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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 440 OF 1999.
Cuttack, this the 24 day of August, 2000.

Karunakar Behera. 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)

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(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

Original Application No. 440 of 1999.
Cuttack, this the 9th day of August, 2000.

C O R A M:

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

Karunakar Behera, Aged about 52 years,
S/o. Late Akuli Charan Behera,
At/Po: Bharatpur, Dist. Kendrapara. ... Applicant.

By legal practitioner: M/s. A. C. Sarangi, A. K. Sarangi, K. Panda,
Advocates.

-Versus-

1. Union of India represented by its Secretary,
Department of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, North Division,
Cuttack.
3. Assistant Superintendent of Post Offices,
Kendrapara Division, Kendrapara. ... Respondents.

By legal practitioner : Mr. B. Dash, Additional Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, u/s. 19 of the Admn.
Tribunals Act, 1985, the applicant has prayed for a direction
to the Superintendent of Post Offices, Respondent No. 2, to
treat the appointment of the Applicant as E.D.B.P.M., Bharatpur
as regular and substantive.

2. Case of the applicant is that he started his career
in the Postal Department as EDDA in the Branch Post office,
Bharatpur on 1.5.1.5.1972. According to him, he continuously
worked till 25.10.1992 and again from 26.10.1992 till
30.3.1993 he worked as EDBPM, Bharatpur. Since 31.3.1993, he
worked as EDDA in the same office. Thereafter, the post of

EDBPM, Bharatpur fell vacant and as per orders of the ASP, Kendrapara Sub Division, applicant took charge of the post of EDBPM from 16.10.1998 alongwith his duty as EDDA and has been continuing as such. Applicant had earlier filed O.A. No.464/1993 seeking direction for fresh selection. This O.A. alongwith O.A.No.332/93 and 462/93 were disposed of by a common order on 15.9.1993 directing further selection. Accordingly, fresh selection was made and one Pitabas Das was appointed as EDBPM, Bharatpur. Later on Pitabas Das was removed from the post and he challenged his removal in OA No.572/1994 which was ultimately dismissed. Applicant belongs to SC and is a resident of village Bharatpur. His grievance is that for filling up of the post of EDBPM, Bharatpur, Res.No.2 has invited applications from general public in notice dated 17.6.1999 (Annexure-4). Applicant has stated that he was twice selected for the post and ^{as} he has discharged the duties of EDBPM satisfactorily, the notification should be quashed. In the context of the above facts, he has come up in this original Application with the prayer referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant. They have stated that the applicant was appointed as EDDA, Bharatpur on 1.5.1972. While working as such, he applied for the post of EDBPM, Bharatpur in 1992 when the post fell vacant. In the light of the Departmental instructions, applicant's candidature was then considered but as the applicant did not fulfil the property conditions, as well as the residential condition which was in vogue at the relevant time, he could not

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be considered for that post. Being aggrieved with this decision, he filed O.A.No. 464/93 which was disposed of in order dated 15.9.1993 alongwith OA No. 462/93 and 332/93. Copy of the order of the Tribunal is at Annexure-A/2. Tribunal directed the Departmental Authorities to undertake fresh selection for the post of EDBPM, Bharatpur. It was further directed that in that selection the case of the petitioner Pitabas Das, Petitioner in OA No. 332/93, Sanjukta Mohanty, Petitioner in OA No. 462/93 and the present applicant, who was petitioner in OA No. 464/93 should be considered alongwith other applicants and whoever is found to be suitable be appointed to that post. In pursuance of the above order, one Pitabas Das was given appointment to the post. Selection of Pitabas Das was reviewed and was found irregular and his services were terminated. Being aggrieved by that Pitabas Das filed OA No. 572/94 and the Tribunal stayed operation of the termination notice dated 2.9.94. On the basis of which Pitabas Das continued to work as EDBPM, Bharatpur. While working as such, Pitabas Das committed forgery in payment of money orders, SB transactions and temporary misappropriation. For this, he was placed under put off duty. The order of put off duty was challenged by Pitabas Das by filing OA No. 639/97 which was dismissed. In order to fillup the post of EDBPM Bharatpur, which fell vacant, after Pitabas Das was put off duty a public notice was issued inviting applications from the intending candidates and the selection process was under progress. Respondents have stated that the applicant does not have the minimum educational qualification for the post of EDBPM and as such his case can not be considered. Educational certificate of the applicant is at Annexure-R/3. On the above grounds the Respondents have opposed the prayer of the applicant

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4. We have heard Mr. A. C. Sarangi, learned counsel for the Applicant and Mr. B. Dash, learned Additional Standing Counsel appearing for the respondents and have also perused the records. Learned counsel for the Applicant has relied on the decision of the Hon'ble Supreme Court in the case of THE NAYAGARH CO-OPERATIVE CENTRAL BANK AND ANOTHER VRS. NARAYAN RATH AND ANOTHER reported in AIR 1977 SC 112 which has also been taken note of.

5. The main contention of learned counsel for the applicant is that the applicant in past, had worked in the post of EDBPM, Bharatpur in addition to his own duties as EDDA and therefore, the fact that he does not have the minimum educational qualification can not be held against him. In the case of Nayagarh Co-operative Central Bank and another (supra), the Respondent Narayan Rath was working as the Secretary of Nayagarh Cooperative Central Bank for 13 years. After which he was ordered to be removed as his original appointment as the secretary Central Cooperative Bank was made without the approval of the Registrar of the Co-operative Societies. In that case the Hon'ble Supreme Court held that as Shri Rath had worked for 13 years as Secretary, Nayagarh Cooperative Central Bank, during which period, no action was taken to remove him on the ground of absence of approval of the Registrar, after passage of 13 years he can not be removed on that ground. This case has no application to the facts of the present case because in this case the applicant was working as EDDA and he has applied for the post of EDBPM. According to him he is continuing to hold ^{dual} the ~~charge~~ charge of the post. But that by itself would not entitle him to get the post of EDBPM on regular basis. The post of EDBPM has to be filled up in accordance with the Recruitment Rules and the minimum

qualification for the post of EDBPM is HSC pass. Applicant has failed in HSC and therefore, he does not have the minimum educational qualification. In view of this as he can not be appointed to the post of EDBPM because of the absence of the essential educational qualification, his prayer that he should be treated as regularly appointed EDBPM, Bharatpur is without any merit.

6. In the result, therefore, the application is held to be without any merit and is accordingly rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

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