

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 399 OF 1999.
Cuttack, this the 12th day of September, 2000.

RAMA KRUSHNA PATTANAIK.

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.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
18.1.2000

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 399 OF 1999.
Cuttack, this the 12th day of September, 2000.

C O R A M:

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

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Rama Krushna Pattanaik, Aged about 39 years,
S/o, Nilakantha Pattanaik, At/Po:Kittangi,
Ps:Kasinagar, Dist.Gajapati. Applicant.

By legal practitioner: M/s. P.K. Mishra, Prativa Misra, SC Patnaik,
Advocates.

- VERSUS -

1. Union of India represented by its Secretary,
through Director General of Posts, Department
of Posts, Dak Bhawan, New Delhi-1.
2. Chief Postmaster General, Orissa Circle,
At/Po: Bhubaneswar-1, Dist: Khurda.
3. Senior Superintendent of post Offices,
Berhampur (GM) Division,
At/Po: Berhampur, Dist. Ganjam.
4. Sub Divisional Inspector of Post Offices,
Paralakhemundi (West), At/Po: Paralakhemundi,
Dist: Gajapati, PIN- 761200.
5. Ram Mediboina, S/o. Mediboina Lakshmana Rao,
Ward No.11, Home No.182 (Near Forest Colony),
NAC Area, Kasinagar, Dist. Gajapati.

.... Respondents.

St. Form. By legal practitioner: Mr. S. Behera, Additional Standing Counsel.

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the appointment of Respondent No.5 to the post of Extra Departmental Branch Postmaster, Kittangi Branch Post Office and also for a direction to the Departmental Authorities to issue the order of appointment in favour of the Applicant.

2. Departmental Respondents have filed counter opposing the prayers of applicant and applicant has also filed rejoinder. Respondent No.5 the selected candidate was issued with notice but he did not appear nor filed counter. Learned counsel for the Applicant submits that Respondent No.5 must be taken to filed counter and this point will be taken into consideration later on. *S/JM*

3. For the purpose of considering this Original Application, it is not necessary to record the averments made by the parties in their pleadings as these will be taken note of while considering the submissions made by learned counsel for both sides.

4. We have heard Mr. P. K. Mishra, learned counsel for the Applicant and Mr. S. Behera, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents and have also perused the records.

5. The admitted position is that a vacancy in the post of Extra Departmental Branch Post Master, Kittangi Branch Post Office arose on superannuation of the regular incumbent. In notice dated 15-1-1999, at Annexure-R/1 of the counter applications were invited from the general public and on

the same day, the Employment Exchange was also asked to sponsor names. In the notice, as also in the requisition to the Employment Exchange, it was mentioned that preference will be given to the ST candidates and in case of non-availability of three ST candidates, preference will be given to SC/OBC/OC in that order. In response to the public notice as also out of the names sponsored by the Employment Exchange, ultimately 20 candidates came up for consideration and their names were mentioned in the check-list at Annexure-R/4. On the basis of the analysis of the candidates, it was found that applicant is the only candidate who has fulfilled all conditions. So far as Respondent No.5 is concerned, it was pointed out that he has purchased land jointly in his name along with his brother and in another sale deed the land has been purchased through un-registered document which was apparently been subsequently offered for registration and has also been registered and the Res. No.5 has filed receipt of registration office in place of the document. After analysing all these twenty cases, it was pointed out that neither in ST nor SC/OBC categories three persons are available for consideration. It was also pointed out that for the general candidates three persons are not available and therefore, it was decided to issue fresh notification. It has been submitted by learned counsel for the applicant that it has been wrongly mentioned in the note that three candidates are not available but as a matter of fact applicant was available and willing to take up the post and he was also the only candidate who has fulfilled all criteria and therefore, appointment should have been

given to him without calling for fresh Notification. This contention is absolutely without any merit because it had been noted that three candidates are not available and what was meant is that three candidates belonging to General category were not there for consideration and Departmental instructions provide that for filling up of ED post there should be at least three eligible candidates and therefore, the action of the Departmental Authorities in issuing a fresh public notice can not be found fault with and this contention of the learned counsel for the applicant is accordingly rejected. Accordingly a fresh public notice was issued on 20.4.1999 at Annexure-R/5 giving the same conditions about reservation in favour of ST/SC/OBC. This time four candidates including applicant and Respondent No.5 came up for consideration and Respondent No.5 was selected. Learned counsel for the applicant has challenged the selection of Respondent No.5 on different grounds which are discussed below.

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6. The first contention taken by him is that in the office notings which have been enclosed by the Respondents, it has been pointed out that the name of Respondent No.5 has been differently mentioned at some places as Modiboina Ram and some other places as Ram Modiboina. This can not be a ground for canceling the candidature of Respondent No.5 because in many cases in the application the sur name is mentioned ahead of the name in any case there is no controversy about the identity of Respondent No.5. This contention is, therefore, held to be without any merit and is rejected.

7. Second contention of learned counsel for the applicant is that in the notice at Annexure-R/1 and Annexure-R/5, it has been mentioned that the selected candidate must reside in the Post village but from the document filed by Respondent No.5 it appears that at some place of the document it has been mentioned that he resides at new Colony of Kasinagar and in some other document it has been mentioned that he resides at Kasinagar and some other document in a third village. Learned counsel for the applicant submits that as in the notice itself it was mentioned that selected candidate must reside in the post village and must be a resident of post village, Departmental Authorities should not have selected Respondent No.5 who does not belong to the post village which is Kitangi. This contention is also without any merit because originally rules relating to appointment to the post of EDBPM provided that the candidate must be a resident of post village but subsequently on the basis of the judicial pronouncements it has been held that the selected candidate may reside in any village but he should be prepared on being selected as EDBPM to take up residence in the Post Village and to provide rent free accommodation for holding the post Office. In accordance with the judicial pronouncement, the Director General of Posts has also issued circular to this effect. In view of this, even if it is taken for argument sake that Respondent No.5 is a resident of Kasinagar or some village other than the village Kittangi, this can not be a ground for rejecting his candidature. Moreover, in one of the document it has been mentioned that Respondent No.5 is a resident of village Kittangi which is the Post village. In view of the above, this contention of the

learned counsel for the applicant is rejected.

8. The third contention of the learned Counsel for the applicant is that the instructions provide that EDBPM must have independent means of livelihood and the quantum of properties held by the Applicant is much more than the properties held by the Respondent No. 5. There are instructions of the Director General of Posts that while selecting the EDBPM the choice should not be made in favour of a person having larger income or larger area of property and the selection should be made only on the basis of percentage of marks obtained in Matriculation examination from amongst the candidates who are eligible otherwise. In view of this, the applicant can not claim preference over the Respondent No. 5 on the ground that he has larger income and more properties. This contention is accordingly rejected.

9. The next contention of the learned counsel for the applicant is that a reference to the check-list enclosed at Annexures R/4 and R/6 would indicate that the marks obtained by Respondent No. 5 has been changed in between two check lists. This is not correct. What has happened is that only in one check-list i.e. at Annexure-R/4 marks have been changed and the said marks have been mentioned at Annexure-R/6. It is necessary to note that from the check-list at Annexure-R/4, it appears that the applicant has got 296 marks out of 800 representing 37% in HSC examination whereas marks of Respondent No. 5 was written as '369' out of 900 representing 41%. This has later on corrected to 301 out of 750 marks representing 40.1%. From this it is clear that marks of Respondent No. 5 has been brought down and the

percentage has also been brought down. Therefore, it can not be said that the marks have been changed to favour Respondent No. 5. On the other hand, we find that applicant's percentage of marks has been mentioned as 37% but in the next check-list on the basis of the same marks the percentage has been correctly worked out as 36.57% and the Respondent No. 5's marks has been worked out as 40.1%. Both the applicant and Respondent No. 5 belong to general category and between the two Respondent No. 5 has got higher percentage of marks than the applicant and therefore, he has been rightly selected for the post.

10. Next contention of learned counsel for the applicant is that in the Original check-list it was pointed out that Respondent No. 5 has purchased land jointly along with his brother and on that ground his candidature should have been rejected and the applicant being the only person available who had fulfilled all the conditions should have been selected. It has been submitted that the Departmental Authorities have cancelled the selection and issued fresh public notice only to give an opportunity to Respondent No. 5 to cover up his deficiencies. We are not inclined to accept this proposition. In a large number of cases, we have held that under mitaksara system of law a co-parcener has a specified identifiable interest in the property and even if Respondent No. 5 has purchased the land jointly along with his brother he has a specific identifiable interest in that joint property. Moreover, the ED Rules only provide that the candidate must have adequate means of livelihood and does not require that he must have land exclusively in his own

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name. In view of this, the cancellation of the candidature of Respondent No. 5 in the first selection does not appear to be correct. But even then had the candidature of Res. No. 5 been accepted as correct in the first selection process, there would have been two candidates in the field i.e. the applicant and Respondent No. 5 and therefore, the selection could not have been made between the two of them. The Departmental Authorities have rightly cancelled the selection and gone for fresh selection process.

11. The last point mentioned by learned counsel for the applicant is that in the counter filed by the Departmental Respondents it has been mentioned on the top that counter has been filed by Respondents and on the basis of this it has been submitted that this counter filed by the Departmental Authorities must be taken as a counter filed by Respondent No. 5 as well as the Departmental Respondents and this shows the collision between the Departmental Authorities and Respondent No. 5. We are appalled by this submission of the learned counsel for the applicant. On behalf of the Departmental Respondents, learned Additional Standing Counsel has filed Memo of appearance and signed in the counter. In effect the learned counsel for the applicant makes a submission that learned Additional Standing Counsel while appearing for the Departmental Respondents has also appeared and filed counter on behalf of the Respondent No. 5 which under the terms of engagement of learned ASC he is not permitted to do. In

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consideration of this, this contention is held to be without any merit and is rejected.

12. In the result, therefore, the Original Application is rejected but under the circumstances without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.9.2000
JDM