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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 147 OF 2001
Cuttack this the 12th day of May, 2004

Durga Madhab Samantray ... Applicant(s)

-VERSUS-

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *m*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

12/05/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 147 OF 2001
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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

Durga Madhab Samantray, aged about 31 years,
Son of Ullas Chandra Samantray, At-Manikpur,
PO-Pratap, P.S. Banapur, Dist-Khurda

... Applicant

By the Advocates

M/s. S. Das
S.K. Parida

-VERSUS-

1. Union of India represented through Post Master General, Bhubaneswar, Dist-Khurda
2. Senior Superintendent of Post Offices, Puri Division, At/PO/Dist-Puri
3. Sub Divisional Inspector (Postal), Balugaon Sub Division, At/PO-Balugaon, Dist-Khurda
PIN - 752 030
4. Mahendra Jena, aged about 26 years, Son of not known, At/PO-Singheswar, Via/PS-Balugaon, Dist-Khurda

... Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.
Mr. N. Jujharsingh

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicant, Shri Durga Madhab Samantray, in this application under Section 19 of the A.T. Act, 1985, has challenged the appointment made to the post of Extra Department Branch Post Master (in short EDBPM) Singheswar Branch Office.

2. The facts of the case are that the applicant had submitted his application for the said post within the due date prescribed for the purpose. It is his claim that he had stood 2nd in the interview held for the post and he was

a suitable candidate for being appointed to that post. But the

whom
candidate/the Respondents selected as the number 1 in the panel for having secured the higher marks, was not given the offer of appointment as he was 90% physically handicapped. In the circumstances, the applicant, ~~Shri Mahendra Jena~~, should have been given the offer of appointment as he was second in the panel, instead of appointing Shri Mahendra Jena (Res. No.4) who stood 3rd in the interview. He has also alleged that the post was filled up without advertising it to the public. This action on the part of the Respondents-Department, as submitted by the applicant, is illegal and arbitrary with a view to harass the applicant.

2. The Respondents have contested the Original Application by filing a detailed counter. They have repudiated the facts as stated by the applicant. They have submitted that after obtaining applications from the open market as well as from the Employment Exchange, Khurda, in early 1999, they had initially selected one Shri S.K.Samantray, who could not be appointed to the vacant post due to public resistance on the ground that he was deaf and dumb. After the matter was enquired into ^{and} with the approval of the higher authority, the vacancy was re-notified on 3.5.2000. In response to the said notification seven applications were received and from the zone of consideration, one Mahendra Kumar Jena was selected for appointment as EDBPM, Singheswar. With regard to the applicant, the Respondents have disclosed that although he had secured more marks than the selected candidate (Res.4) he could not be selected for ^{the} post in question as he did not fulfil the eligibility condition including that he could not provide rent free accommodation for the postal premises in

the post village of Singheswar. The house offered by him for the post office was inspected by the Sub-divisional Inspector, when it was found out that the house offered by the applicant was situated in a village though under Singheswar revenue village, but in the delivery jurisdiction of another EDBO. The matter was then referred to Res. No.1 for permission to open the post office in a village other than the post village. However, Res.No.1 clarified that the post office had to function in the post village only. On receipt of this clarification, Respondent No.2 issued letter of appointment to Respondent No.4 as the applicant could not offer any accommodation in the post village. Thus, the Respondents-Department have submitted that although the applicant fulfilled all other eligibility conditions, he failed to provide rent free accommodation in the post village and this is how he became ineligible to be appointed to the said post. They have also denied all the allegations levelled by the applicant as baseless.

3. By filing a detailed counter Res.No.4 has submitted that having failed to offer rent free accommodation for the postal premises in the post village, which is one of the conditions in the recruitment rules, rightly he was not appointed by the Respondents-Department and therefore, this application being devoid of merit is liable to be rejected.

4. The applicant submitted rejoinder to the counter filed by Res.No.4 trying to clarify that it was a typographical error on his part to have described his village name as 'New Singheswar'. No rejoinder has been filed to the counter submitted by Res. 1 to 3.

5. We have heard the learned counsel for the parties and perused the materials available on record.

6. In this case the applicant was not selected for the post in question on the ground that he was not able to provide rent free accommodation for the post office. The learned counsel for the applicant drew our attention to the affidavit filed by the owner of the house, who had agreed to let it out to the applicant. On the other hand, the learned Senior Standing Counsel for the Respondents-Department placed before us the report of Respondent No.3 as well as an affidavit sworn by Mochiram Behera, son of late Mukunda Behera, before the Notary Public, Berhampur dated 7.1.2001 (the owner of the house proposed for the Post Office) stating that he had withdrawn his commitment to Shri Durga Madhab Samantray to let out a room in his house due to some domestic problem. The learned counsel for the applicant tried to explain that the contents of the aforesaid affidavit as sworn by Mochiram Behera on 7.1.2001 were not genuine. On perusal of the records, we find that said Mochiram Behera had filed three affidavits, one dated 2.11.2000 before the Notary Public, Berhampur, wherein he had disclosed his age to be 43 years and stated that his house was situated near Singheswar Gram Panchayat and that he was willing to give his house for the purpose of Post Office. Second one dated 7.1.2000 before the Notary Public, Khurda wherein he disclosed his age about 50 years and stated that due to some domestic problem he was not in a position to rent out his place for the post office. Then the third and the last one dated 29.11.2001 sworn before the Court of Executive Magistrate, Sadar, Cuttack

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stating that "the affidavit dated 7.1.2001 containing his signature is a forged one". We are not impressed by this argument. To our query if he had filed any FIR against the person whom he has named in his affidavit dated 29.11.2001, to have caused the mischief, there was no positive answer. Be that as it may, the fact, however, remains and is not disputed by either of the parties that the house that was provided by the applicant for the postal premises was in a village which was not only situated in a place other than the post village but in a village which comes under the delivery jurisdiction of another EDBO. In this background, the Department is within their competence not to select the applicant for the post of EDBPM, Singheswar, even though the applicant admittedly has not secured the highest marks amongst all the candidates within the zone of consideration. At the end, he failed to fulfil the residency condition.

7 Having regard to what has been discussed above, while we uphold the selection of Respondent No.4 to the post of EDBPM, Singheswar Branch Post Office, we have no option but to reject the case of the applicant and accordingly, this Original Application fails. No costs.

Law
12/05/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

BJY

Law
(B.N. SOM)
VICE-CHAIRMAN