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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 661 OF 1998.
Cuttack, this the 6th day of July, 2000.

YUDHISTIRA SAHOO.

...

APPLICANT.

-VERSUS -

UNION OF INDIA & OTHERS.

....

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*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 661 of 1998.
Cuttack, this the 6th day of July, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

..

SHRI YUDHISTIRA SAHOO,
Aged about 48 years, S/o. late Banchhanidhi Sahoo,
At/Po; Bharigada, PS; Rajkanika,
Dist; Kendrapara, Presently serving as E. D. D. A.
of Achyutpur Branch post office,
Achyutpur, PS; Rajkanika, Dist; Kendrapara.

... APPLICANT.

By legal practitioner; M/s. S. K. Nayak, -2, B. K. Sahoo,
K. K. Rout, B. K. Rout, Advocates.

-Vers.-

1. Union of India represented through its Secretary, Postal Department, New Delhi, At/Po/PS./Dist; New Delhi.
2. The Chief Post Master General, Orissa, Bhubaneswar, At/Po/PS; Bhubaneswar, Dist; Khurda.
3. Superintendent of Post Offices, North Division, Cuttack, At/Po/PS; Cantonment Road, Cuttack.
4. Sub-Divisional Inspector (Postal), Pattamundai, At/Po/PS. Pattamundai, Dist; Kendrapara.
5. Sub Post Master, Rajkanika Sub Post Office, Rajkanika, Po/PS; Rajkanika, Dist; Kendrapara.
6. Purandar Naik, S/o. not known, presently serving as Gr. D runner of Rajkanika Aul Line, At/Po/PS; Rajkanika, Dist; Kendrapara.

... Respondents.

BY legal practitioner; Mr. B. K. Nayak, Additional Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for quashing the order dated 24.9.1998, at Annexure-3 appointing Shri Purandar Naik, Respondent No.6, EDBM, Dalikaunda BO, on promotion to Gr.D post and for a direction to the Departmental Authorities to give appointment to the applicant as Gr.D runner of Rajkanika Aul line w.e.f. 24.9.1998.

2. Respondents have filed counter opposing the prayers of applicant. Applicant has filed rejoinder.

3. We have taken note of the pleadings. It is not necessary to go into the too many facts of this case because these would be referred to at the time of considering the submissions of learned counsel for both sides.

4. We have heard Mr. S.K. Nayak, learned counsel for the applicant and Mr. B.K. Nayak, learned Additional Standing Counsel appearing for the Departmental Respondents and have also perused the records.

5. Applicant is an EDDA and under the Rules, he is entitled to be considered for promotion to the post of Gr.D in accordance with the seniority and suitability. Admittedly Respondent No.6 is junior to the applicant but according to the Respondents applicant had crossed the age limit of 50 years at the time of consideration of his case for promotion. According to the Respondents rules which are at Annexure-R/2 lay down that the maximum age limit for promotion to the post of Gr.D from ED Agents is 50 years for General category persons and 55 years for SC/ST.

Respondents have pointed out that the applicant was appointed in the year 1964 as EDDA and at the time of his appointment, he had given his date of birth as 10.1.1944 and this has been recorded in the descriptive roll enclosed by the Respondents at Annexure-R/1 which had been signed at that time by the applicant. In view of this, it has been submitted that the applicant had crossed the age limit of 50 years by the time, his case was taken up for consideration for promotion to Gr.D post. On the above grounds the applicant was not selected.

6. We have carefully considered the submissions made by the learned counsel for both sides. Learned counsel for the petitioner submits that in accordance with the School Leaving Certificate dated 31.12.1963, at Annexure-7 his date of birth is 30.6.1950. He has stated that he had represented for correcting his date of birth from 10.1.44 to 30.6.1950 and this has already been accepted by the Departmental Authorities. Departmental Authorities on the other hand have stated in their counter that the applicant had never represented for correcting his date of birth. We note that the applicant has not made any averments in his original Application stating that his representation for changing his date of birth has already been accepted by the Departmental Authorities. In view of this contradictory stand taken by the parties on this point, learned counsel for the petitioner submitted that the gradation list at Annexure-1 shows that the applicant's date of birth is 30.6.1950 and therefore, it must be taken that the departmental authorities have accepted the date of birth

as 30.6.1950. It is submitted by him that besides this document, he has no other document with him showing that the Departmental Authorities have accepted his prayer for change of date of birth. We are unable to accept the above contention for the simple reason that if the applicant had actually represented earlier, for change of his date of birth and in case the same had been allowed by the Departmental Authorities then some orders must have been issued to the applicant informing him that his date of birth has been changed in the official records. But learned counsel for the petitioner has not been able to produce any such document. Applicant has also not made any such averments in his Original Application. In view of this it can not be held that the Departmental Authorities have accepted his date of birth as 30.6.1950.

7. It is next submitted by learned counsel for the petitioner that even according to the recruitment rules, the upper age limit is 55 years for candidates belonging to SC/ST and therefore, even going by the date of birth as 10.1.1944, applicant is eligible for consideration for promotion. In the gradation list at Annexure-1 filed by the applicant himself, the applicant has been shown as belonging to other category (OC). Therefore, it is clear that according to the gradation list and records of the Department he is not a Scheduled Caste person. In his Original Application, also the applicant has not made any averment that he belongs to SC. It is only in his rejoinder for the first time he has mentioned that he belongs to SC. As this fact has been made for the first time in the rejoinder, the

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Departmental Respondents did not have any chance to give reply on this point. In view of this, it can not be accepted merely on the basis of the submission made by the learned counsel for the petitioner that he belongs to SC. We find from the descriptive particulars filled in at the time of initial appointment of the applicant that in the descriptive particulars it has been mentioned that he does not belong to SC and this descriptive particulars have been signed by the applicant. In view of this merely on the basis of the statement in the rejoinder it can not be accepted that he belongs to SC. More so when no such averments has been made by him in the Original Application. From this it is clear that at the time of consideration of the case of the applicant for promotion to Gr.D post he has crossed the maximum age limit of 50 years and in view of this, the Departmental Authorities have not rightly selected him.

8. As regards selection of Respondent No.6, the only ground urged by the applicant is that Res.No.6 is junior to him This fact has been admitted by the Respondents but as the applicant was not eligible for promotion, Res. No.6 who is admittedly junior to him and was within the age limit, was considered and appointed. In view of this, we find no infirmity in the action of the OPS. The Original Application is ^{for} therefore, held to be without any merit and is rejected but in the circumstances, there shall be no order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN