that selection and appointment of Res.4 only on the ground that he is a Scheduled Caste candidate in preference to other candidates is contrary to law. This being the position we need not enter into other controversy relating to the caste of the applicant.

6. In the result, while quashing provisional selection and appointment of Res.4 to the post of E.D.B.P.M., Jagannathpur Bachhada, we direct Res.3 to select one among the four candidates whose applications were received in response to letter dated 16.1.1998 according to rules and not on caste basis within a period

✓ of 30 days from to-day. The application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

16.99

B.K.SAHOO

1.6.25
(G.NARASIMHAM)
MEMBER(JUDICIAL)