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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 571 OF 1999.

Cuttack, this the 8th day of August, 2000.

Hemanta Kumar Behera.

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Applicant.

- Versus -

Union of India & others.

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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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 571 OF 1999.

Cuttack, this the 8th day of August, 2000.

CORAM:

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

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Hemanta Kumar Behera,
Aged about 20 years,
S/o. Amulya Chandra Behera,
At/Po: Tulsipur, via. Banki,
Dist. Cuttack.

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Applicant.

By legal practitioner : M/s. T.K. Mandal, Laxmidhar Kabi, Advocates

- VERSUS -

1. Union of India represented through the
Chief Postmaster General, Orissa,
At/Po: Bhubaneswar, Dist. Khurda.
2. Senior Superintendent of Post offices,
Cuttack City Division, Cuttack-1.

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Respondents.

By legal practitioner : Mr. A.K. Bose, Senior Standing Counsel (Centr

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this original Application, the applicant has prayed for a direction to Respondent No. 2 to consider the application made by the petitioner for the post of Extra Departmental Branch Post Master, Tulsipur Branch Post office giving preference caste and marks secured in the matriculation examination.

2. Respondents have filed counter opposing the prayer of the applicant.

3. By way of interim relief the applicant has prayed for a direction to the Respondents to stay the selection and appointment for the post of EDBPM, Tulsipur Branch Post office. Prayer for interim relief was disposed of in order dated 22.11.1999, directing that selection and appointment to the post of EDBPM, Tulsipur Branch Post office, shall be subject to the result of this application.

4. For the purpose of considering this original Application, it is not necessary to go into too many facts of this case. Admitted position is that for the post of EDBPM, Tulsipur Branch post office, names were called for from the Employment Exchange as also through public notice directing that preference will be given to ST candidates failing which to SC candidate. Applicant's grievance is that even though there were two SC candidates under consideration i.e. the applicant himself and another but he apprehended that ignoring his candidature a general candidate belonging to general community is going to be appointed and that is why he has come up in this original Application with the prayer referred to earlier.

S. J. S.

5. Respondents in their counter have submitted that by the time the petition was filed, a general community candidate was provisionally selected and appointed on the ground that he has secured highest marks in the HSC examination amongst all the candidates. Respondents have also stated that the candidature of SC community could not be considered because one of the candidates belonging to SC community did not submit income certificate in his own name. Applicant's candidature was rejected on two grounds; firstly according to the income certificate, his income is derived from business and not from landed property and according to the DG circular the income of selected person must be deprived from landed property. The second ground on which the candidature of applicant was rejected is that there was only two SC candidates in the zone of consideration and as per rules, there should have been at least three.

6. We have heard Mr. K.K. Mandal, learned counsel for the Applicant and Mr. A.K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records. Respondents have themselves enclosed at Annexure-R/3 the circular of the DG posts dated 27.11.1997, which provides in paragraph 8 that when a post has been held reserved for one of the reserved categories, and even after getting names from Employment Exchange and applications in response to the public notice, the total number of persons belonging to that community falls below three, then with the approval of the higher authorities, selection can be made from amongst the persons of the reserved categories even if their number is less than three. In the counter there is no explanation forthcoming as to why this DG circular was not followed and one of the two

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SC candidates could not be selected, even when the circular was provided for this and when the post is reserved for ST/SC.

7. As regards the second ground regarding the income certificate, ED rules provide that selected candidate must have the adequate means of livelihood. In this case according to the Income certificate issued by the concerned Tahasildar, the applicant has the annual income of Rs.18000/- Thus, it must be held that he has adequate means of livelihood. Respondents have mentioned that according to the DG circular dated 16.12.93, at Annexure-R/2, such income of the selected person must be derived from landed property or immovable assets. In this case, the applicant has stated that he has given the lists of landed properties and he has also filed the Pattas alongwith his original Application. His case is that on his landed properties, he has constructed a house and given it on rent and that is why the Tahasildar has taken the rent as income from business. From this it appears that the applicant has the adequate means of livelihood as provided under the Rules. In consideration of the above, we hold that when the post was reserved for ST failing which by SC and when there were two candidates belonging to SC, even after issuing of public notice, the Respondents should have acted in accordance with the circular at Annexure-R/3(para-8). From the counter it does not appear, if the OBC candidate who was provisionally selected has in the meantime taken over the charge and joined the post but as we had indicated that his selection would be subject to the result of this application and as we have held that the candidature of the applicant has been unfairly excluded

from the consideration, we would direct the Departmental Authorities to consider the candidature of the applicant giving due regard to his SC status as also his marks secured in the HSC examination and other eligibility conditions.

8. In the result, therefore, the original Application is allowed but under ^{the} circumstances without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.