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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO:295 OF 1999.
Cuttack, this the 08th day of January, 2001.

Sanjarekha Mohapatra.

....

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 -

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 295 OF 1999.
Cuttack, this the 08th day of January, 2001.

C O R A M

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

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Sanjarekha Mohapatra, Aged about 32 years,
W/o. Prasanta Kumar Panda, At/Po; Kumusi,
PS: Parjanga, Via; Hindol Road, Dist: Dhenkanal.

... APPLICANT.

By legal practitioner: M/s. B. S. Misra (2)
M. R. Misra,
A. P. Dhirsamanta,
A. R. Mishra,
Advocates-

-Versus-

1. Union of India represented by its
Secretary, Department of posts,
Dak Bhavan, New Delhi.
2. Postmaster General, Sambalpur,
At/Po/Dist: Sambalpur.
3. Superintendent of post Offices,
Dhenkanal, At/Po/Dist: Dhenkanal.
4. Sri Debasish Singh,
At/po; Kasiadhia, Via. Godasil,
Dist: Dhenkanal.

...

... RESPONDENTS.

By legal practitioner: Mr. S. B. Jena,
ASC (Central)
for Res. Nos. 1 to 3.

By legal practitioner: M/s. D. P. Pattanaik,
S. K. Panigrahi,
S. B. Sahu,
Advocates.

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

In this Original Application praying for appointment of the applicant as EDBPM, Baji Chouk Branch Post Office w.e.f. 17.3.1999 and for setting aside the order dated 17.3.1999 of the Respondent No.3 in appointing Respondent No.4 as EDBPM of that post office, the facts not in dispute are that the applicant who for some time served as a substitute EDBPM in place of her father-in-law, Manmohan Panda in Kumusi Post Office in the Dist. of Dhenkanal was an applicant for the post of EDBPM, Kumusi BO, in view of the retirement of Manmohan Panda on superannuation in the month of April, 1990 alongwith others. One Adikanda Sahu was appointed to that post through regular selection. The applicant thereafter preferred Original Application No. 347/1990 challenging the appointment of Adikanda Sahoo. This Tribunal by order dated 24.4.1992 set aside the order of appointment and directed for issue of fresh advertisement and selection for that post. During pendency of that OA, the Postmaster General, Sambalpur had also cancelled the appointment of Adikanda Sahoo because of certain irregularities in the selection. Hence while quashing the appointment of Adikanda Sahoo, this Tribunal also directed to consider the case of the Applicant Adikanda Sahoo alongwith applications to be received in response to fresh requisition. After the selection was made afresh, one Bijaya Laxmidhar was appointed to that post which was challenged by Adikanda Sahoo in O.A. No.655/92 without impleading the applicant as a party in that case. While disposing of that case on 8.1.1993, this Tribunal observed as follows;

"I shall also be very happy if the Superintendent of post offices, phenkanal tries to adjust Smt. Sanjarekha in some other post offices, if it is possible*.

In fact the applicant also challenged the appointment of Bijaya Laxmi Dhar in O.A. No. 225 of 1993. In the counter filed in that O.A., the Department submitted that the case of Smt. S. Mohapatra could not be considered as no post was vacant in the vicinity. During the pendency of the OA No. 225 of 1993, a fresh vacancy arose in Baji Chouk post office and since Bijaya Laxmi Dhar had continued for more than six years in that post, the applicant applied to the authorities for her appointment in the vacancy in Baji Chouk post office. She also preferred M.A. 530/1998 in that OA to injunct the OAs from filling up of the vacancy of Baji Chouk Post Office. This Tribunal by order dated 23.10.1998 directed the Department to consider the case of the applicant against that vacancy alongwith other candidates for the post at Baji Chouk post office keeping in view the observation of the Tribunal in OA No. 655 of 1992 and the averments of the Department in para-2 of the counter in OA No. 655/92, that the applicant could not be adjusted for lack of vacancy. The applicant duly applied for the vacant post at Baji Chouk post office in time. However, order of appointment was issued by Respondent No. 3 in favour of Respondent No. 4.

