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Cuttack, this the 19th day of October, 1999

Vrs.

(FOR INSTRUCTIONS)

- (G. NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som,  
(SOMNATH SOM)  
VICE-CHAIRMAN  
14.10.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

O.A. NO.669 OF 1998

Cuttack, this the 19th October, 1999

CORAM:

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

....

Smt.Puspalata Pradhan, aged about 36 years,  
wife of Kunjabehari Dalabehera,  
At/PO/PS-Kundheigola,  
District-Deogarh

.... Applicant

Advocates for applicant - M/s M.Kanungo,  
P.K.Rath, S.Nanda,  
L.Kanungo, S.Kanungo.

Vrs.

1. Union of India, through Chief Post Master General,  
Orissa, At/PO/PS-Bhubaneswar, District-Khurda.
2. Post Master General, Sambalpur Region, Sambalpur,  
P.O/PS/Dist.Sambalpur.
3. Senior Superintendent of Post Offices, Sambalpur Division,  
At/PO/PS-Sambalpur, District-Sambalpur.
4. Inspector of Post Offices, At/PO/PS/District-Deogarh
5. Saudamini Gamayak, W/o Saubhagya Pradhan,  
At/PO/PS-Kundheigola, PS/Dist.Deogarh

.....Respondents

Advocates for respondents - Mr.S.Behera ,ACGSC  
for R.1 to 4

&

M/s A.K.Sahu, S.B.Das, K.K.Sahoo,  
for R-5

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has

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prayed for a direction to the departmental respondents to give appointment to the applicant to the post of EDBPM, Kundheigola B.O. and to quash the selection and appointment of Saudamini Garnayak (respondent no.5) to that post.

2. For the purpose of considering this OA, it is not necessary to go into too many facts of this case. Admittedly, the applicant and respondent no.5 were both considered along with others for the above post. The applicant got 306 out of 800 marks. Respondent no.5 took the H.S.C. Examination in 1980 like the applicant and got 279 marks out of 800. In English Paper-I and Paper-II she got 14 and 11 marks respectively out of 100 each. In the Supplementary HSC Examination she got 39 marks in English Paper-I and 21 marks in English Paper-II, totalling 60 marks in these two papers. The departmental authorities had taken the marks obtained by respondent no.5 as 314 in the following fashion. Out of 279 marks obtained by her at the first examination, 25 marks received by her in the two papers in which she had failed, have been deducted. To the balance 254 marks has been added 60 marks obtained by her in the Supplementary Examination in these two papers. Thus respondent no.5 has been taken to have secured 314 marks out of 800 as against 306 secured by the applicant and therefore respondent no.5 has been selected. In the counter filed by respondent no.5 and the rejoinder filed by the applicant several averments have been made with regard to the process of selection but those are not really material. To give an example it has been alleged by respondent no.5 that in the advertisement calling for applications it was specifically mentioned that the candidate must know

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cycling and must possess a cycle of his own. It is alleged by respondent no.5 that the applicant does not have a cycle and does not know cycling. We have mentioned this only to make out the point that these averments are not relevant for the present purpose. The appointing authorities have considered both the applicant and respondent no.5. The departmental instructions provide that amongst the eligible candidates, person with the highest percentage of marks in the H.S.C. Examination is to be selected. The departmental authorities have concluded that respondent no.5 has got highest percentage of marks having secured 314 marks out of 800 as against the applicant securing 306 out of 800 marks and therefore respondent no.5 has been selected.

3. In the context of the above facts, the challenge of the applicant and her prayers are solely based on the submission that the marks of respondent no.5 have not been correctly calculated. It has been submitted that if the marks of respondent no.5 are correctly calculated, then her marks would be less than the marks of the applicant. On that ground, the applicant has based her prayer.

4. We have heard Shri Milan Kanungo, the learned counsel for the petitioner and Shri S. Behera, the learned Additional Standing Counsel for the departmental respondents 1 to 4, and Shri A.K. Sahu, the learned counsel for private respondent no.5 and have perused the records. An earlier decision of the Tribunal in OANo.481/94, dated 6.12.1994, has also been relied on and copy of the order has been furnished. We have also looked into the records of that case.

