

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 168 OF 1999.
Cuttack, this the 29th day of August, 2001.

Mitan Kumar Behura. ... Applicant.

Vrs.

Union of India & Ors. ... 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)

S. Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.8.2001

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VJ

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 168 OF 1999.
Cuttack, this the 29th day of August, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.).

MITAN KUMAR BEHURA,
Aged about 30 years,
Son of late Premananda Behura,
Vill. Boli Sahi, PO: & DS: Nauganhat, Hat,
Dist: Jagatsinghpur, working as Casual
Labourer, Nauganhat Post Office,
Nauganhat, Dist. Jagatsinghpur. APPLICANT.

By legal practitioner: M/s. A.K. Swain, M. Mohanty, B.B. Mohanty,
P.L. Behera, Advocates.

VERSUS

1. Union of India represented through its Secretary
of Posts and Telecommunication Department,
Sahajahan Road, New Delhi.
2. Superintendent of Post Offices, South Division,
At: PO: Dist: Cuttack.
3. Asst. Supdt. of Post Offices, At/PO/Dist: Jagatsinghpur.
4. Sub Postmaster, At/PO: Nauganhat, Dist. Jagatsinghpur.

... RESPONDENTS.

By legal practitioner : Mr. U.B. Mehapatra, ASC(Central).

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN:

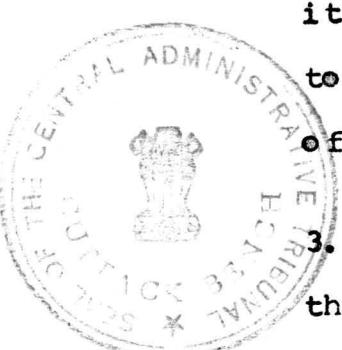
In this Original Application, the applicant has prayed for quashing the public notice dated 19-3-1999 at Annexure-2 inviting applications for the post of EDDA, Tento Branch Post Office. He has also prayed for a direction to the Respondents to consider his case for the post of EDDA giving him first preference as per the instructions of the Department.

2. On the date of admission of the Original Application, it was ordered by way of interim relief that any appointment to the post of EDDA, Tento BO, shall be subject to the result of this Original Application.

3. Respondents have filed counter opposing the prayer of the applicant. No rejoinder has been filed.

4. The case of the applicant is that he was appointed to the post of Sweeper cum Waterman in Naugaon hat Sub post office on 15.11.1994, after he applied for the post. He has been continuing as such when for filling up of the post of EDDA in Tento the public notice was issued at Annexure-2 inviting applications. As the applicant has been working from 1994 as Sweeper cum Waterman and had put in five years of service, he has prayed that he should be given preference while filling up of the post. In the context of the above facts, he has come up in this Original Application with the prayer referred to earlier.

S. J. Som



5. Respondents in their counter have stated that the post of EDDA, Tentoil became vacant w.e.f. 19.12.1998 due to superannuation of the regular incumbent. Employment Exchange was moved for sponsoring candidates belonging to ST and OBC candidates. Simultaneously public notice was issued on 19.3.1999 in Annexure-1 inviting applications. In that public notice also it was indicated that preference will be given to ST/OBC candidates. Altogether 74 candidates applied but the appointing authority selected one A.K.Das belonging to OBC community, who was the seniormost in age amongst the candidates having the qualifications. Respondents have stated that applicant belongs to unreserved community and therefore, he could not be considered.

6. We have considered the rival submissions carefully. Respondents have stated that amongst the eligible candidates Shri A.K.Das was selected being the seniormost in age. They have also pointed out in page 5 of their counter that there is no provision to select the person who is seniormost in age but no further remedial action was taken with regard to such wrong selection in view of the pendency of this O.A. before this Tribunal. In view of the above submissions, we dispose of this O.A. with a direction to the Departmental Respondents to take such action as is permitted under law to correct the wrong selection made for the post of EDDA, Tentoil BO.

S. J. Jum

7. So far as the applicant is concerned, he is admittedly a casual labourer. He was also appointed as a part time Sweeper cum Waterman through a public notice. Question of providing regular job to casual labourers who letime and part time is the subject matter of Director General of Posts Circular dated 6.6.88

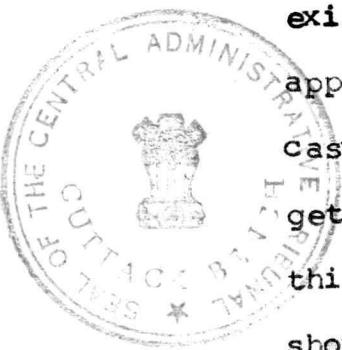
gist of which has been printed at page 98 of Swamy's compilation of ED Rules (7th edition). In this circular the Director General of Posts have noted that casual labourers whole time and part time are entitled to be considered for appointment in Gr.D posts in the Deptt.

But in such appointment the following priority is provided:

1. Non-test category;
2. ED employees;
3. Casual labourers;
4. part time casual labourers.

It has been noted in this circular that because of the existence of large number of ED employees waiting to be appointed in Gr.D posts, they ~~are~~ having higher priority. Casual labourers whole time and part time hardly ever get any chance to get appointed in Gr.D post. In view of this, in the circular it has been provided that casual labourers should be given preference in the matter of recruitment to ED posts provided they fulfil the eligibility conditions for ED posts and provided that they are being sponsored by the Employment Exchange. As already noted that in the instant case the applicant was not sponsored by the Employment Exchange at the time of his initial appointment in 1994 to the post of Sweeper cum Waterman. But Respondents themselves have stated that he was so appointed in pursuance of a public notice issued inviting application for the post of casual labourer. Hon'ble Supreme Court has held that besides calling for names from the Employment Exchange appointments can be made by issuing public notice and in view of this we hold that the applicant is entitled to be considered for appointment to

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ED post even though he has not been sponsored by the Employment Exchange for appointment as Sweeper Cum Waterman because he applied for that post in response to a public notice.

8. So far as the post of EDDA Tentoi is concerned, the post has been reserved for ST/OBC community and the applicant belongs to general category and therefore, obviously he can not be considered for that post but in case the applicant applies for some other ED post for which he has the required qualification, then his case should be considered for appointment to such ED post in terms of the circular dated 6-6-1983 and in terms of our observations made above.

9. In the result, therefore, the Original Application is disposed of with the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.8.201

KNM/CM.