

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 326 OF 2000.
Cuttack, this the 26th day of September, 2000.

Dillip Kumar Patra. 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)
VICE-CHAIRMAN
26.9.2000

6
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 326 OF 2000.
Cuttack, this the 26th day of September, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

..

Dillip Kumar Patra, Aged about 22 years,
S/o. Mr. Arjun Patra, At/Po: Kurujanga,
Via. Chandol, Ps: Mahanga, Dist. Cuttack. ... Applicant.

By legal practitioner: M/s. Akshya Kumar Mishra, Jajati Keshari
Swain, Advocate.

- Vis. -

1. Union of India represented through Director
General of Posts, Daka Bhawan, New Delhi.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices,
North Division, At- Chantonment Road,
Dist: Cuttack.
4. Sub divisional Inspector (Post)
Salipur, At/Po: Salipur,
Dist: Cuttack.
5. Fakir Charan Dash, S/o. Sukadev Dash,
At: Sabalkana, Po: Kurujanga, Via. Chandol,
Dist: Cuttack.

..... Respondents.

J. J. M. By legal practitioner: Mr. S. B. Jena, Additional Standing Counsel
(Central).

.....

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 quashing the appointment of Respondent No. 5, Fakir Charan Dash, to the post of EDBPM, Kurujanga, Branch Post Office and for a direction to the Departmental Respondents to issue appointment order in favour of applicant if he has secured more percentage of marks than the Respondent No. 5.

2. Departmental Respondents have filed counteropposing the prayers of applicant and the applicant has filed rejoinder. Respondent No. 5 was issued with notice but he did not appear nor filed counter.

3. We have heard Mr. Akhaya Kumar Mishra, learned counsel for the applicant and Mr. S. B. Jena, learned Additional Standing Counsel appearing for the Departmental Respondents and have also perused the records.

4. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case. It is only necessary to note that for the post of EDBPM, Kurujanga BO selection was confined to ST community. In the absence of candidates belonging to ST community the posts were to be filled by suitable OBC and SC community according to percentage of shortfall in the representations of the reserved communities. Applicant and Respondent No. 5 both belong to OBC community. It is also ^{the} admitted position that the applicant got higher percentage of marks than Respondent No. 5, the selected candidate in the matriculation examination. As per check list enclosed by the Departmental Respondents, the Respondent No. 5 got 55.42% whereas the applicant got 56% of marks. Departmental Respondents have submitted that the

applicant's candidature was not considered because he was adjudged ineligible on the ground that he did not possess property in his own name. He had given proof of certain properties held by him along with his brother and on this ground the candidature of applicant was rejected and amongst the rest of the eligible OBC candidates, Res.No.5 having secured the highest percentage of marks was selected. It is submitted by Mr.Jena, learned Additional Standing Counsel that in the notice dated 17.6.99 (Annexure-2) inviting applications for the post it has been mentioned under clause(e) that a candidate should have adequate means of independent livelihood and income and property in the name of their parents, guardians will not make the candidate eligible for consideration for appointment. In the instant case the only ground on which the candidature of applicant has been rejected is that he has given the proof of his holding landed property alongwith his brother. Learned Additional Standing Counsel has relied on the circular dated 6.12.93 (Annexure-R/4) in which it has been laid down by DG posts that while determining adequate means of livelihood, preference should be given to those candidates whose means of livelihood is derived from landed property or immovable assets. In the instant case the land is held by the applicant alongwith his brother. The circular at Annexure-R/4 merely lays down that preference should be given to those candidates whose adequate means of livelihood is derived from landed property or immovable assets. This paragraph does not say that such landed property or immovable assets must be held by the candidate in his own name. In para-4 of the said circular it has been specifically mentioned that the land held by the guardians of the applicant shall ^{not} be taken into consideration. That is also not the case here. The Departmental

Rules lay down that to be eligible to be appointed as EDBPM, a person must have adequate means of livelihood so that he does not have to depend exclusively on the allowances which he would receive as EDBPM. So far as the holding of landed property in his own name there is no requirement in the Rules for this. Moreover, even though the property shown by the applicant is held by him along with his brother he has ~~the~~ specific identifiable share in the property and therefore, it can not be said that his means of livelihood is not derived from ~~the~~ landed property. In consideration of the above we hold that the candidature of the applicant has been wrongly rejected by the Departmental Authorities. Coupled with the fact that the applicant has got higher percentage of marks than the selected candidate, Respondent No. 5. ^{via} ~~make~~ it clear that the Departmental Authorities have not acted in accordance with the law and instructions in ignoring the candidature of the applicant and selecting Respondent No. 5. In view of this, we have no hesitation in quashing the appointment of Respondent No. 5. It is so ordered.

5. As regards the second prayer of the applicant that the Departmental Authorities should be directed to give him appointment to the above post. We find from the check list that there are other OBC candidates whose candidatures have been rejected on the same grounds on which the candidature of the applicant has been rejected but some of them has got higher marks than the applicant. In view of this, the applicant is not entitled to a direction that he should be appointed straightaway. In consideration of the above, this prayer of the applicant is disposed of with a direction to the Departmental Authorities that they should conduct a fresh selection amongst

the candidates keeping it confined to the OBC candidates case of the applicant and while considering the ^{JJM} alongwith the candidates who have been considered and those OBC candidates whose candidatures have been wrongly rejected as per our observations above, should also be taken into consideration. This process should be completed by the respondents within a period of 60 days from the date of receipt of a copy of this order.

6. With the above observations and directions, the O.A. is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.