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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 106 of 2000
Cuttack, this the 5th day of February, 2004

Urmimmala Pradhan. Applicant.
-Versus-
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? *Yes.*

B.N. Som
(B. N. SOM)
VICE-CHAIRMAN

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
25/02/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 106 OF 2000
Cuttack, this the 5th day of February, 2004.

C O R A M:-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. MANORANJAN MOHANTY, MEMBER (J)

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Urmimmla Pradhan, aged about 24 years,
D/o. Santosh Kumar Pradhan,
Vill./Po: Muntunia,
Via-Hatigarh,
Under Jaleswar Head P.O.,
Dist. Balasore.

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Applicant.

By legal practitioner: M/s. S. K. Das,
S. J. Nanda,
S. S. Mohapatra,
Advocates.

:Vrs.:

1. Union of India represented through
its Secretary, Govt. of India, Ministry
of Communication, Department of Posts,
Dak Bhawan, New Delhi-110 001.
2. Post Master General, Orissa,
Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices,
Balasore Division, Balasore,
At/Po/Dist. Balasore.
4. Mochhiram Murmu,
S/o. Kude Murmu,
At/Po: Muntunia,
Via-Hatigarh,
Dist. Balasore.

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Respondents.

By legal practitioner: Mr. S. B. Jena, ASC
&
Mr. D. P. Dhalsamant, Advocate
for Res. No. 4.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant challenges the selection and appointment of the Res. No. 4 (Mochhiram Murmu) to the post of Extra Departmental Branch Post Master of Munutunia Branch Post Office on the ground that this post ought not to have been reserved for ST community and the Respondents ought not to have cancelled the requisition placed to the Employment Exchange time and again. In support of this submission, learned Counsel for the Applicant brings the question of mala fides and favouritism shown to the Respondent No. 4.

2. In nut-shell, the case of the Applicant is that on retirement of the regular incumbent, from the post of Extra Departmental Branch Post Master of Munutunia Branch Post Office in the year 1997, the Employment Exchange was requisitioned to sponsor names for the post, in question. Accordingly, the Employment Exchange sponsored 12 names. Instead of acting on the same, the Respondents cancelled the Notification and again, on 16.4.1998, Res. No. 3 sent requisition to the Employment Exchange to send names of eligible ST candidates for the post in question and pursuant to the said second requisition, the Employment Exchange sent

names of 40 Scheduled Tribe candidates. Instead of going ahead with the process of selection (it is alleged that only to show favour to Res. No. 4, who had no landed property in his name at that relevant time) the Respondents cancelled the process of selection. Again on 19-3-1999 i.e. after acquisition of land by the Respondent No. 4, in his name, from his father, the Respondent No. 3 notified the post inviting applications, and ultimately, the Respondent No. 4 was selected for the post in question. It has also been urged that since adequate ST candidates were not available, the post ought to have been filled up by other community candidate, as per the preference shown in the advertisement. It has been alleged by the Applicant that for oblique motive, the Respondents reserved the post in question for the ST community and it has been submitted that even though he is a better qualified candidate (having more number of marks in the HSC examination though not ST community) he ought to have been selected in place of the Respondent No. 4.

3. By filing counter, Respondents have submitted that in pursuance of the requisition dated 16.4.1998 sent to the Employment Exchange at Jaleswar, 40 ST candidates were sponsored on 13-05-1998. All of them were asked to apply in prescribed proforma (with documents) by 15-06-1998. In response to that only 13 candidates had applied but none of them fulfilled the basic requirements.

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for the post. Hence, it was decided to renotify the post and, accordingly notification was issued on 19.03.1999 inviting applications from the eligible ST candidates for the post. In response to the open advertisement, 9 candidates (including the Applicant and Respondent No. 4) had applied for the post. Their applications were scrutinised and a check-list was prepared and, as per the Rules, since out of three ST candidates, one Shri Budhia Kisku was found more meritorious (having all requisite conditions) he was selected; but, subsequently, when he did not fulfil the condition of accommodation, the Respondent No. 4 was issued with the order of appointment vide order dated 3.8.1999 and, accordingly, he joined the post w.e.f. 25.8.1999 (A/N). The Respondents have submitted that since there was short-fall in the category of ST community in the Balasore Division, it was decided by them to fillup the post in question by an ST community candidate and as there was nothing wrong committed by them, in the matter of selection and appointment in question, the case is liable to be dismissed. Respondent No. 4 has also filed a counter; which has been taken note of.

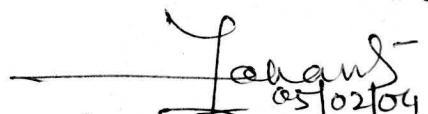
4. Heard learned counsel for both sides and perused the materials placed on record. Learned counsel for the Applicant has submitted during the course of argument that from the entire picture given by him, it goes without saying that only to show favouritism to Respondent No. 4, the process of selection was delayed and, ultimately, the Respondent No. 4 was selected. But it is a fact that the

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Applicant is an 'OBC' candidate and the post was advertised to be filled up by ST community due to short-fall and it is also a fact that the Res.No.4 belongs to ST community. It is also not the case of the Applicant that the Respondent No.4 did not fulfil the conditions stipulated for appointment to the post in question; when the selection was made. Rather, it is the case of the Respondents that due to short-fall the post was decided to fillup by a candidate from ST community. That-apart, another candidate was selected by the Respondents and since he failed to provide accommodation, the Respondent No.4 was selected. Thus, it cannot be said that there were any malafides.

5. Law is well settled that which post is to be reserved/filledup by which category of candidate is a matter to be decided by the authority according to law/rules. It is also well settled that adequate representations of SC/ST are to be given in the matter of selection and appointment to the civil post and deviation from the reservation principle has deleterious consequence. Law is also well settled that it is easy to allege mala fides but difficult to be proved. There are no contemporaneous materials placed by the Applicant, to prove the malafides; except the bald allegation. In this view of the matter, we find no merit in this O.A; which is, accordingly dismissed. No costs.


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)