

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 307 of 1998
Cuttack, this the 1st day of January, 2004

GOPINATH MODI.

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APPLICANT.

:VERSUS :

UNION OF INDIA & OTHERS.

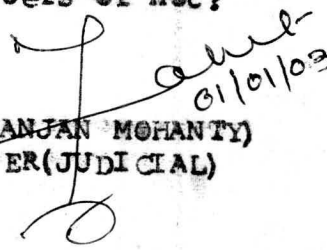
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RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be circulated to all the Benches of the Central Administrative Tribunal or not?
2. whether it be circulated to the reporters or not?


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 307 of 1998
Cuttack, this the 1st day of January, 2004

CORAM:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

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GOPINATH MODI, Aged about 34 years,
S/o. Mangal Modi, At: Kanaposhi,
PO: Sondkap, Dist. Keonjhar,
at present working as EDMM in
the vacant post in Keonjhar garh
Sorting office.

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APPLICANT.

By legal practitioner; M/s. P. Mohanty, D.N. Mohapatra,
G. Satpathy, Smt. J. Mohanty,
Advocates.

:Vrs.:

1. Union of India represented by the Chief
Postmaster General, Orissa Circle,
Bhubaneswar, Dist. Khurda.
2. Inspector of Railway Mail Services,
'N' Ist Sub-Division, Cuttack,
At/PO/Dist. Cuttack.
3. Sub-record officer, RMS 'N' Division,
Keonjhar garh Sorting Office,
At/PO/Dist. Keonjhar.
4. Superintendent of Railway Mail Services 'N'
Division, At/PO/Dist. Cuttack.
5. Bhagaban Nanda, aged about 22 years,
S/o. Anadi Charan Nanda, EDMM Sub Record Office,
RMS 'N' Division, Keonjhar garh Sorting Office,
Now working as Postal Clerk, LSG, in Keonjhar garh
Head office.

.... RESPONDENTS.

By legal practitioner; Mr. A. K. Bose, Senior Standing Counsel.

M/s. P. K. Mishra, P. K. Padhi
Advocate
for Respondent No. 5.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Selection and appointment of Respondent No.5 to the post of E.D.M.M. of Sub-Record office of Keonjhar Sorting office of R.M.S.'N' division is under challenge in this original Application filed under section 19 of the Administrative Tribunals Act, 1985. The main thrust of the argument of the Applicant for his non-selection to the post, in question, is that he having worked in the post, on substitute basis, has a better right to be selected over and above the Respondent No.5. It is an admitted fact that both the Applicant and Respondent No.5 have the equal educational qualification of Class-IX. It is also an admitted fact that the post was not reserved for any reserved category person. It is also an admitted fact that in the last advertisement/requisition to employment exchange, there was also no mention that any preference will be given to the experience gained by a candidate as substitute. It has been submitted by the learned counsel for the Applicant that the post should have been filled up by persons from reserved category and that the Applicant being a person from ST community ought to have been selected/appointed in the post. In support of his argument, it has also been urged by the Applicant that since the Respondent No.5 is a relation of a postal employee, he was preferred for the post, in question.

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2. Heard learned Counsel for the parties and perused the materials placed on record.

3. It is found that except bald allegation, noncontemporaneous materials/documents have been placed on record to substantiate the allegation of favouritism to Respondent No.5. Rules governing the field, with regard to the appointment in the post, in question, envisage that for such an appointment, one must have passed 8th class. Both the Applicant and Respondent No.5 having passed 8th class; they both were considered.

4. The allegation of the learned counsel for the Applicant that at the time of selection and appointment of the Respondent No.5 he was below aged, is not a fact in view of the submissions made by the Respondents that he attained the age of 18 years.

5. That apart, which post of the Department is to be reserved for any reserved community is a matter to be decided by the executive/authority. The Respondents have also explained that there was no short-fall of ST community in that recruiting unit under the Respondents.


6. As regards the allegation of the Applicant that no weightage has been given to his experience as substitute, it is to be noted here that law is well settled that a substitute has no right to claim for any weightage to his experience, because a substitute always works at the risk and responsibility of the regular incumbent.

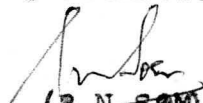


7. As such all the pleas of the Applicant are of no avail.

8. As regards the allegation of the Applicant that the selected candidate is the son of a postal employee and in show of favour he was selected appears to be baseless; because there is no instruction/rule or prohibition that son/relation of a postal employee cannot be allowed to enter postal department services and, even if there are such prohibition, the same is null and void; being against the fundamental rights. That apart the Applicant has failed to show any bias or favouritism.

9. As a result, no irregularity or illegality having been found to interfere in the selection (and appointment of Respondent No.5) this Original Application is dismissed being devoid of any merit. No costs.




(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
01/01/03