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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 227 OF 1999
Cuttack, this the 18th day of August, 2000

Sri Umakanta Swain

Applicant

Vrs.

Union of India and 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)
VICE-CHAIRMAN
18.8.2000

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CORAM:

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

Sri Umakanta Swain, aged about 29 years, son of Sri Rama Chandra Swain, resident of Nagapur, P.S-Balikuda, Dist.Jagatsinghpur

Applicant

Advocates for applicant - Ms. S.L.Patnaik
Md.Arif

Vrs.

1. Union of India, represented by its Secretary, Government of India, Ministry of Communication, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar.
3. Superintendent of Post Offices, Cuttack South Division, Cantonment Road, Cuttack.
4. Assistant Superintendent of Post Offices (I/C), Jagatsinghpur Sub-Division, Jagatsinghpur-754 103.
5. Bibhudatta Mohanty, EDMC, Palasol Branch Office, P.S-Balikuda, Dist.Jagatsinghpur

Respondents

Advocates for respondents - Mr.S.Behera
ACGSC
& M/s
B.Mohanty-I
S.Patra
for R-5.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S. Som.
In this Application the petitioner has prayed for quashing the selection of respondent no.5 for the post of EDMC, Palasol Branch Office and for a direction to select the applicant for the post as per rules.

2. The applicant's case is that the departmental authorities initiated selection process for

filling up of the post of EDMC, Palasol Branch Office. As the applicant's name was not sponsored by the Employment Exchange, he approached the Tribunal in OA No.17/99 and by virtue of the interim order dated 28.1.1999 his case was considered. According to the applicant, this was not a reserved vacancy and amongst all the candidates, the ^{person} ~~presen~~ having the highest percentage of marks should have been considered as most meritorious. The applicant has passed Matriculation whereas the selected candidate respondent no.5 has only passed Class VIII and also belongs to general category. The applicant has stated that the rules provide that even though the minimum qualification is Class VIII pass, Matriculates are to be preferred. But this has not been done. In view of this he has come up with the prayer referred to earlier.

3. Respondent no.5 in his counter has stated that the applicant withdrew OA No.17/99 after the interim order was passed, because he was not eligible so far as residential requirement is concerned. According to Rules, EDMC should reside in the station where the Branch Post Office is situated or the stage where the mails originate or terminate. But the applicant is a resident of village Naqapur which comes under Balikuda Post Office. It is also stated that the applicant has participated in the selection process and after becoming unsuccessful he is estopped from challenging the selection process. The third point urged is that respondent no.5 has worked as EDMC on various occasions and on that basis he has been selected. On the above grounds respondent no.5 has opposed the prayers of the applicant.

4. The departmental respondents in their counter have pointed out that for filling up of the regular vacancy, the Employment Exchange sponsored 40 names which did not include the name of the applicant. Out of these forty, thirteen candidates applied by the stipulated date. Five other candidates including the applicant also submitted their applications by the scheduled date. The Tribunal in their order dated 28.1.1999 in OA No.17/99 directed to consider the case of the applicant. Similarly their Lordships of the Hon'ble High Court in their order dated 15.9.1988 in OJC No.12733/98 directed the Assistant Superintendent of Post Offices, Jagatsinghpur to consider the case of respondent no.5. The application of respondent no.5 was also received before the expiry of the last date. The departmental respondents have stated that respondent no.5 was eligible for the post and was senior in age amongst all the candidates and therefore he has been selected on merit. It is also stated that in the requisition given to the Employment Exchange there was no mention about giving preference to candidate who has passed HSC Examination. The departmental respondents have pointed out that in the process of selection of respondent no.5, the specific instruction dated 12.3.1993 (Annexure-R/6) of Director General, Posts, was ignored, which provides that even though the minimum educational qualification is VIIIth standard, preference may be given to candidates with Matriculation qualification. They have pointed out that the selection of respondent no.5 is not in order. But as the case is subjudice, no further action has been taken in this regard.

J. Som.

5. We have heard Madam S.L.Patnaik, Shri Biswajit Mohanty-I, the learned counsel for respondent no.5, and Shri S.Behera, the learned Additional Standing Counsel for the departmental respondents and have also perused the records. The learned counsel for respondent no.5 has cited the decision in the case of Secretary (Health), Department of Health v. Dr.Anita Puri and others, JT 1996 (8) SC 130. Before considering the submissions made by the learned counsel of both sides, it would be worthwhile to refer to this decision. In that case for selection of Dental Officers by the Punjab Public Service Commission, the qualification was B.D.S. and it was mentioned that M.D.S. would be preferred. The Hon'ble Supreme Court held that the High Court had erred in holding that a MDS qualified person entitled to be selected whereas in the advertisement it was only mentioned that some preference would be given to higher qualified person. Thus, in this decision the Hon'ble Supreme Court have not held that preference could not be given to higher qualified person. In the instant case it is specifically provided in the rules that even though the minimum qualification is 8th pass, Matriculates will be preferred. The departmental authorities have also mentioned that the selection of respondent no.5 is not in order. From the checklist which is at Annexure-R/5 we find that there were several persons with qualification of HSC pass. But the appointing authority has, according to the counter, selected respondent no.5 solely on the ground that amongst all the candidates, he was the seniormost in age. This is a totally

extraneous consideration and the selection made on the basis of such extraneous consideration cannot be supported. In view of this, the selection of respondent no.5 for the post of EDMC, Palasol B.O. is quashed.

6. As regards the second prayer of the applicant for a direction to the departmental respondents to appoint him to the post, this prayer cannot be granted because there are other HSC pass candidates in the field. In view of this, this second prayer is disposed of with the direction to the departmental respondents that they should make a selection afresh keeping the consideration confined to the 18 (eighteen) persons whose names were in the check-list and who were considered earlier.

7. In the result, therefore, the Original Application is partly allowed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

August 18, 2000/AN/PS