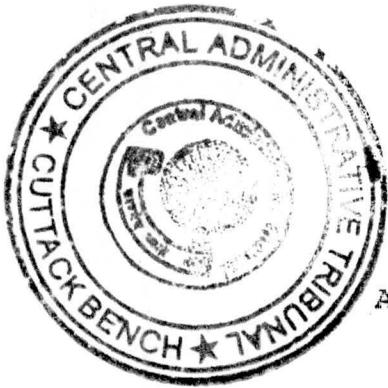


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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.



ORIGINAL APPLICATION NO. 355 OF 1998  
Cuttack, this the 17<sup>th</sup> day of December, 2004.

Arati Dalai. ....

Applicant.

- Versus -

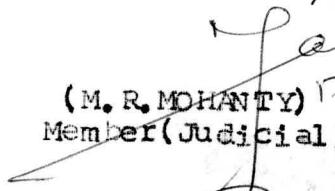
Union of India & Ors. ....

Respondents.

FOR INSTRUCTIONS

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

  
(B.N. SENGUPTA)  
Vice-Chairman

  
(M.R. MOHANTY)  
Member (Judicial)

17/12/04

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 355 of 1998  
Cuttack, this the 17<sup>th</sup> day of December, 2004.



CO RAM:

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

Arati Dalai, aged about 31 years,  
W/o Kanheichand Giri,  
At-Kulida, Po: Godikhal,  
Dist. Balasore. .... Applicant.

By legal practitioner: M/s. K. K. Swain, M. R. Mayak,  
B. B. Mohanty, Advocates.

-Versus-

1. Union of India represented through its Secretary in Ministry of Communications, Department of Posts, Sanchar Bhawan, New Delhi.
2. Chief Postmaster General, Orissa, Bhubaneswar.
3. Director of Postal Services, Orissa, Bhubaneswar.
4. Vigilance Officer, attached to the office of the Chief Postmaster General, Orissa Circle, Bhubaneswar.
5. Superintendent of Postal Balasore Circle,  
At/Po/Ps/Dist: Balasore.
6. Ratnakar Mohanty, S/o. Akhil Mohanty, At: Junbalada,  
PO: Godikhal, District-Balasore.

.... Respondents.

By legal practitioner: Mr. S. B. Jena, Additional Standing Counsel.

*J*



O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

In order to fill-up the regular vacancy of Extra Departmental Branch Postmaster/Gramin Dak Sevak Branch Post Master (in short 'EDBPM/GDSBPM') of Gudikhali Branch Post Office (in account with Amarda Road Sub Post Office, under Jaleswar Head Post Office) Departmental Respondents had taken step to fillup the said post. Accordingly, the local Employment Exchange was asked on 5-11-1997, to sponsor names of candidates. Having failed to get sponsored names from the Employment Exchange (by the date fixed i.e. by 05-12-1997), the Departmental Authorities notified the vacancy by inviting applications from open market candidates. In response to the said public notification, 12 candidates applied (including that of the Applicant and Respondent No. 6) for the post in question. It is relevant to mention here that the Respondent No. 6 was working as Extra Departmental Delivery Agent of the said post Office. However, when Respondent No. 6 was selected and appointed in the post, in question, the Applicant, being aggrieved, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 challenging the same to be illegal on the ground that; (a) the

Respondent No. 6 secured less percentage of marks than her (in HSC Examination); (b) the Applicant to be more solvent than Respondent No. 6 and (c) the Respondent No. 6 does not belong to the post village and that, therefore, he ought not to have been selected.

2. Factual positions of this case are not in dispute. However, in the counter, the Respondents have stated that though applications were invited from the open market candidates, since the Respondent No. 6 was working as EDDA/GDSDA in the same Post Office and he preferred to work against the vacant post of EDBPM/GDSBPM of Gudikhali Branch Post Office, it was found on examination, that the Applicant fulfilled all the required eligibility conditions for being appointed in the post of EDBPM/GDSBPM (as per the DG Posts communication No. 43-27/85-Per. (EDC&Trg.) dated 12-09-1988 under Annexure-R/3 and, therefore, he was selected and appointed as EDBPM/GDSBPM of Gudikhali Branch Post Office on 22-04-1998 and, that though the Applicant was found eligible for the said post of EDBPM/GDSBPM of Gudikhali Branch Post Officer, her case didn't receive consideration in view of stipulations contained in Directorate Communication dated 12-09-1988. It has further been

stated in their counter that both the Applicant and Respondent No. 6 secured equal percentage of marks in Matriculation Examination. As regards, the plea of the Applicant that the selected candidate must be a man of the post village, it has been submitted by the Respondents that the said condition is no more available to be followed rigidly and such condition has been given a complete goby by the Director General of Posts communication dated 06-12-1993. By stating so, the Respondents Department opposed the prayers of the Applicant.

3. Learned counsel for both sides were present and we heard them. During oral submission, learned counsel for the Applicant has submitted that since advertisement was issued (pursuant to which applicant had applied, she has a right to know her result and that her case having not been considered, the selection was not proper. Learned counsel appearing for the Respondents has vehemently opposed the submissions of the learned counsel for the Applicant, by stating that merely because there was an advertisement and simply because, the Applicant applied for the post, she cannot claim that any right had accrued on her. Law, rather, is well settled that merely because she was an applicant, she cannot claim that she should be selected/appointed.

J.B



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4. Having heard learned counsel for the parties, we have given our anxious consideration to various submissions made by the respective parties. Looking to the instructions relied on by the Respondents, it is crystal clear that the Respondents Department/Competent Authority was/is to consider the case of any existing EDAs for being appointed; provided that he/she is eligible and willing. Here, in the instant case, undoubtedly, Respondent No. 6 was in possession of the required eligibility and, as such, the Respondents Department had rightly selected and appointed him in the post in question. As regards the allegation of the illegal gratification the same has no legs to stand as no credible evidence has been produced by the Applicant to substantiate the said plea. The Applicant has also not made the selecting Authority (against whom allegation of receiving gratification is made) as party to this case by name. In absence of this, no consideration can be given to such allegation as made by the Applicant, as this would be against the principles of natural justice.

5. In the above said premises, we find no merit in this Original Application; which is accordingly dismissed. No costs.

*rsdms*  
(E.N. SOM)  
Vice-Chairman

*Malav D*  
17/12/04  
(M. R. MORANTY)  
Member (Judl.)