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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 336 OF 1999

Cuttack, this the 23<sup>rd</sup> day of April, 1999

Kshirod Kumar Panda           .....           APPLICANT

Vrs.

Union of India and another       ....       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*

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(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
*23-4-99*  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....

Kshirod Kumar Panda,  
aged about 30 years,  
son of late Gokulananda Panda,  
At/PO-Jignipur,  
District-Cuttack

..... Applicant

Advocates for applicant - M/s G.A.R.Dora  
V.Narasingh  
J.K.Lenka  
G.R.Dora

Vrs.

1. Union of India, through Chief Post Master General (Posts), Orissa Circle, Bhubaneswar, Dist. Khurda.
2. Superintendent of Post Offices, Cuttack North Division, Cuttack

..... Respondents

Advocate for respondents - Mr.A.K.Bose  
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

*S.S.M.*  
In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for setting aside the notice dated 15.6.1998 at Annexure-A/4 calling for applications from open market for the post of EDSPM, Jignipur SO. The second prayer is for a direction to the respondents to publish the result of the

earlier selection and to give appointment according to that.

2. By way of interim relief, it was prayed that operation of Annexure-A/4 should be stayed. The prayer for interim relief was considered after filing of the showcause by the respondents and it was ordered that any selection made in pursuance of the public notice at Annexure-A/4 shall be subject to the result of this Application and this condition should be specifically mentioned in the order of appointment issued to the person so selected and appointed.

3. Facts of this case, according to the petitioner, are that his father was working as EDSPM, Jignipur SO. He passed <sup>away</sup> in harness on 8.7.1996 after putting in about 32 years of service. Whenever the applicant's father remained on leave the applicant worked as substitute of his father in the said post. The applicant is a Graduate and has registered his name in the Employment Exchange, Cuttack, on 5.11.1991. Even though the applicant's name was registered in the Employment Exchange, his name was not forwarded by the Employment Exchange. Before the commencement of the selection the applicant filed OA No. 234 of 1997 which was disposed of at the stage of admission in order dated 11.4.1997 with a direction to the Superintendent of Post Offices, Cuttack North Division (respondent no.2 in that case) to consider the name of the applicant along with other candidates if the selection process has not started by the time the petitioner's application and a copy of this order reach respondent no.2 and the petitioner is otherwise eligible to be considered in accordance with rules. In letter dated 12.5.1997 the applicant was directed to submit his detailed application form by 2.6.1997. The petitioner submitted his application

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(Annexure-A/3) along with necessary documentation by 23.5.1997. The applicant has stated that as the last date of receipt of application was 2.6.1997 the selection should have been completed thereafter. But instead of publishing the result the respondents delayed the matter and after about one year issued fresh notification dated 15.6.1998 in Annexure-A/4 inviting applications from Scheduled Tribe candidates for the said single post of EDSPM, Jignipur. The applicant has stated that the single post cannot be filled up by a reserved candidate as it would amount to 100% reservation and therefore, Annexure-A/4 is illegal. It is further stated that the post in question was an unreserved one and the Employment Exchange was asked to forward the names of all categories of candidates and there was no mention in the requisition to the Employment Exchange that the post is reserved for ST candidate. Therefore, the respondents should not have reserved the post at a later stage for ST candidate. It is also submitted that the departmental authorities by their action are estopped from reserving the post for ST candidate, and in the context of the above the applicant has come up with the prayers referred to earlier.

4. Respondents in their counter have stated that the applicant's father, the regular EDSPM passed away on 8.7.1996 while in service. The case of the applicant for compassionate appointment was considered and rejected by Circle Relaxation Committee. During the pendency of the case of the applicant for compassionate appointment, the post of EDSPM was kept vacant. After rejection of the case of the applicant for compassionate appointment, the Employment Exchange Officer, Cuttack, was requested to sponsor names of the candidates to fill up the vacant post in letter dated 24.3.1997 which is at Annexure-R/3. In

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response to this, the Employment Exchange Officer sponsored forty candidates, but the name of the applicant was not sponsored. As regards candidature of the applicant, the Tribunal in their order dated 11.4.1997 directed the respondents to consider the name of the applicant along with other candidates. Therefore, altogether 41 candidates were asked to submit their applications with required documents so as to reach on or before 2.6.1997. In reply, fourteen candidates including the applicant and another existing incumbent EDMC, Jignipur applied for the post and the assessment for selection was undertaken among these fourteen candidates. The respondents have further stated that there are 41 EDSM posts under the appointing unit of respondent no.2 and the representation of various categories communitywise is OC - 35, SC - 2, ST - Nil and OBC - Nil. Thus, the short-fall in representation of ST category is 100%, SC category 66% and OBC 100%. Keeping this in view, the post was preferentially reserved for ST/OBC/SC community and the Employment Exchange Officer was also accordingly notified. When the assessment was taken up, it was found that there was no application from ST candidate. There was one OBC candidate who is the existing EDMC of the same office, but his application was rejected as it was received after the due date. There was also adverse report of SDI(P), Salipur, against that EDMC. One application from SC community candidate was received and was rejected because the candidate was joint holder of property and had no income certificate in his own name. Because of this, there was no other candidate from the reserved category and according to the instructions dated 23.12.1997 the vacancy was notified again on 15.6.1998 vide Annexure-4 calling for applications from the open market. In this notification applications were invited from candidates of ST community. It was also indicated that if

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minimum three eligible candidates from ST community do not apply, then the vacancy will be treated as unreserved and offered to the candidates belonging to OBC community first and then SC community, and in case minimum three eligible candidates belonging to the above communities do not apply, then the vacancy will be treated as unreserved and offered to candidates belonging to other community. The respondents have stated that this has been done strictly in accordance with the departmental instructions and no illegality is involved. The case of the applicant, who belongs to General category can be considered if in response to the notice at Annexure-A/4 sufficient number of candidates belonging to the reserved communities do not apply. On the above grounds, the respondents have opposed the prayer of the applicant.

5. The applicant in his rejoinder has submitted that in the requisition to Employment Exchange which is at Annexure-R/3 enclosed to the counter it has been clearly mentioned that SC and ST candidates will be given preference. The Employment Exchange sponsored 40 candidates, but no ST candidate was sponsored by the Employment Exchange in spite of the above indication in the requisition to the Employment Exchange. The applicant has further stated that besides the 40 candidates the candidature of the applicant was also considered and all the 41 candidates were asked to apply. Only 14 candidates submitted their applications. Of these, the lone SC candidate was found ineligible and the application of one OBC candidate was not considered as it was received after the last date for receipt of applications. The applicant has further stated that out of the remaining 12 candidates, the applicant is the most meritorious. But

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instead of issuing appointment letter to him, the impugned notice at Annexure-A/4 dated 15.6.1998 has been issued inviting applications only from ST candidates. The applicant has further pointed out in the rejoinder that the respondents have relied on the circular dated 23.2.1997 at Annexure-R/8 in support of their action in issuing the notice at Annexure-A/4. The applicant has stated that the circular dated 23.12.1997 is prospective in nature and in this case the selection commenced much before 23.12.1997 and the last date for receipt of applications was 2.6.1997 and as such the above circular is not applicable to this case. It has been further stated that another post of EDSPM, Pegarpara fell vacant on 31.12.1997 due to retirement of the incumbent and similar requisition was sent to the Employment Exchange. The Employment Exchange did not sponsor the name of Pradyumna Kumar Mohanty. As per direction of the Tribunal in OA No. 8/98 his case was considered along with others and he was selected and appointed in order dated 27.7.1998 at Annexure-A/5. He belongs to General category like the applicant and therefore, it has been urged that the applicant has been subjected to hostile discrimination.

6. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records.

7. The admitted position is that the departmental authorities while calling for names from the Employment Exchange indicated that SC/ST candidates may be sponsored and ST candidates will be given preference. In the requisition to the Employment Exchange there was no mention that the post is reserved for ST candidate and in case ST candidates are not available, SC candidates and

thereafter OBC candidates and failing that General category candidates will be considered. The Employment Exchange Officer, who was asked to send names of SC/ST candidates sent forty names, but on being asked by the Department only 14 out of those 40 candidates filed applications. Application of the petitioner was also obtained in pursuance of the order of the Tribunal in OA No. 234/97. Out of these fourteen candidates who applied, there was no candidate belonging to ST community. There was only one SC candidate who was found to be ineligible and one OBC candidate whose application was not considered as it was received after time. The point for consideration is whether under these circumstances the respondents were correct in issuing a fresh notice at Annexure-A/4 reserving the post for ST candidate and failing that, for SC candidate and thereafter for OBC candidate and General Category candidate in that order. The respondents have stated that short-fall in the representation of ST and OBC candidates among the EDSPMs was 100%, and for SC candidates it was 66%. But this fact was known to the respondents before hand and while issuing the requisition to the Employment Exchange they could have asked for only names of ST candidates and failing which, OBC candidates and thereafter SC candidates. But they have done no such thing. They have merely stated that ST/SC candidates may be sponsored and ST candidates would be preferred. The Employment Exchange did not sponsor any ST candidate. In view of this, the respondents should have kept the selection confined to the candidates who were before them and should not have gone in for fresh notice in pursuance of the circular at Annexure-R/8. This circular has been issued on 27.11.1997 and has been circulated in CPMG's letter dated 23.12.1997. While the circular is dated 27.11.1997 the vacancy in this case had arisen much before and the last date for receipt of applications, according to the respondents themselves,

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was 2.6.1997. Having started the selection process and having fixed the last date for receipt of applications on 2.6.1997 and fourteen candidates having applied for the post, it was not open for the respondents to sit over the matter and issue a public notice inviting applications almost one year after in June 1998. Having asked the 14 candidates, who have made their applications in proper form with necessary documentation, the respondents have raised a level of reasonable anticipation amongst these candidates that their candidatures would be considered in accordance with rules. At that stage it was not open for them to take advantage of a circular which has been issued in November 1997 and go in for calling for applications from the ST candidates only from the open market. The applicant has also pointed out in his rejoinder that for a subsequent vacancy of EDSPM, Pegarpara, a similar requisition was sent to the Employment Exchange and ultimately a General category candidate has been selected. The position of law is well settled that any executive instruction can have only prospective effect and therefore, the respondents could not have taken advantage of the circular dated 27.11.1997 to reserve the post for ST candidate after having gone through the process of selection in the manner referred to earlier, more so when the short-fall in the representation of ST, SC and OBC candidates amongst the EDSPMs in that recruiting unit was known to them right from the beginning. In consideration of the above, it is held that the issuing of notice at Annexure-A/4 calling for applications from ST candidates from open market is not in accordance with the departmental instructions and cannot be sustained. It is accordingly quashed. The departmental

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authorities are directed to complete the selection process strictly in accordance with rules taking into account the candidatures of the 14 persons who have applied for the post, within a period of 60 (sixty) days from the date of receipt of copy of this order and issue appointment order to the selected candidate within 15 (fifteen) days thereafter.

8. In the result, the Original Application is disposed of in terms of the observation and direction given above. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 23.4.99

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