

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 13 OF 1999
Cuttack, this the 21st day of July, 1999

Sri Dillip Kumar Behera Applicant

Vrs.

Union of India and another 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)

VICE-CHAIRMAN

GERMAN
21.7.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

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Sri Dillip Kumar Behera, aged about 24 years
son of Satyabadi Behera,
At/PO-Maniabandha, Dist.Cuttack,
PIN! 754 034.....

Applicant

Advocate for applicant - Mr.T.Rath

Vrs.

1. Union of India, represented through the Chief Post Master General,Orissa, Bhubaneswar, At/PO-Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices,
Cuttack South Division, Cuttack, At/PO-Cuttack-1,
District-Cuttack.

Respondents

Advocate for respondents-Mr.J.K.Nayak
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to complete the selection by considering the candidature of the applicant for the post of EDBPM, Abhimanpur B.O.

2. The case of the applicant is that Superintendent of Post Offices, Cuttack South Division, issued notification dated 20.10.1998 inviting applications for the post of EDBPM, Abhimanpur. According to the

notification, which is at Annexure-1 first preference will be given to ST candidate, second preference to SC and third preference to OBC candidate. The petitioner, who belongs to SC community, submitted his application in time. He has stated that he is eligible to be appointed to the post of EDBPM, Abhimanpur B.O. But notwithstanding this, respondent has sent the applciations of only two candidates Smt.Krishna Sahoo and Padmanav Panda to Sub-Divisional Inspector (Postal), Athgarh Sub-Division, on 8.1.1999 for verification. The applicant met the S.D.I.(P), Athgarh, who informed the petitioner that his application along with applications of all other candidates have not been sent to him for verification. Only the two applications of Krishna Sahoo and Padmanav Panda, who are now working as EDDA, Hariant and EDDA, Abhimanpur respectively have been sent. The applicant has stated that he apprehends that the post is going to be filled up by one of these candidates and therefore he has come up in this petition with the prayer referred to earlier.

3. Respondents in their counter have admitted that public notification was issued inviting applications from general public and in the notification it was mentioned that the post would be filled up by ST candidate, failing which by SC candidate and failing that by OBC candidate. As many as 11 persons applied in response to the public notification and 2 ED officials also applied for the post. Amongst the persons who applied in response to public notice there were two ST candidates and three each belonging to SC, OBC and General Categories. It is stated that one of the ST candidates did not have the requisite qualification of Matriculation and the other did not have landed property in his own name. Accordingly, the candidature of the two ST candidates was rejected. The three SC candidates, have requisite qualification to come

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under the zone of consideration. But according to the letter dated 28.8.1996 of Director General, Posts, preference is to be given to ED Agents for appointment to vacant ED post. Copy of this circular is at Annexure-R/3. Accordingly, the applications of the two ED Agents Krishna Sahoo and Padmanav Panda have been sent for verification. after verification if it is found that they fulfil all the requisite conditions, they will be given preference over other candidates and one of them will be selected keeping in mind the departmental rules. In view of this, the respondents have opposed the prayer of the applicant.

4. The applicant had asked for stay of the process of selection till the disposal of the OA. In Order dated 19.1.1999 the prayer for interim relief was disposed of with the direction that in case a non-ST/SC candidate is selected for the post, then appointment of such candidate should be done by the respondents with the leave of the Court.

5. We have heard Shri T.Rath, the learned counsel for the petitioner and Shri J.K.Nayak, the learned Additional Standing Counsel for the respondents. In support of his prayer the learned counsel for the petitioner has relied on the decision of the Tribunal in OA No.284 of 1996 (Ajaya Kumar Das v. Union of India and others) decided on 2.3.1999. We have also looked into the record of this case.

6. Facts of OA No.284/96 are that in that case the petitioner applied for the post of EDBPM. But even though he got higher marks than the selected candidate (respondent no.3), the departmental authorities selected respondent no.3 on the sole ground that he is an existing EDDA and according to the circular of Director General, Posts, dated 12.9.1988, he is to be given

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preference over other candidates. OA No. 284/96 was disposed of in order dated 2.3.1999 quashing the selection of the existing EDDA (respondent no.3) for the post of EDBPM and directing the respondents to consider the candidature of all candidates afresh. It was also held that in the circular dated 12.9.1988 all that has been provided is that the existing ED Agents can be considered for the post of EDBPM even though their names have not come through Employment Exchange if they have applied directly. The Tribunal held that even in such case the ED Agent has to be considered along with other candidates and selected strictly in accordance with rules.

7. In the instant case the respondents have relied on a more recent circular dated 28.8.1996 which is at Annexure-R/3. In this circular certain specific points of doubt have been clarified. On the question of transfer of one ED Agent to another post it has been laid down that transfer request may be considered in the following order of preference. Surplus ED Agents whose names for deployment appear in the waiting list. If surplus ED Agents are not available, then the seniormost ED Agent, working in the same office and/or the seniormost ED Agent in the same recruitment unit should be given preference in that order. Between two ED Agents applying for the same post preference may be given to ED Agent having higher marks in Matriculation Examination when selection is made for the post of EDBPM/SPM. For other ED posts preference may be given to seniors if they otherwise satisfy the eligibility criteria. This circular also does not provide that if an ED Agent applies for the post he can be straightaway appointed to the post without reference to other considerations. The circular itself provides that for appointment to the post of EDBPM, the marks of ED Agent in Matriculation

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Examination will have to be taken into account and the person who has got highest percentage of marks has to be given preference. In the instant case the departmental respondents have notified the vacancy stating that it will be filled up by an ST candidate, failing which by an SC candidate and failing that by an OBC candidate. The respondents have stated that only two ST candidates applied and they are not eligible. Therefore, the post has to be filled up in terms of the public notification by a person belonging to SC category. Providing reservation to SC and ST candidates in civil post is an obligation on the part of the Department and having notified that the post is to be filled up by ST candidate, failing which by SC candidate and failing that OBC candidate, the departmental authorities cannot be permitted to ignore the point of reservation and select one of the ED Agents who have applied for the post when none of them belongs to SC or ST category. In OA No.284/96 (supra) we have held that even in such case their marks have to be considered vis-a-vis the marks obtained by the other candidates who have applied in response to the public notification. In the instant case selection has to be made in terms of the notification issued and in view of this, the contention of the respondents that one of the ED Agents will be selected cannot be accepted. In consideration of the above, this OA is disposed of by issuing a direction to the respondents that they will consider the candidates who have applied in response to the public notice as also the two ED Agents who have applied for the post strictly keeping in view the terms of public notification and the departmental rules. The existing ED Agents if coming within the zone of consideration have to compete with the other candidates on

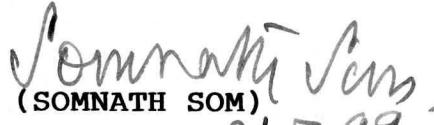
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the basis of their marks in the Matriculation Examination. This process of selection should be completed within a period of 120(one hundred twenty) days from the date of receipt of copy of this order.

8. With the above observation and direction, the Original Application is allowed but without any order as to costs. The stay order granted earlier also stands vacated.


(G.NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
21.7.99
VICE-CHAIRMAN

AN/PS