2. The case of the applicant is that she has better claim for the post of EDBPM, Baji Chouk Post Office as she has read upto I.A. and possesses Ac. 0.83 decimal of land and was ready to offer rent free accommodation for functioning of the post office.

Besides, she has the experience to her credit and this Tribunal also made observation in favour of her appointment.

3. Respondent No.4 and the Departmental Respondents filed separate counters.

4. The stand of Respondent No.4 is that he had duly applied to the post in response to the advertisement. The selection was made on the basis of mark sheet of the HSC certificate. ^{He} ~~She~~ had passed HSC examination in 1st Division securing 570 marks out of the total marks of 750 whereas the applicant had passed in 3rd Division by securing 310 marks out of 700 marks. The observation of the Tribunal would not imply that the Department would offer appointment to the applicant avoiding the cases of more meritorious candidates.

5. The stand of the Department is that on enquiry it could be known that AC0088 decimals of land form part of sale deed dated 20.4.1990 executed in favour of the applicant by one of the share holders which has resulted in subsequent litigations and consequent attachment of the land since 19.11.1993 in a proceedings under Sec.145 Cr.P.C. Further the applicant could not produce any document in support of the source of income of Rs.12000/- as alleged in her application. Respondent No.4 having secured more marks in HSC examination than the applicant was given appointment. No illegality or irregularity has been committed in issuing such order of appointment.

6. The applicant in her rejoinder challenged the jurisdiction of the Department in questioning the genuineness of the sale deed executed in favour of the applicant and the income certificate issued by the Tahasildar in her favour.

7. We have heard Mr.B.S.Mishra-2, learned counsel for the applicant and Mr.S.B.Jena, learned ASC appearing for the Department and have also perused the records.

8. It is not in dispute that Respondent No.4 secured 1st Division in HSC examination while the applicant secured 3rd Division in the said examination. While Respondent No.4 secured 570 marks out of 750 in the examination conducted in the year 1993, the applicant secured only 310 marks out of 700 marks. Law is well settled that for selection to the post of EDBPM a candidate carrying higher percentage of marks in the HSC or matriculation examination is preferred than a candidate securing lesser percentage of marks in such examination. We are not very much impressed on the submission made by Mr.Mishra, learned counsel for the applicant that the standard of examination at the time of Respondent No.4 passed the HSC examination has considerably deteriorated than the standard of examination conducted prior to 1990 when the applicant passed the HSC examination. We can not take any judicial notice of such a submission more so when the applicant secured 3rd Division as against the 1st Division secured by the Respondent No.4.

9. We also can not attach any importance to the experience of the applicant as substitute EDBPM in view of the Full Bench CAT Ruling in G.S.Parvati vrs. UOI reported in Administrative

Tribunals Full Bench Judgments 1991-1993 at page-23, wherein the Full Bench of the Tribunal observed that experience gained as provisional EDAs can be given due weightage in regular selection and even such experience would not be the only decisive factor of selection and other relevant factors should also be taken into account. Consideration of this experience as a provisional EDAs appears to have been given a go-by by a Larger Bench of this Tribunal of Bangalore Bench consisting of five members reported in 2000 (2) ATJ 259 D.M. Nagesh and others vrs. Assistant Superintendent of Post Offices, Bangalore South, Bangalore and others. Thus, the contention advanced in support of her previous experience as a substitute EDBPM, can not be accepted.

10 The observations of this Tribunal as referred to above by the applicant can not be taken to be understood that this Tribunal directed the Departmental Authorities to select and appoint the applicant to that post. Had it been the intention of this Tribunal there would not have been any necessity for the Tribunal to give direction to consider her case along with others. The expression consider would necessarily imply that her case has to be judged along with other applicants as per under law. Hence even if the applicant possesses adequate means of livelihood as claimed by her, we do not see any legal infirmity in appointing Respondent No. 4 who has undoubtedly secured first Division in HSC examination in the face of the applicant securing 3rd Division in the HSC examination.

10. In the result, we do not see any merit in this Original Application which is accordingly dismissed. No costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHIEF MAN *10/01*

1-1-2011
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.