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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:

CUTTACK BENCH: CUTACK.

ORIGINAL APPLICATION NO. 98 OF 1993.

Cuttack this the 1st day of September, 1993.

SHRI KUMAR SETHY.

...

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*.

2.9.93
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 98

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 98 OF 1998.

Cuttack this the 1st day of September, 1998.

CORAM:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

IN THE MATTER OF:

SHRI KUMAR SETHY, aged about 33 years,

Son of Panu Sathy, Vill. Palaksandha,

PO. palaksandha, Ps. Gangpur, Dist. Ganjam.

... Applicant.

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

-Versus-

1. Union of India represented through its
Secretary, Postal & Telecommunication,
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, Aska Division,
At/po/ps. Aska, Dist. Ganjam.
4. Aruna Sahoo, S/o. Raghunath Sahoo,
At/Po. Pailpada, Ps. Gangpur, Dist. Ganjam.

... Respondents.

By legal Practitioner M Mr. B.K. Nayak, Additional Standing
Counsel (Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

It is submitted by the learned counsels for both sides that the matter may be finally disposed of at the stage of admission.

2. We have heard Shri S.K.Nayak-2, learned Counsel for the Applicant and Shri B.K.Nayak, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

3. Short facts of this case, according to the Petitioner, are that for filling up of the Post of Extra Departmental Branch Post Master, Palaksandha Branch Post Office, a public notification was issued vide Annexure-1 inviting application from general public. In this notification it was mentioned that candidates belonging to ST community will be given preference and in case no ST candidate is available, selection will be made from amongst other candidates on merit as per rules. Petitioner belongs to SC community and according to him, he has all the necessary qualifications for being appointed to the post of EDBPM, Palaksandha Branch Post Office. He applied for the Post. It is submitted by him that he applied for the post along with some other persons. No ST candidate applied for that post. It is submitted by the learned counsel for the applicant that when no ST candidate was available

S. Som

the Departmental Authorities should have given preference to the SC candidate. Applicant was the only person belonging to SC category but ignoring his candidature, Respondent No. 4 has been appointed. It is submitted by the learned Additional Standing Counsel Shri B.K.Nayak, appearing for the Departmental Respondents that for the purpose of reservation of posts for SC/ST, the total position for the Division as a whole is taken into account and in this particular Division, there was no shortfall in reservation so far as SC category is concerned. But there was short fall for ST category and that is why in the advertisement at Annexure-1 it was indicated that preference will be given to the persons belonging to ST community and in case ST community candidate is not available, the post will be filled up by the general category candidate. It is submitted by the learned Additional Standing Counsel that according to the Departmental instructions, the post has been filled up amongst the general candidate going strictly by the percentage of marks obtained in the HSC examination. Respondent No. 4 has secured 417 out of 770 marks in the HSC whereas, applicant has secured 244 out of 700 marks in the HSC and on this ground, Respondent No. 4 has been adjudged more meritorious and has been appointed to the post of EDBPM, Palaksandha Branch Post Office. On the above grounds, he has opposed the prayer of the applicant.

J. Sam

It is submitted by the learned Counsel for the petitioner that in accordance with the Circular dated 8.3.1978 printed in page 59-, and 60 of Swamy's Compilation of ED Agents Rules, candidates belonging to SC/ST should be given preference over the candidates belonging to other community even if the general candidate has better merit provided the candidates belonging to SC/ST are otherwise eligible for the Post. It is also submitted by the learned counsel for the petitioner that in accordance with the instructions of the Govt. gist of which has been printed at para-5 in pages 34 and 35 of Swamy's compilation on Reservations and Concessions(1st edition), the vacancies reserved for SCs and STs could be exchanged. If ST candidate is not available, the post should be filled up by SC candidate. On a careful reading of the last mentioned instruction, we find that it is provided in the circular that vacancies reserved for SCs/STs will continue to be treated as reserved for the respective communities while they are carried forward to the subsequent three recruitment years. It is laid down that only when such a vacancy could not be filled by an SC or ST candidate, even in the third recruitment year of carry-forward, the vacancy can be exchanged between these communities i.e. an SC candidate can be considered for a vacancy reserved for ST and vice -versa. In this instant case, it was not reserved for ST candidate. It was mentioned that ST

candidate will be given preference. Moreover, the exchange of vacancy of SC/ST is possible, by the circular relied upon by the learned counsel for the petitioner, only after the matter was carried forward to the subsequent three ^{during} recruitment years and this period of carry forward vacancies can not be interchanged. In view of this, this circular has no application to the present case. It has been ~~recently~~ submitted by the learned additional Standing Counsel that for reservation of vacancies, the number of posts are taken as a whole at the divisional level. It is submitted that in this particular division, there was no short-fall in the vacancy for SC community and therefore, it has not been indicated that in the absence of ST candidate, preference will be given to SC community. We also note that in the absence of any such indication in the public notice inviting application, many SC candidates might have not applied for the post. According to the Departmental instructions, amongst the eligible candidates, selection is to be made on the basis of higher percentage of marks obtained in the HSC examination. In the instant case, Respondent No. 4 has secured higher marks than the petitioner. Therefore, we hold that the petitioner has not been able to make out a case for quashing the selection and appointment of Respondent No. 4 and for a direction to make a fresh selection to the post, giving preference to SC candidates.

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4. The Original Application is held to be without any merit and the same is dismissed. But in the circumstances, there would be no order as to costs.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN 1.9.98