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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 197 OF 2000
Cuttack, this the 19th day of March, 2001

Sri Gopal Krishna Giri

Applicant

Vrs.

Superintendent of Post Offices and 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
(SOMNATH SOM)
VICE-CHAIRMAN
19.3.2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Gopal Krishna Giri, son of Jagannath Giri, At-Debhog,
PO/PS-Baliapal, District-Balasore....Applicant

Advocates for applicant-M/s D.K.Nanda
N.K.Dash

Vrs.

1. Superintendent of Post Offices, Balasore Division ,
Balasore.
2. Union of India, represented through the Director
General (Posts), India, Dak Bhawan, New Delhi.
3. Smt.Jyotsnarani Mohanty, w/o Mrutyunjaya Mohanty,
At/PO-Debhog, District-Balasore....Respondents

Advocates for respondents - Mr.S.B.Jena
ACGSC for R-1
& 2
&
Mr.P.K.Khuntia
for R-3.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J. J. M.

In this OA the petitioner has prayed for quashing the order dated 31.3.2000 at Annexure-1 appointing respondent no.3 to the post of Extra-Departmental Branch Post Master, Debhog B.O. and for a further direction to the departmental respondents for selecting the applicant for the post. The departmental respondents and private respondent no.3 have filed counters, and the applicant has filed rejoinder, which have been perused. We have heard Shri D.K.Nanda, the learned counsel for the petitioner, Sri P.K.Khuntia, the learned counsel for respondent no.3, and Shri S.B.Jena, the learned Additional Standing counsel for the departmental respondents. For the purpose of the present

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controversy, it is not necessary to go into too many facts of this case.

2. The admitted position is that the departmental authorities took up selection for the post of EDBPM, Debhog and in that selection the applicant, respondent no.3 and some others were considered. The departmental respondents have stated that the applicant having secured highest marks in HSC Examination was due to be selected. But during the process of selection, a complaint was received against the applicant stating that he was involved in a criminal case which was pending in the court of Sub-Divisional Judicial Magistrate, Balasore. On enquiry by the departmental authorities, it was established that the applicant was involved in G R Case No.765 of 1999 under Sections 341, 323 and 34 IPC. The departmental respondents have stated that the applicant furnished a false declaration in the application that no criminal case was pending against him. Because the applicant had furnished a false declaration and was actually involved in a criminal case, his candidature was ignored and respondent no.3, who had secured the next highest marks in the HSC Examination, was selected and was appointed on 8.4.2000 after verification of her documents.

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3. Thus the sole point for consideration in this case is whether because of pendency of the criminal case as also because of false declaration given by the applicant, his candidature has been rightly rejected by the departmental authorities. The applicant has mentioned in his rejoinder and this has also been submitted by Shri Nanda, the learned counsel for the petitioner that the applicant was implicated as a party in a criminal case because of an incident which

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occurred on 16.6.1999. He was arrested and released on PR bond. The applicant has stated that the matter was compromised on 22.6.1999 in presence of local villagers and the Sarpanch and the compromise petition was signed and given to the Officer-In-Charge, Baliapal P.S. The applicant has stated that because of compromise petition the applicant genuinely believed that the criminal case has been brought to an end. No summons had also been issued to him till 4.12.1999 on which date he made the application/ ^{for} the post of EDBPM and that is why in his application he had given a declaration that no criminal case is pending against him. From the Annexures to the rejoinder we find that the applicant was sent up for trial and was tried in Trial No. 2216 of 1999. The learned Sub-Divisional Judicial Magistrate, Balasore, noted that offences under Sections 341, 323 and 34 have been compounded and the matter was tried only in respect of the alleged commission of offence under Section 294 IPC. After trial the accused persons including the applicant were held not guilty of offence under Section 294 IPC and were acquitted in order dated 7.1.2000 at Annexure-4. From the above recitals in the rejoinder of the applicant it is clear that the applicant was aware that the case against him is pending when he made the application for the post of EDBPM. In this case the applicant has stated that he filled up and submitted his application for the post of EDBPM on 4.12.1999. From the judgment of the learned Sub-Divisional Judicial Magistrate it appears that Trial Case No. 2216 of 1999 was heard on 5.1.2000. The applicant must have received summons from the trial court much before that date and therefore, his statement that he was

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not aware after filing of the compromise petition that the case is still pending cannot be accepted.

