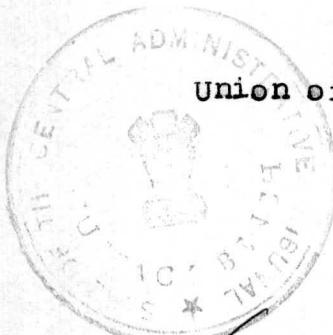


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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.205 OF 2000.
Cuttack, this the 28th day of December, 2001.

Ashok Kumar panda. 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?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28/12/2001

Nityananda Prusty
(NITYANANDA PRUSTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 205 OF 2000.
Cuttack, this the 28th day of December, 2001.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. NITYANANDA PRUSTY, MEMBER (J).

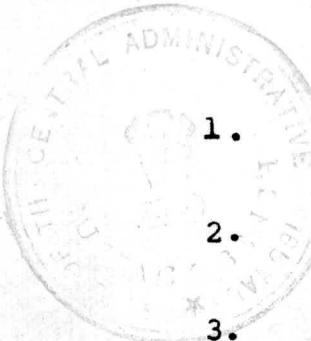
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Ashok Kumar Panda, Aged about 30 years,
S/o. Appana Panda, At/Po: Jaradagada,
District- Ganjam.

Applicant.

By the legal practitioner: Mr. P. K. Panda, Advocate.

- Versus -



1. Union of India represented through its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Berhampur Division, At/Po: Berhampur, Dist: Ganjam.
4. Sub-divisional Inspector (Postal) Paralakhemundi East Sub Division, At/Po: Paralakhemundi, Dist. Gajapati.
5. Krushna Chandra Behera, Aged about 32 years, S/o. Raiberia Behera, At/Po/Ps: Jaradagada, Dist. Ganjam.

. Respondents.

By legal practitioner : Mr. A. Routray, Additional Standing Counsel.

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O R D E R

MR.NITYANANDA PRUSTY, MEMBER(JUDICIAL):

The applicant who was one of the candidates for appointment to the post of ED Packer, Jaradaguda Sub Post Office, in the process of selection, has filed this original Application with the following prayers:

- (a) to quash the selection of Respondent No.5 in the post of ED Packer of Jaradaguda Sub Post Office and also quash any order whatsoever passed pursuant to selection;
- (b) to declare the applicant selected in the post of ED Packer of Jaradaguda Sub Post Office and appoint the applicant in the said post;

* 2. The brief fact of this case is that this is the second round of litigation of the applicant and prior to the present original Application, he had filed original Application No.251/91 challenging the order of his termination in the post of ED Packer and provisional appointment of one Khetrabasi Sethi in his place. The applicant filed the said OA No.251/91 on the ground that he was appointed as ED Packer after undergoing through the process of selection vide order dt.24.12.1989, taken charge on the same date and terminated w.e.f. 28.2.1991. The said OA was disposed of by this Tribunal vide order dated 22-4-1992 with the direction that the process of fresh selection be made by the competent authority considering the cases of all candidates sponsored by the Employment Exchange and also applications which have been received from the Open market including that of applicant and Shri Khetrabasi Sethi. On the allegation of non-compliance of the aforesaid order of this Tribunal dated 22-4-1992, again the applicant approached



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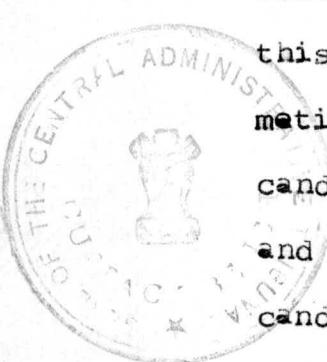
this Tribunal in O.A.No.378 of 1992 which was also disposed of on 10.12.1998 with a direction to the Departmental Authorities to finalise the process of selection for the post of ED Packer strictly in accordance with Rules within a period of 90 days from the date of receipt of a copy of that order keeping the process of consideration confined to those persons whose names had been sponsored by the Employment Exchange and who had applied directly including the applicant and Shri Khetrabasi Sethi as on 22-4-1992 i.e. the date of passing of the order in the earlier O.A. The applicant has filed the present O.A. challenging the selection and appointment of Res.No.5 as ED Packer, Jaradagada Sub Post Office on the allegation that the Respondent No.5 is not at all eligible and qualified in comparison to the present applicant. The present applicant is more meritorious than Respondent No.5. The applicant is a matriculate and passed in second division with an aggregate marks of 337 in HSC examination whereas Res.No.5 who passed his matriculation in compartmental. It is submitted by learned counsel for the applicant that a candidate who has passed matriculation in compartmental, at no stretch of imagination can be compared with a candidate who has passed matriculation examination in one chance and as such, the consideration of Respondent No.5 ignoring the case of meritorious candidate, like the applicant, is completely illegal and against the settled principle of law. The second contention of the applicant is that while considering the ~~candidate~~ of all the candidates, the working experience of the applicant ought to have been taken into consideration by the Respondents

