

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 366 OF 1999

Cuttack, this the 15th day of May 2001

Ananda Chandra 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 (SOMNATH SOM) VICE-CHAIRMAN 10.5.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 366 OF 1999
Cuttack, this the 10th day of May, 2001

CORAM:

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

.....
Sri Ananda Chandra Swain, aged about 37 years, son of
Bhagaban Swain, At/PO-Duburi, Via-Danagadi, District-Jajpur

..... Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through the Chief Post Master General, Orissa Circle, Bhubaneswar, At/PO-Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices, Cuttack North Division, P.K.Parija Marg, Town/District-Cuttack.
3. Sub-Divisional Inspector (Postal), Jajpur, At/PO/Dist.Jajpur.
4. Sri Bibhudutta Patnaik, S/o Rajkishroe Patnaik, At-Padampur, P.O-Jajpur Road, Dist.Jajpur

....Respondents

Advocate for respondents - Mr.S.Behera
ACGSC

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the selection and appointment of respondent no.4 to the post of EDBPM, Duburi B.O. and also for a direction to the departmental respondents to consider his candidature for the post in accordance with the instructions of Director General, Posts, as a departmental candidate as also on the ground of his being a physically handicapped person. The departmental respondents have filed counter opposing the prayers of the applicant. The selected candidate (respondent no.4) was issued with notice but he did not appear or file counter.

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2. For the purpose of considering this petition it is not necessary to go into too many facts of the case. Admittedly, the petitioner was working as EDMC at Duburi B.O. The post of EDBPM, Duburi fell vacant on 14.2.1999 due to superannuation of the original incumbent. It is also admitted that after retirement of the original incumbent the applicant was managing the day to day work of EDBPM. The applicant's case is that in response to a public notice issued by Superintendent of Post Offices, Cuttack North Division (respondent no.2), he applied for the post as he is eligible for the same. But instead of selecting the applicant, the departmental authorities selected respondent no.4 for the post. The applicant has stated that according to Director General, Posts' letter dated 12.9.1988, where an ED post falls vacant in the same post office or in any office in the same place and if one of the existing ED Agent prefers to work against the post, he is entitled to be appointed to the vacant post without going to Employment Exchange provided he fulfils all the required conditions. In view of this, the applicant states that as he is working as EDMC in the same office and has applied for the post of EDBPM, he should have been given preference and should have been selected. He has also stated that in Cuttack North Division, not a single physically handicapped person has been appointed as EDBPM even though there are instructions to give preference to physically handicapped and on the above two grounds the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that after superannuation of the original incumbent, Employment Exchange was requested to sponsor names of candidates and simultaneously open notification was also

issued inviting applications from public. The post was reserved for ST candidate and it was indicated that in case three eligible candidates belonging to ST community are not available, the vacancy will be offered to OBC/SC communities, failing which the vacancy will be treated as unreserved. Initially fifteen candidates offered their candidature. But on examination it was found that none of them fulfilled the eligibility conditions. Accordingly, the vacancy was re-notified and three applications from eligible OC candidates including that of the petitioner were received within due date and two applications were received after the due date. While the selection was in process, one Debadutta Jena filed OA No.272 of 1999 and in that OA by way of interim order it was directed that selection and appointment to the post of EDBPM shall be subject to the result of OA No.272 of 1999. The respondents have stated that amongst three candidates Bibhudutta Patnaik (respondent no.4) got highest percentage of marks and accordingly he was selected. From the checklist it appears that Bibhudutta Patnaik got 454 out of 750 marks representing 60.53% whereas the applicant got 353 out of 750 marks which works out to 47.06%. The departmental respondents have stated that the selection of respondent no.4 was done strictly in accordance with rules, and on the above grounds they have opposed the prayers of the applicant.

4. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri S.Behera, the learned Additional Standing Counsel for the respondents and have perused the record.

5. One of the grounds urged by the applicant for preferential consideration is that he is a physically

handicapped person. Instructions of Director General, Posts, lay down that earmarking of particular vacancy for physically handicapped quota has to be done at Circle and Region levels, i.e., by the Chief Post Master General and Post Master General, and Superintendent of Post Offices, who is appointing authority in this case, has no power to reserve a post for physically handicapped person. In this case also in the requisition to the Employment Exchange or in the two public notifications, the post was not reserved for physically handicapped quota. Had it been so reserved, then many other physically handicapped persons could have applied for the post. In view of the above, it cannot be said that the applicant should have been given preference on the ground of his being physically handicapped.

6. The second ground on which the petitioner has asked for preferential treatment is the circular of Director-General, Posts, according to which if an ED post falls vacant and one of the ED Agents in the same post office or in any office in the same place prefers to work in that post and is otherwise suitable/eligible to be appointed to the post, then the post should be offered to him. This has been laid down in Director General, Posts' circular dated 12.9.1988 relied on by him. On this point the subsequent circular of Director General, Posts, dated 28.8.1996 lays down that for filling p a post of ED Agent by transfer of another ED Agent, a priority has been laid down. According to the priority, the first priority has to be given to surplus ED Agents whose names for deployment appear in the waiting list. If surplus ED Agents are not available, the senior most ED Agent, working in the same office and/or the seniormost ED Agent in the same recruitment unit may be given preference in that order. For filling up the post of EDBPM/EDSPM by way of

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such transfer of ED Agents, it is laid down that ED Agents having highest marks in the matriculation examination are to be preferred if they are otherwise eligible. From the above, it is clear that for filling up the post of EDBPM by way of transfer, the departmental authorities have to follow a particular procedure. They have to first check up if any surplus ED Agents eligible to be appointed are available in the waiting list, failing which they have to consider the senior most ED Agent in the same office or in the same recruitment unit. It is further laid down that for the post of EDBPM/EDSPM, among the ED Agents, the person who has got the highest marks in the HSC Examination has to be preferred. From this it is clear that merely by applying for the post of EDBPM by an ED Agent working in ~~the same office~~ ^{from} has no right to get appointed. Moreover, in this case the petitioner has applied in response to a public notice and his case has been considered along with other candidates and he has got less marks than the selected candidate. For filling up the post of EDBPM by way of transfer of an ED Agent, the departmental authorities have to act in accordance with the two circulars of the Director-General, Posts, prior to issuing of the notification inviting applications from public or placing requisition with the Employment Exchange. In this case public notice was issued twice and in response to the second notice, the petitioner has applied to be considered along with others. In view of the above, he cannot claim that he should be given preference for the post of EDBPM.

7. In the result, therefore, the Original Application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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VICE-CHAIRMAN
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