

ORIGINAL APPLICATION NO.439 OF 2000  
Cuttack this the 10<sup>th</sup> day of August, 2001

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-VERSUS-

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*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*10.8.201*

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.439 OF 2000  
Cuttack this the 10<sup>th</sup> day of August, 2001

CORAM:

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

Sri Ganesh Chandra Pradhan, aged about 21 years,  
S/o. Golak Bihari Pradhan, At-Patanibar, Via-Khurda  
PO - Sarua, PS/Dist - Khurda

...

By the Advocates

Applicant

M/s.S.K.Patri  
S.K.Pattnaik  
K.C.Nayak  
B.K.Nath  
P.K.Puhan

-VERSUS-

1. Union of India represented through it's  
Chief Post Master General, Bhubaneswar, Orissa
2. Senior Superintendent of Post Offices,  
Puri Division, Puri
3. Asst.Subdivisional Post Master, Khurda Division, Khurda
4. Sachala Dei, W/o. Promod Rout, aged about 29 years,  
At/PO-Narayanapada, Via/PS-Begunia, Dist-Khurda

...

By the Advocates

Respondents

Mr.A.K.Bose,  
Sr.Standing Counsel  
(Res. 1 to 3)  
M/s.Ashok Mohanty  
T.Rath & J.Sahu  
(Res. No.4)

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Ganesh Chandra Pradhan, while praying to quash the appointment of Sachala Dei, (Res. No.4) to the post of Extra Departmental Branch post Master, Narayanipara Branch Office, also wants a direction to be issued to the departmental respondents to appoint him to that post.

2. Six candidates including the applicant and Respondent

No.4 applied for the post of EDBPM, Narayanipara B.O. Out of them three were <sup>not</sup> considered as their applications were not complete in all respects. While the applicant secured 50.40% marks in the H.S.C. Examination, Respondent No.4 (Sachala Dei) secured 44.71% and the remaining one 33.28%. Though the applicant secured higher percentage of marks in the H.S.C. Examination than Respondent No.4, he was not selected on the ground that he did not have adequate means of livelihood.

3. The grievance of the applicant is that he being more meritorious than Respondent No.4 and having given an undertaking to provide a house for the running the Post Office, his candidature could not have been ignored. Departmental respondents 1 to 3 and private respondent 4 filed separate counters. In substance their stand is that since the applicant has no adequate means of livelihood derived from the landed property or immovable assets, as per the instructions issued in Directorate letters dated 6.12.1993 and 26.5.1995 vide Annexures R/5 and R/6, respectively and as envisaged under Rule-284 of the P & T Manual, Vol-IV (Annexure-R/4), he was not selected. "Adequate means of livelihood" is another qualification required for appointment to the post of E.D.B.P.M. The Income Certificate produced by the applicant, issued by the competent Revenue Authority discloses that he has annual income of Rs.800/- per annum from agricultural source and Rs.7200/- from daily wages. Annual income of Rs.800/- from agricultural source was considered to be inadequate.

4. In the rejoinder the stand of the applicant is that disqualifying<sup>ication</sup> a more meritorious candidate in a Welfare State like India, where majority of the people are below the poverty

line, on the ground of inadequate means of livelihood would amount to discrimination, being violative of Articles 14 and 16 of the Constitution.

5. We have heard Shri P.K.Patri, the learned counsel for the applicant, Shri A.K.Bose, learned Senior Standing Counsel appearing for Res. 1 to 3 and Shri Ashok Mohanty, learned counsel for Respondent No.4.

6. Facts are not in dispute. It is also not in dispute that applicant is more meritorious than Respondent No.4. Annexure-R/2, the check sheet discloses that while Respondent No.4 has annual income of Rs.8000/- from agricultural source and Rs.12,000/- from other source, the applicant has only Rs.800/- from agricultural source and Rs.7200/- from daily wages. Considered from this angle, Respondent No.4 has better means of livelihood than the applicant. But at the same time it should not be forgotten that a candidate having better source of income not necessarily to be preferred for selection in case he/she is lesser meritorious than a candidate to be selected and at the same time having lesser source of income. Hence the point for determination is whether the applicant satisfies the criterion "Adequate Means of Livelihood".

7. Before discussing this point, we may note that so long as requirement of "adequate means of livelihood" is in force, the same cannot be ignored on the plea that it violates Articles 14 and 16 of the Constitution of India. In fact there is no prayer in this application for quashing that instruction, insisting adequate means of livelihood, as one of the criterion for selection to the post of E.D.B.P.M.

8. The criterion "adequate means of livelihood" is

dealt under instruction No.3 in Chapter "METHOD OF RECRUITMENT" Swamy's Compilation of Service Rules for Postal E.D.Staff.

This instruction No.3 runs as follows :

"3. Income and ownership of property:

The person who takes over the agency (ED SPM/ED BPM) must be one who has an adequate means of livelihood. The person selected for the post of ED SPM/ED BPM must be able to offer space to serve as the agency premises for postal operations. The premises must be such as will serve as a small postal office with provision for installation of even a PCO (Business premises, such as shops, etc., may be preferred) "

This instruction does not lay down that the person to be selected as E.D.B.P.M. must own landed property exclusively in his own name. Even a person having fat bank balance or other assets, like buildings, vehicles and so on can come under the category of person having adequate means of livelihood. In fact in Para-6 at Page-76 of Swamy's Compilation of Service Rules for Postal E.D.Staff (99th Edn.) the criterion to judge adequate means of livelihood has been indicated as follows :

"... The criterion to judge "adequate means of livelihood" should be that, in case he loses his main source of income, he should be adjudged as incurring a disqualification to continue as ED SPM/ED BPM. In other words, there must be absolute insistence of the adequate source of income of ED SPM/BPM and the allowances for his work as EDSPM/BPM must be just supplementary to his income. To ensure this condition, the candidate must be able to offer office space to serve as the agency premises for postal operations as well as public call office and as such, business premises such as shops, etc., must be preferred regardless of the various categories of preferences mentioned above.