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M.J.

coupled with his merit and qualification. As such, the selection made by the Respondents is completely illegal, unfortunate and is a colourable exercise of power in ignoring the statutory rules and principles and is in violation of the directions of this Tribunal in earlier OAs. In view of the above fact, he prayed for setting aside of the process of selection of Respondent No.5 and for quashing the order of his appointment with a further prayer for declaring the applicant as selected for the post in the process of selection.

3. Departmental Respondents have filed their counter interalia stating therein that the earlier directions of this Tribunal in OA No.251/91 and OA No. 378/92 have been meticulously followed. Out of 20 candidates only seven candidates found to be having matriculation qualification and accordingly checklist at Annexure-R/1 and finalist of candidates having matriculation qualification at Annexure-R/2 were prepared and Respondent No.5 was found to be more suitable amongst all the candidates having matriculation qualification. After the marks secured in extra-optinal subject have been excluded. The selected candidate i.e. Respondent No.5 has secured 328 out of 700 marks in the matriculation (46.857%) whereas the present applicant has secured 319 out of 700 in the HSC examination (45.571%) after their marks secured in the extra-optinal subject were deducted. As such the selected candidate i.e. Res.No.5 has secured more marks in the matriculation examination than the present applicant. Hence no illegality has been committed by the Departmental Respondents while selecting Respondent No.5 to the post in question.

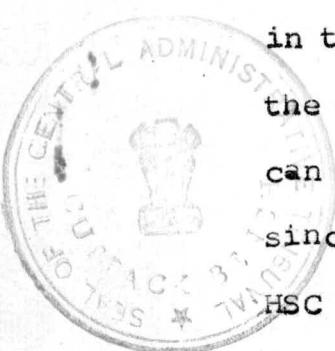


On the above grounds, the Departmental Respondents have opposed the prayer made by the applicant in the original Application.

4. Respondent No.5 has also filed counter to the allegations made in this O.A. more or less adopting the same plea as taken by the Departmental Respondents in their counter and further stating therein that the contentions advanced by the applicant is no longer res-integra since this Tribunal by order dated 11.1.1999 in OA No.631/91 and in order dated 24.5.2001 in OA No.670/1999 after referring to the relevant rules ^{and earlier decisions,} have categorically held that amongst the candidates, one who secured higher percentage of marks in the matriculation examination should be adjudged more meritorious and there is no mention in the above said order that compartmental passing candidate should be considered less meritorious. On this point this Tribunal has also disposed of OA No.481/1994 wherein it has been decided that "when the applicant has scored highest number of marks in one attempt, he was rightly appointed when all the applicants before the appointing authority were considered". On this point another case bearing O.A.No.670/1999 was disposed of by this Tribunal on 24.5.2001 wherein it has been held categorically in para 14 of the order of this Tribunal that compartmental passed candidate securing higher percentage of mark in the HSC examination is more meritorious than a candidate passing the same examination in one chance securing lesser percentage of marks. No rule or circular of the Department that a compartmental pass with higher percentage of marks should be considered less meritorious than a pass in one chance

securing less percentage of marks in selection to the post EDBPM has been placed before the Tribunal.

5. We have heard learned counsel for both sides, perused the pleadings of the respective parties and the citations/documents relied upon by the learned counsel for both sides. In the instant case, the checklist which has been filed by the Departmental Respondents alongwith their reply, clearly indicates that the present applicant has only secured 319 marks out of 700 in the HSC examination whereas the Respondent No.5 has secured 328 marks out of 700 marks in the HSC examination after deducting their marks secured in the extra-optional subject. As such, keeping inview the earlier decisions of this Tribunal, the Respondent No.5 can not be said to be less meritorious than the applicant since he has secured more marks than the applicant in the HSC examination.



6. So far as the past experience of the applicant is concerned, there is no prevalent rule for giving weightage to the past experience of a candidate and also while deciding the earlier OAs, this Tribunal have said nothing regarding giving weightage to the past experience of the applicant. In that view of the matter, the Departmental Respondents have, in no way, committed any illegality/irregularity in not taking into consideration the past experience of the applicant.

7. In view of the discussions made above, we find no merit in this original Application which is accordingly rejected. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

Nityananda Prusty
(NITYANANDA PRUSTY)
MEMBER(JUDICIAL)