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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 458 OF 1998
Cuttack this the 7th day of January, 2000

Duryodhan Dash

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 45
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NY

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.1.2000

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)
7.1.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.458 OF 1998
Cuttack this the 7th day of January, 2000

CORAM:

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

...

Duryodhan Dash agd about 36 years
S/o. Krushna Chandra Dash
At: Ramachandrapur
PO: Durgapur, Via: Banki
Dist: Cuttack

...

Applicant

By the Advocates : M/s.B.N.Nayak
A.K.Dora
B.B.Mohapatra

-Versus-

1. Union of India
represented through the Secretary,
Ministry of Communications
(Department of Posts)
At: Daktar Bhawan, New Delhi
2. Chief Post Master General,
Orissa, At/Po: Bhubaneswar
Dist: Khurda
3. Senior Superintendent of Post Offices
Cuttack City Division
At/Po/Dist: Cuttack
4. Senior Post Master Banki
At/Po: Banki
Dist: Cuttack

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Respondents

By the Advocates : Mr.B.K.Nayak
Addl.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application challenging the process of selection to the newly created post of Extra Departmental Branch Post Master at Durgapur Branch Office, the case of the applicant Duryodhan Dash is that he possess ~~the~~ necessary qualifications for being considered to that post, but, because the Department did not make due publicity with regard to vacancy, he could not apply for the said post in time and his application submitted to the departmental authorities direct is not being considered, on the ground that preference would be given to SC/ST candidate.

It is urged by the applicant that there is no rule authorising the Department to reserve a particular post for SC/ST and no selection can be valid without due publicity of the vacancy.

Hence this application with prayer for direction to Department to consider his candidature for the post in question.

2. The Department in their counter submit that the Durgapur Branch Office was opened at Village Durgapur under Banki S.O. on 31.3.1998. Since the date of its open the work of the F.D.B.P.M. is being managed by one F.D.Agent, pending finalisation of recruitment process. The representation of SC/ST candidate in the cadre of F.D.B.P.M. in that Postal Division is far below the requirement, i.e., there is only one F.D.B.P.M. belonging to S.C. community in comparison to 76 EDBPMS of other communities, i.e. of O.C. category. Hence a decision was taken to fill up that post either from SC/ST candidate. Accordingly requisition was sent to the Employment Exchange on 12.6.1998 calling for names specially of the

candidates belonging to SC/ST. The Employment Exchange sponsored the names of 9 candidates belonging to SC/ST categories. The process of recruitment has not yet been finalised. Hence instruction in Circular dated 19.8.1998 that the vacancy shall have to be simultaneously notified through public advertisement is not applicable in case of this recruitment. The application dated 31.7.1998 of the applicant was received direct on 4.8.1998. As he does not belong to either SC/ST community and since his application was not forwarded by the Employment Exchange and received direct, his application cannot be taken into consideration. On these grounds the respondents pray for dismissal of this application.

3. In the rejoinder the applicant challenges the legal propriety of the Department in taking a decision to fill up the post either by SC/ST candidate on the ground that F.D.A.(Conduct & Service) Rules nowhere prescribes any such reservation.

4. We have heard Shri B.N.Nayak, learned counsel for the applicant and Shri B.K.Nayak, learned Addl. Standing Counsel appearing for the Respondents. Also perused the records.

Annexure-3, the requisition sent to the Employment Exchange for sponsoring the names reveals that the Employment Exchange was instructed to sponsor the names of only candidates belonging to SC/ST. Though in the rejoinder it has ^{not} been denied that out of 76 EDBPMs in the Division, only one E.D.B.P.M. in S.C. community is functioning, the learned counsel for the applicant contended that such requisition to the Employment

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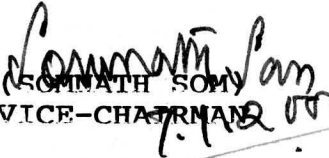
Exchange to sponsor only names of SC/ST candidates would mean that the Department took decision to reserve 100% posts for SC/ST communities. He places reliance on the Division Bench decision of Ernakulam Bench in **K.P.Chandran vs. Sub-Divisional Inspector(Postal)** reported in 1994(1)(CAT) All India Services Law Journal 550 in support of his contention. This was a case wherein the applicant claimed preference over Res.3 in the matter of regular appointment, both by reasons of being superior in merit and member of Scheduled Caste for appointment to the post of F.D.M.C. This is also a case where there is averment with regard to shortfall of percentage in representation of SC/ST. In our view, requisitioning the Employment Exchange only for sponsoring candidates belonging to SC/ST would amount to cent per cent reservation. The matter would have been different had it been mentioned in the requisition that preference would be given to SC/ST candidates.

It is true in D.G.(Posts) Circular dated 19.8.1998 instruction was imparted for issue of public advertisement in filling up of F.D.Posts, ^{but} long prior to that the Apex Court in the matter of **Excise Superintendent, Malakpatnam, Ksrhna District vs. K.B.N.Vishweswar Rao** reported in 1996 (6) SCALE 676 held that in addition to sending requisition to the Employment Exchange, the appropriate Department/Establishment should call for names by publicizing in newspapers for wider circulation and also display on the Notice Board or announce in Radio/Television and so on, and then consider the cases of all the candidates who have applied.

Admittedly no such public notice was given by the

Department. Hence the Department cannot brush aside the application of the applicant received direct from being considered.

In the result, we direct the respondents to consider the application of the applicant along with others for the post in question. The application is allowed, but there shall be no order as to costs.


(SOMNATH SANYAL)
VICE-CHAIRMAN
R.K.SAHOO

7.1.2011
(G.NARASIMHAM)
MEMBER (JUDICIAL)