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ORDER DATED 31-1-2002.

Heard Shri P. V. Ramdas, Learned Counsel for the Applicant and Shri Anup Kumar Bose, Ld. Senior Standing Counsel (Central) appearing for the Respondents and have also perused the pleadings.

In this Original Application, the applicant who is an unsuccessful candidate for the post of EDBPM, Nandiko Branch post office, has prayed for a declaration that selection of Respondent No. 5 to the post was illegal. He has prayed for a direction to the Respondents 3 and 4 (Departmental Authorities) to make fresh selection to the post taking into account the case of all the candidates as per the Notification at Annexure-1.

Departmental Respondents have filed counter opposing the prayers of applicant. Respondent No. 5 the selected candidate was issued notice by Regd. post on 11.4.2001 but he has not appeared nor file counter. At the instance of learned counsel for the applicant we have also called for and perused the records of disposed of OA No. 506 of 2000. For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that for filling up of the post of ED BPM, Nandiko Branch Post Office a public notice was issued on 24.2.2000 inviting applications by 16.3.2000. In this notice it was mentioned that the post is ~~meant~~ reserved for OC community. Respondent No. 5 in the present OA approached this Tribunal in OA No. 506/2000 stating that he had applied in response to the notice and as he is a physically handicapped person and physically Handicapped person has to be given preference, he wanted to

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submit his physically handicapped certificate after the last date of receipt of application and the documents. His prayer for an interim direction to the Departmental Authorities to consider his Physically Handicapped certificate was rejected by this Tribunal in their order dated 23.11.2000. Against this order, applicant in OA No. 506/2000 (Respondent No. 5 in the present OA) approached the Hon'ble High Court of Orissa in OJC No.12310/2000 which was disposed of by Their Lordships in their order dated 23.11.2000 (Annexure-5) with a direction to the Departmental Authorities to consider the certificate submitted by Respondent No. 5 (Petitioner before the Hon'ble High Court of Orissa) in support of his case that he is a physically Handicapped person. It was further observed that this will be without prejudice to the rights and contention of the parties to be decided in the main case i.e. OA NO. 506/2000. Interim prayer of applicant in OA No. 506/2000 was rejected inter alia on the ground that his prayer for interim relief and main relief asked for in the OA was same. After having got the main relief from the Hon'ble High Court, the petitioner in OA No. 506/2000 sought and was granted permission to withdraw the OA. It is also necessary to note that the present applicant before us had filed an intervention petition through MA No.337/2000 which was rejected in our order dated 29.1.2001 in which the earlier OA was allowed to be withdrawn. It is to be noted further that the petitioner has also approached the Hon'ble High Court in OJC No.1644/2001 which was disposed of by Their Lordships in their order dt. 14.3.2001 with a direction to the Departmental

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Authorities to consider the case of the applicant alongwith others for the post of Branch PostMaster, Nandiko BO.

Present grievance of applicant is that in the ensuing selection even though he has admittedly got more marks than the selected candidate, Respondent No. 5, in the matriculation examination he was not selected but the Res. No. 5 was selected. Departmental Respondents have pointed out in their counter and it has also been submitted by Learned Senior Standing Counsel that as the Hon'ble High Court had directed consideration of the Physical Handicapped Certificate of the present Respondent No. 5, it would necessarily mean that he had to be considered as a physically handicapped person, and the Departmental Authorities taking him as a physically handicapped person and giving him preference selected Respondent No. 5 even though he was less meritorious than the present applicant. In view of this we find no illegality in the action of the Departmental Authorities in view of the specific direction of the Hon'ble High Court to consider the physically handicapped status of Respondent No. 5. In view of our above discussions we hold that the applicant is not entitled to the reliefs claimed by him in this OA which is accordingly rejected. No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 31.01.2002

Somnath Mohanty
(SOMNATH MOHANTY)
VICE-CHAIRMAN 31.01.2002

KNM/CM.