(D.G. P & T, letter No.43-84/80-Pen., dated the 30th January, 1981 and Corrigendum dated the 29th March, 1981, D.G.Posts letter No.41-301/87-II (ED & TRG.) dated the 6th June, 1988 and No.17-366/91-ED & TRG., dated the 12th March, 1993)

Thus the aforesaid instruction is clear as to what the Department originally meant by adequate means of livelihood is that the person selected as EDBPM must have the means to offer office space to serve for the agency premises for postal operations as well as public call office. It is not the case of the Department that the applicant has no such means. In fact the positive case of the applicant is that he has given an undertaking to the Department to offer space for running the post office. The Department, however, relied on Annexure-R/4 which is a copy of Directorate letter dated 6.12.1993 and Annexure-R/5, a copy of Directorate letter dated 26.5.1995. Under Annexure-R/5 it was clarified that provision of adequate means of livelihood, as stipulated in letter dated 6.12.1993 (Annexure-R/4) should be restricted only to candidates seeking appointment as ED SPM/BPM. Letter dated 6.12.1993 (Annexure-R/4) does not say that such candidate must have landed property exclusively in his name. All that it says that it is not necessary to quantify the adequate means of livelihood and preference should be given to those candidates, whose adequate means of livelihood is derived from landed property or immovable assets, if they are otherwise eligible for the appointment. But this letter dated 6.12.1993 does not appear to have been issued in supersession of earlier instructions of the D.G.Posts, as quoted in Para-8 (above). At this stage it is profitable to quote the following observations of the Division Bench of C.A.T., Jaipur in the case of Kailash Chandra Sharma vs. Union of India & Ors. reported in 1996(32) A.T.C. 35 (at pages 37-38).

"The learned counsel for the respondents argued that the requirement of adequate means of livelihood



implies that the applicant should himself have sufficient property in the village concerned before his appointment. Then only can he be said to have adequate means of livelihood. In our view this is stretching the matter too far. We have first to look at what is contained in the above provision and what are the reasons given in the order which is the foundation or the basis for termination of the applicant's service. All that is mentioned in the order Annex.R/1, which is the basis for ordering termination is that the applicant did not own immovable property in his own name and that he had been studying at Niwai, which is another place. Studying at another place is not a disqualification for appointment as EDBPM. There is no specific, clear and categorical requirement in the provisions reproduced above that the applicant must necessarily possess property in his own name. We cannot link the means of livelihood with possession of property when no such linkage has been established in the Rules and perhaps cannot be established even otherwise, because, a person may possess means of livelihood without owning any property".

This Bench accepted these reasonings of the Division Bench of C.A.T., Jaipur, in Original Application No.65/95, disposed of on 22.9.2000 (Pabitra Kumar Kandi vs. Union of India & Others). 22.9.2000 (Pabitra Kumar Kandi vs. Union of India & Others). Thus, insistence of adequate means of livelihood appears to a secondary criterion, primary one being a pass in Matriculation <sup>or</sup> equivalent examination. Adequate means of livelihood, as per our discussion in Para-8 (above) with reference to instructions of D.G.Posts would be that persons selected must have the means to offer space to serve the agency premises for postal operations as well as public call office. In other words, if a candidate securing higher percentage of marks in the H.S.C./Matriculation Examination among the candidates applying for the post has some property can be selected. It is not the case of the Department that the applicant has no landed property in his name. The only objection is that the income derived from that property is

not enough/adequate. But, as discussed earlier, instruction -in letter dated 6.12.1993(Annexure-R/4) lays down that it is not necessary to quantify the adequate means of livelihood.

10. The issue can also be viewed from another angle. As per instructions of the recruitment to the post of EDBPM, a candidate can be between 18 years to 65 years of age. In other words, a person just attaining the age of majority on completion of 18 years of age will also be eligible to apply for the post, if he is a Matriculate. But in Hindu society and in these parts, where joint family system is still widely prevalent, it is improbable, if not impossible, that a minor just attaining majority would be having landed property or anyother immovable property/assets, exclusively in his own -name. Cases of persons just attaining 18 years of age having landed property exclusively in their own names are very rare. Hence it would be quite unreasonable to disqualify a person having just attained majority for want of adequate means of livelihood, because he has no landed property in his name.

11. Thus it is clear that the applicant who has secured higher percentage of marks in the H.S.C.Examination than the selected candidate (Respondent No.4) has some landed property and has given an undertaking to offer space for running the post office, if selected, and this, in view of our discussions held above, satisfies the criterion "adequate means of livelihood". Accordingly we are of the view that the Department committed illegality in selecting Respondent No.4 in stead of the applicant. In view of this, we quash the selection and appointment of Respondent No.4 (Sachala Dei) to the post of Extra Departmental Branch Post Master, Narayanipara Branch



with direction to departmental respondents 1 to 3  
to select and appoint the applicant to that post of  
E.D.B.P.M., within a period of 30 (thirty) days from  
the date of receipt of copies of this order.

12. In the result, Original Application is  
allowed, but without any order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*10/8/2011*

*10.5.01-*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

B.K.SAHOO//