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5. It has been submitted by the learned counsel for the petitioner that while calculating the marks of a person who has passed H.S.C. Examination compartmentally by appearing at Supplementary Examination, the correct way to go about is to deduct the marks of the subject or subjects in which the candidate has failed from the total marks obtained in the first examination and then add to the balance the average of the marks obtained by the candidate in the supplementary examination. To illustrate this in the case of respondent no.5, out of 279 marks obtained by her 25 marks obtained by her in English Papers I and II in which she had failed are to be deducted. The balance then would become 254 marks. In these two subjects the respondent no.5 has got 39 and 21 marks, totalling 60. The marks obtained by respondent no.5 in the Supplementary Examination and in the original examination, i.e., 25 and 60 are to be totalled up and divided by two to get the average which comes to  $42\frac{1}{2}$  marks in the instant case. Thus her total marks should be taken as  $254 + 42\frac{1}{2}$ , i.e.,  $296\frac{1}{2}$  or giving her the benefit of approximation 297 marks. As against this, the applicant has got 306 marks and therefore she should have been appointed. In support of her contention the learned counsel for the petitioner has enclosed the prospectus of Government College, Angul, for the year 1998-99 at Annexure-4 in which in paragraph 1(ix) dealing with selection procedure for admission in Higher Secondary Degree and Post-Graduate Classes the following instructions have been laid down:

"ix) For students passing compartmentally, the average of the two marks in the subjects, in which the candidate had failed in the first attempt, shall be considered for determining the aggregate

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marks in the subject. Marks in the first unsuccessful attempt plus marks in the successful attempt divided by two will determine the marks in the subject."

It has been ~~sox~~ submitted by the learned counsel for the petitioner that this system of calculating the marks as indicated by him is the one which has been adopted for admission in a Government College and the same system operates in all Government colleges in the State. It is also submitted that for the purpose of admission also like in the case of selection to the post of EDBPM the percentage of marks is the determining factor and the same system of calculation of marks should have been adopted by the departmental authorities.

6. The departmental authorities and their learned counsel have taken the stand that Annexure-4 enclosed to the Rejoinder deals with admission to a Government college and the instructions regarding manner of computation of marks of a candidate who has passed the examination compartmentally has nothing to do with the computation of marks for the purpose of considering selection to the post of EDBPM. The departmental respondents have enclosed along with their counter at Annexure-R/2 the marksheet issued by the Headmaster, Kundheigola High School in favour of respondent no.5. The Headmaster himself has worked out the marks obtained by respondent no.5 as 314 by deducting the marks in the failed subjects and adding the marks obtained by respondent no.5 in those two subjects in the Supplementary Examination. The departmental authorities have stated that when the Headmaster himself has worked out the marks as 314, the same has to be accepted and the method of calculating the marks for admission to courses for further education by

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taking the average of marks in the failed subjects in the two attempts cannot be accepted. We are inclined to accept the submission of the departmental respondents. The marks obtained by a candidate are shown in the marksheet and here in the marksheet issued by the Headmaster of the school he has worked out the marks of respondent no.5 and showed it as 314. Therefore, the departmental authorities were obliged to go by that marks for respondent no.5. There is no departmental circular in the Postal Department that for calculating the marks the method as suggested by the learned counsel for the petitioner is to be adopted. In view of this, the departmental respondents were right to take the marks of respondent no.5 as 314, as certified by the Headmaster. Moreover, it has been pointed out by the learned counsel for respondent no.5 that besides the applicant and respondent no.5, there was a third candidate in the field, namely, Manoj Kumar Dehury. He has got 268 marks out of 700 which works out to 38.28%. The applicant admittedly has got 306 out of 800 marks which works out to 38.25. The marks of respondent no.5 taken at 314 out of 800 works out to 39.25%. Respondent no.5 has mentioned that Manoj Kumar Dehury has got higher percentage of marks than the applicant and therefore the applicant cannot make a grievance about her non- selection. We also find considerable force in this submission.

7. As regards the decision of the Tribunal in OA No.481/94 we find that in this decision the present point ~~kunder~~ controversy in this case was not considered and therefore this decision is of no relevance to the present case.

8. In view of the above, we hold that the applicant has not been able to make out a case for the relief claimed by her. The Application is therefore held to be without any merit and is rejected but without any order as to costs. The interim order is vacated.

(G. NARASIMHAM)  
MEMBER(JUDICIAL)

*Somnath Soni*  
(SOMNATH SONI)  
VICE-CHAIRMAN  
19.10.99

AN/PS