

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 658 OF 1999
Cuttack this the 28th day of March/2000

Hemanta Kumar Patra

.....

Applicant

-VERSUS-

Union of India & Others

.....

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Sumnath S. S.
(SUMNATH S. S.)
VICE - CHAIRMAN

28.3.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.658 OF 1999

Cuttack this the 28th day of March / 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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1. Hemanta Kumar Patra, aged about 22 years,
S/o.Banamali Patra, At/P.O.Badhan,
Via. Ilda, Dist.Balasore.

By the Advocates

Applicants
M/s Manoj Mohanty
B.P.Routray
S.Samal

-VERSUS-

1. Union of India, represented by the Secretary,
Post & Telegraph, Ministry of Communication,
Dak Bhawan, New Delhi.110 001

2. Superintendent of Posts Offices, Balasore
Division, At/P.O./Dist.Balasore.

3. Bijaya Kumar Patra, S/o.Srusthidhar Patra,
At/P.O.Badhan, Via-Ilda, Dist-Balasore.

By the Advocates

Respondents

Mr. B.Dash
Respondent No.3
Shri P.K.Khuntia

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O R D E R

MR. SOMNATH SOM (VICE-CHAIRMAN): In this Original Application, the petitioner has prayed for quashing the selection of Respondent No.3 to the post of Extra Departmental Branch Post Master(EDBPM), Badhan Branch Post Office and for direction to the departmental authorities to give him appointment to the post along with consequential, financial and service benefits.

2. The case of the applicant is that on vacancy arising in the above post, departmental authorities issued notification dtd.10.5.99 inviting applications. It was stated in the notification that the post is reserved for ST Community and in the absence of 3 eligible candidates of ST, the post will be filled by Scheduled Caste Candidate, failing which by O.B.C candidate and failing that by candidate belonging to General category. The applicant has stated that he belongs to O.B.C category and he applied within time with all necessary documents. He has further stated that his father was the EDBPM when the Branch Office was first opened in the village and the Post Office was running in the house of the applicant. The applicant undertook to give the same house for functioning of the post Office. He has further stated that he had all the necessary qualifications for the Post. He has also secured more marks than respondent No.3. But the departmental authorities have illegally appointed respondent no.3 to the post. In the context of the above, the applicant has came up with the prayers refer to earlier. By way of interim relief, the applicant prayed for staying the appointment of respondent no.3 to the post. In order dtd.8.3.2000 prayer for interim relief was disposed of with the direction that appointment of respondent no.3 shall

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be subject to the result of this application.

3. Departmental respondents and private respondents no.3 have filed counters opposing the prayers of the applicant. The applicant has filed rejoinder to the counters filed by departmental respondents and respondent no.3. It is not necessary to record to the averments made by the respondents in their counters as these will be referred to at the time of considering submissions may by the learned counsel of both sides.

4. We have heared Shri M.K.Mohanty, learned counsel for petitioner, Shri P.K.Khuntia, learned counsel for respondent ~~Shri B. Das~~ ^{deemed as for} no.3 and departmental respondents. Learned counsel for the petitioner and learned counsel for respondents no.3 have filed Memo of citations along with xerox copy of the some of the decisions and we have perused the same. The departmental respondents have filed the copy of notification dtd.10.5.99 along with certain circulars and these have also been perused.

5. The first point urged by the learned counsel for the petitioner is that in the notification it was mentioned that if candidates belonging to ST and SC Communities are not available, the post will be filled up by candidate belonging to the O.B.C, failing which by General Category candidate. It is the admitted position that in response to the public notice, seven candidates including the petitioner and respondent no.3 applied for the post. None of them belongs to ST category. There were 3 candidates belonging to Scheduled Caste. But all the three Scheduled Caste candidates were also disqualified as two of them did not have adequate income from landed property and the third had refused to provide rent free accommodation for holding the Post Office.

