

15. ORDER DATED 17-7-2001.

Heard Shri P.K. Rath, learned counsel for the Applicant and Shri S.B. Jena, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

2. In this Original Application, the applicant has prayed for a direction to the Superintendent of Post Offices, Cuttack South Division, Respondent No. 2 to allow the applicant to continue as Extra Departmental Branch Post Master, Angeswarapada Branch Post Office, on regular basis. The case of the applicant is that the regular incumbent in the post of E.D.B.P.M. superannuated and in the vacancy, the Respondent No. 3, Assistant Superintendent of Post Offices, Jagatsinghpur was directed by Respondent No. 2, the Superintendent of Post Offices to give offer of appointment to the Applicant. Accordingly offer of appointment was given to the applicant and he joined the post. He has stated that he had earlier worked as EDBPM in Angeswarapada Branch Post Office and acquired some experience of the post. On 7.2.2000 a public notice was issued inviting applications for the post. The applicant has stated that as he has worked for sometime and he was appointed to the post, he should have been considered for regularisation. In the context of the above facts, he has come in this Original Application with the prayers referred to earlier.

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3. Respondents in their counter have stated that the regular incumbent retired on 9.3.2000 on superannuation and prior to that on 7.2.2000 public notice was issued fixing the last date for receipt of application as 7.3.2000. The post was reserved for ST/SC/OBC community in the descending order. Employment Exchange was also notified the vacancy and asked to sponsor the candidates. Altogether, 24(twenty four) candidates applied. There were seven eligible SC candidates. Petitioner was also one of the candidates. From the check list enclosed by the Respondents it appears that applicant is a candidate belonging to general community (against his name it has been mentioned that he is SEBC and SEBC has no preference so far as the post of Govt. of India are concerned). Therefore, the applicant has to be treated as belonging to general category. Respondents have pointed out that amongst the seven eligible SC candidates, one Shri Biswanath Behera, who secured 67.46% marks was selected. As against which, the applicant got only 43.6% of marks. Respondents have pointed out that as the regular selection was likely to take time, the Assistant Superintendent of Post Offices, Jagatsinghpur in his letter dated 25.3.2000 directed the applicant to discharge the duties of Extra Departmental Branch Postmaster purely on temporary basis without any claim for his permanent absorption. It is stated by the Respondents that the Appointing Authority of the EDBPM is

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Superintendent of Post Offices and Assistant Superintendent of Post Offices had issued the order on his own without any reference to the Superintendent of Post Offices, contrary what has been mentioned by the Applicant in his Original Application. Because of this Departmental proceedings were initiated against the Assistant Superintendent of post Offices. Against the issue of public notice, which was prior to the appointment of applicant, the applicant came up before this Tribunal and prayed for a direction not to hand over the charge. Against the order of the Tribunal declining to issue any such direction, the applicant filed OJC No. 5001/2000 before the Hon'ble High Court of Orissa on 31.5.2000 and the Hon'ble High Court in order dated 2.6.2000 in Misc. Case No. 4997/2000 directed the Superintendent of Post Offices, Cuttack South Division not to do away with the service of Applicant without the leave of the Court. Accordingly, the applicant continued in service but later on the applicant withdrew the writ petition and this was allowed in order dated 10-8-2000 by the Hon'ble High Court. It is submitted by the Respondents that notwithstanding the above fact, the applicant is not handing over the charge of the Office of the Extra Departmental Branch Post Office, and is continuing in that job forcibly. In the context of the above, the Respondents have opposed the prayers of applicant.

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4. It is submitted by learned counsel for the applicant that as the post of EDBPM, is a single post reservation should

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not have been made for ST and SC and 80 point roster should have been followed. This contention is without any merit. Departmental instructions provide that for the post of EDBPM total number of posts in the Recruitment Unit will have to be taken into consideration and on the basis of the short-fall from the required percentage posts are to be reserved. Applicant has not made any averment that the required percentage in respect of ST/SC and OBC candidates have been achieved in the concerned Recruitment Unit. In view of this, we find no illegality in the action of the Departmental Respondents ~~in~~ reserving the post for ST/SC/OBC in a descending order. This contention, is therefore, held to be without any merit and is rejected.

5. Second contention of the learned counsel for the Applicant is that in the process of selection, Departmental Authorities have merely gone by the percentage of marks achieved in the HSC examination. Other conditions of eligibility like independent means of livelihood etc. and ability to provide free accommodation for the post office, have not been looked into. Departmental instructions provide that amongst the eligible candidates, the person who has got highest percentage of marks in the HSC examination has to be taken as most meritorious. Respondents have pointed out that the selected candidate has independent means of livelihood and is also prepared to provide rent free accommodation for holding the post office but because the applicant has not handed over the charge, the post office is still being

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managed by him, in his house. In view of the above, this contention of the learned counsel for the applicant is also held to be without any merit and is rejected.

6. Learned counsel for the applicant led some emphasis on the point that the selected candidate does not belong to that particular village. This point is of no consequence because the instructions requiring that the selected candidate must belong to the post village have been done away with following court decisions and the present instruction clearly provides that the selected candidate, who may belong to any village, must take up residence in the post village and to provide accommodation for holding the post office. This contention is also held to be without any merit.

7. The last contention of the learned counsel for the applicant is that his services have been terminated without following Rule-6 of EDAs (Conduct and Service) Rules. We are not inclined to accept this contention because notwithstanding the order of termination, the applicant has not yet handed over the charge. Moreover, the appointment order specifically provided that his appointment can be terminated at any time without notice. It is also not the case of applicant that he came to be appointed to the post through any process of selection. On the contrary it appears that the pending regular selection the applicant was the son of retiring <sup>who</sup> <sup>^ Jom</sup> EDBPM was simply asked to manage the work during the intervening period. This contention is also held to be

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without any merit and the same is rejected.

8. In the result, therefore, we find no merit in this Original Application which is accordingly rejected but in the circumstances, there shall be no order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

KNM/CM.

Four copies of  
final order  
dt. 17.7.2001 issued  
to counsel for  
both sides.

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*Ram*  
(R. M.)  
S. (CJ)