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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 254 OF 2000.
Cuttack, this the 20th of November, 2000.

Miss. Swetapadma Mohanty. Applicant.
Vrs.
Union of India & 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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.254 OF 2000.
Cuttack, this the 20th day of November, 2000.

CO RAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR.G.NARASIMHAM, MEMBER(JUDICIAL).

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Miss.Swetapadma Mohanty, aged about 20 years,
B/o Rafulla Ch.Mohanty, At/Po/Vill.A.B.Patna,
(Arjunpur Bramhachari Patna), Via.Ahiyas,
District-Bhadrak.

... APPLICANT.

By legal practitioner: M/s. S.K.Mohanty,
S.P.Mohanty,
P.K.Lenka,
Advocates.

-Vrs.-

1. Union of India represented through its
Secretary, Department of Posts, Dak Bhawan,
New Delhi.
2. Superintendent of Post Offices,
Cuttack North Division,
Cuttack-753001.
3. Chief Postmaster General, Orissa Circle,
Bhubaneswar.

... RESPONDENTS.

By legal practitioner: Mr.A.K.Bose,
Senior Standing Counsel(Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for directing the Superintendent of Post Offices, Cuttack North Division (Respondent No. 2) to consider the candidature of the applicant for appointment to the Post of Extra Departmental Branch post Master, A.B. Patna, Branch Post Office. Respondents have filed counter opposing the prayer of the applicant and the applicant has filed rejoinder. Applicant has also filed Miscellaneous Application No. 696/2000 praying for calling certain records and it was ordered on 6-11-2000 that the MA will be considered alongwith the Original Application. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case except one or two points which are also not disputed. These will be considered while considering the submissions made by learned counsel for both sides.

2. Admittedly, applicant's mother was working as E.D.B.P.M. and she passed away while working as such on 7-9-1997. Petitioner's prayer for compassionate appointment was rejected and the vacancy was notified inviting applications in public notice dated 10.1.1999 at Annexure-2. In this notice it was mentioned that the vacancy ^{was} reserved for ST candidate and in case three candidates are not available in the ST category, it would be reserved for OBC community and failing which to ~~be~~ ^{SC} community. It was further directed that if three ^{^ JFM} persons of belonging to out of the reserved communities are

not available, then the post will be treated as unreserved. It appears that in response to the public notice, ultimately five eligible candidates applied. Amongst these five candidates, one was OBC, two were SC and two belonging to general category. It is also admitted position that amongst these persons applicant has secured the highest percentage of marks in the matriculation but as he was not ST candidate, the post was filled up by the OBC candidate, even though he has got less mark than the applicant. Subsequently, the selected OBC candidate could not provide rent free accommodation for holding the post office and in order dated 5.6.2000, at Annexure-6, his appointment order was cancelled. Respondents have mentioned in their counter that the work is being currently managed by the E.D.D.A. of the same office in addition to his duty. The point for controversy in this case is whether the post should have been reserved for ST/SC or OBC community or it should have been treated as an unreserved vacancy. Applicant has stated in his Original Application that in this division, the percentage of reserved communities in the post of EDBPM have already exceeded 50% and therefore, further reservation is not permissible under law. Respondents in their counter have stated that in the vacancies arising every alternate vacancy is reserved for one of the reserved communities and the next vacancy is meant for general category and therefore, they have averred that the upper limit of 50% amongst reserved candidates has not been exceeded and is not being exhausted. We have considered the submission made by the learned counsel for the petitioner carefully. According to the law as laid down by the Apex Court, such reservation should not be vacancy based but post based.

JM.

In other words, reservation should not be made on the basis of vacancies arising from time to time but on the basis of the total number of availability of posts Learned Senior Standing Counsel has also submitted that this is the legal position now. In consideration of this, Respondents should determine about the level of incumbency amongst the existing EDBPMs by the general community candidates and the reserved community candidates in the Division as a whole. In case the incumbency of the existing EDBPMs belonging to reserved category communities existing 50% then further reservation can not be made for any of these categories. In case, however, their representation falls short of 50% then such reservation should be made on the basis of deficiencies of reservation amongst the three categories of SC/ST and OBC. At present the post of EDBPM has not been filled up and the E.D.D.A. cum E.D.M.C. is in charge. In view of this, we direct the Departmental Authorities to determine in the above fashion and in accordance with law whether this vacancy will fall in the general category quota or reserved category quota and thereupon go for a fresh recruitment after following the usual procedure. It is submitted by Mr. S.P. Mohanty, learned counsel for the applicant that if it is ultimately determined that the vacancy is to be filled up by a general category candidate then the applicant should be appointed because amongst all the candidates, she had got highest percentage of marks. This contention is not acceptable on two grounds; firstly we have already held in an earlier O.A. referred to by the Respondents in their counter that in case of appointment to EDBPM, no select panel is drawn up so that if the selected candidate does not join the next candidate will be given offer of appointment.

Therefore, after cancellation of appointment of selected OBC candidate, fresh appointment can not be given out of the same selection to the applicant. Moreover, the applicant is the lone general category candidate, who was under consideration and there has to be at least three candidates as per the rules for making a selection. In view of this prayer of the applicant for a direction to the Respondents to give her appointment to the post of EDBPM is held to be without any merit and is rejected.

3. In view of our discussions, the original application is disposed of with the directions given above. The fresh selection should be initiated in the manner indicated above by us within a period of 60 days from the date of receipt of a copy of this order. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.