Departmental respondents have pointed out that all the remaining 4 candidates belong to General Category. The applicant has stated that he belongs to O.B.C Category but this has been refuted by the departmental authorities. Respondents have enclosed alongwith counter at Annexure R/3 the Caste Certificate filed by the applicant. From this it is clear that applicant belongs to Socially and Educationally Backward Classes (SEBC). For the purpose of employment under Government of India, SEBC candidates do not have any reservation. In view of this, it is clear that the applicant has not given certificate showing that he belongs to O.B.C Community and his contention that he belongs to O.B.C is held to be without any merit and is rejected.

6. The admitted position between the parties is that applicant got higher marks than respondent No.3 in H.S.C examination. As per the marksheet at Annexure-4 to the Original Application the petitioner has got 395 marks whereas respondent No.3 has got 334, both out of 750 marks. Instructions provide that amongst eligible candidates the person who has secured the highest percentage of marks, must be taken to be the most meritorious for the purpose of appointment to the post of EDBPM. Respondents have stated that applicant could not be appointed as his candidature was rejected because it was held that he does not have adequate income. Thus, the sole point of controversy and for consideration in the case is whether departmental authorities have rightly held that the applicant does not have adequate means of livelihood.

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7. The rules provide that to be eligible to be appointed to the post of EDBPM, a candidate must have adequate means of independent livelihood so that he does not have to depend upon the allowance of EDBPM for his sustenance. The income certificate submitted by the petitioner along with the application is at Annexure-5. According to this certificate, income of the applicant from agriculture is Rs.1200/- per year. The departmental respondents have stated that this works out to Rs.100/- per month or Rs.3.30 paise per day. This has been considered insufficient. But in the income certificate at Annexure-5, the Tahasildar has shown, on another head, income of Rs.10,000/- per year from specified immovable property. The departmental respondents have stated that the applicant has 60 decimals of land under Khatian No.248 in his own name. The other land owned by the applicant under Khatian No.185 is jointly recorded along with his brothers. This land under Khatian No.185 at Annexure-8 is homestead. The applicant has stated that through an unregistered family settlement executed in the presence of the villagers on 27.7.1997 by the father of the applicant and three sons including the petitioner, he has been allotted 8.02 acres of land. He is in peaceful and exclusive possession of those lands. The learned counsel for the petitioner and the learned counsel for private respondent no.3 have made various submissions on the point whether through this unregistered family settlement exclusive title has passed on to the applicant in respect of 8.02 acres of land and whether such a record of such family settlement is required under the law to be compulsorily registerable. The learned counsels have cited

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and filed the xerox copy of the following decisions:-

1. Maturi Pullaiah Vrs. Maturi Narasimham, AIR 1966, S.C 1836;
2. Sukulata Mahanto Vrs. Malati Dei, 1971(2) C.W.R 938; and
3. Purnabasi Mishra Vrs. Raj Kumari Misra, 79(1995)CLT 666.

We have gone through these decisions.

As earlier noted, to become eligible to be considered for appointment to the post of EDBPM, a candidate must have independent means of livelihood. Instructions also provide that a candidate must have landed property in his own name. In the instant case applicant's income certificate given by the Tahasildar shows his the income of Rs.11,200/- annually. He has also land exclusively in his possession covered by Khatian No.248 and in the homestead covered by Khatian No.185. the applicant has a specified and identifiable interest. Moreover, the departmental respondents have not conducted any enquiry before disregarding the family settlement under which the applicant has stated to be in exclusive possession of 8.02 acres of land. In consideration of the above, we hold that the candidature of the applicant has been wrongly rejected and the applicant is eligible to be considered for the post. As the applicant admittedly has got higher marks than the selected candidate respondent No.3, the selection of respondent no.3 under the above circumstances and in view of the above discussion, is unsustainable and is accordingly quashed. The departmental respondents are directed to consider the candidature of the applicant afresh along with candidature of respondent no.3 and others, keeping in view our observations above. This exercise should be completed

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within a period of 60(sixty) days from the date of receipt of a copy of this order.

8. In the result, therefore, the Original Application is allowed. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
28.3.2001

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