4. In support of his contention the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of T.S.V.Nair v. Director, Savira Press Centre, 1989 SCC (L&S) 121. In that case the petitioner was denied employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. The Hon'ble Supreme Court held that denial of employment on that ground alone is not sustainable. Facts of T.S.V.Nair's case (supra) are totally different from the case before us. In this case the applicant was involved in a criminal case. Some of the offences were compromised and compounded but for offence under Section 294 IPC, he was tried and acquitted. More importantly the applicant had given a false declaration in his application and the departmental authorities have rightly held that on that ground ~~also~~ the candidature of the applicant has to be rejected for a position of trust as EDBPM for which post the petitioner had applied. The decision in T.S.V.Nair's case (supra), in our view, does not go to support the case of the applicant. During hearing the learned counsel for the petitioner has filed a letter dated 24.12.1999 from the applicant addressed to Superintendent of Post Offices, Balasore, stating that he had mistakenly given the declaration that no criminal case is pending against him because of the compromise between the parties. But he had later on learnt that the case is pending before the court of the learned Sub-Divisional

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Judicial Magistrat and accordingly he requested that in the corresponding column of his application originally submitted his answer should be recorded as "yes" instead of "no". For one thing this letter has been brought on record only at the time of hearing and the respondents had no opportunity to give reply if such a petition was actually filed by the applicant and if so, what action was taken by the departmental authorities on such petition. In ~~any~~ case the applicant had actually filed this petition on then he would have been aware that he had given a wrong declaration. But all these facts including the fact of making this petition have not been mentioned in his OA filed on 10.4.2000. In view of this, no notice can be taken of this document. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in the case of Commissioner of Delhi v. Dhaval Singh, AIR 1999 SC 2326. In that case, the respondent before the Hon'ble Supreme Court was an applicant for the post of Constable. In his application, he had not mentioned about pendency of criminal case. But he voluntarily conveyed to the authorities about his inadvertent mistake and this information was conveyed much before cancellation of his candidature. But this information was not taken note of by the appointing authority. The facts of Dhaval Singh's case (supra) are also distinguishable from the case of the applicant before us. As we have noted the applicant has brought on record his letter dated 24.12.1999 only as an afterthought after suppressing all these facts about pendency of the criminal case and what he now terms as his inadvertent mistake in his averment in the O.A. We have also held that this letter dated 24.12.1999 cannot be taken note of because

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the respondents had not adequate notice of the same. Therefore, the decision in Dhaval Singh's case (supra) does not go to support the case of the applicant.

5. The learned counsel for respondent no.3 has relied on the case of Dr.J.Shashidhara Prasad v. Governor of Karnataka and another, AIR 1999 SC 849. In that case the Chancellor appointed the appellant before the Hon'ble Supreme Court as Vice-Chancellor in order dated 20.8.1997 and on the next day on 21.8.1997 the Chancellor passed another order cancelling the appointment on the ground that he was not aware that against the appellant a criminal case was pending. In that case the point for consideration before the Hon'ble Supreme Court was whether before rescinding the order the appellant was entitled to a showcause notice and whether the principles of natural justice were required to be observed. It is not necessary to refer to the discussions in the above judgment of the Hon'ble Supreme Court. It is only necessary to note that in the facts and circumstances of that case, the Hon'ble Supreme Court declined to interfere in the matter. In the instant case, we have already noted that the criminal case was pending against the applicant and he had furnished a wrong information in his application for the post. We have also rejected the contention of the learned counsel for the petitioner that the petitioner had furnished a wrong information because of a bona fide or inadvertent mistake. In view of this, we find nothing wrong in the action of the departmental authorities in rejecting the candidature of the applicant. Respondent no.3 being the next person in the zone of consideration, having secured the next highest marks, has

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been rightly appointed to the post.

6. The petitioner has taken certain other grounds in the OA challenging the selection of respondent no.3 even though these grounds were not pressed at the time of hearing. It is necessary to note the same. It has been mentioned that respondent no.3 is the daughter-in-law of the previous incumbent EDBPM and possibility of influence and nepotism cannot be ruled out. This is too slender a ground for quashing the selection of respondent no.3 moreso when it has not been alleged that any undue influence was brought on the departmental authorities in the matter of selection of respondent no.3. It is also stated that father-in-law of respondent no.3 is facing criminal trial for misappropriation of postal funds. Departmental respondents in their counter have denied the same and therefore, this contention is held to be without any merit. Similarly, the last contention that the selection in this case was confined to two persons instead of the requirement of three persons. The respondents have stated that the selection was made out of four persons within the zone of consideration and this contention is also therefore held to be without any merit.

7. In the result, therefore, we hold that the applicant is not entitled to the reliefs claimed by him in the OA which is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SODANATH SONI) *[Signature]*
VICE-CHAIRMAN 19.3.2001

19th March, 2001/AN/PS