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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 181 OF 2001
Cuttack, this the 29th day of August, 2002

Ashok Kumar Sahoo Applicant.
Vrs.

Union of India and others Respondents.

FOR INSTRUCTIONS.

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

M. R. Mohanty
29/08/2002
(M.R.MOHANTY)
MEMBER(JUDICIAL)

V. Srikantan
(V.SRIKANTAN)
MEMBER(ADMN.)

For an answer
(22/8)

Ans in (S)
I agree
21/8

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO. 181 OF 2001
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CORAM:

**HON'BLE SHRI V.SRIKANTAN, MEMBER(ADMN.)
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)**

Ashok Kumar Sahoo, aged about 31 years, son of Rameswar Sahoo, At: Begunia Patna, P.O. Kalika Prasad, Via-Mandhatapur, Dist.Nayagarh, Pin 752 079 Applicant.

Advocates for the applicant - M/s S.K.Patri, S.K.Das,
B.K.Nath.

Vrs.

1. Union of India, represented through its Chief Post Master General, Orissa Circle, Bhubaneswar, Orissa.
2. Director of Postal Services (Headquarters), Orissa Circle, Bhubaneswar.
3. Senior Superintendent of Post Offices, Puri Division, Puri.
4. Sub-Divisional Inspector (Postal), Nayagarh East Sub Division, At/PO/Dist. Nayagarh, Pin 752 069
5. Puspala Sahoo, wife of Dasarathi Mohapatra, At/PO-Kalikaprasad, Via/ Mandhatapur, Dist.Nayagarh, Pin 752 079.
6. State of Orissa, represented through its Tahasildar, Nayagarh, Dist.Nayagarh..... Respondents

Advocates for respondents – Mr.A.K.Bose, Sr.CGSC
for Respondent nos.1 to 4;
M/s Ashok Mohanty,
T.Rath, J.Sahu,
H.K.Tripathy, J.P.Patra
for Respondent no. 5;
Mr.K.C.Mohanty, G.A.
for Respondent no. 6.

O R D E R

V.SRIKANTAN, MEMBER(ADMN.)

Heard Shri S.K.Patri, learned counsel for the applicant, Shri A.K.Bose, learned Senior Standing Counsel, appearing for the official respondent nos. 1 to 4, Shri Ashok Mohanty, learned counsel appearing for private respondent no.5, and Shri K.C.Mohanty, learned Government Advocate, appearing for respondent No. 6 and perused the materials on record.

2. The post of Extra-Departmental Branch Post Master (EDBPM), Kalikaprasad B.O., fell vacant on 17.5.2000, and the process of selection was started in advance, by calling for applications through Employment Exchange as well as from open market through public notice. The Employment Exchange did not sponsor any candidate within the stipulated date. In response to the public notice, five candidates applied for the post, and out of these five candidates, applications and documents of three candidates including the application and documents of the applicant, were sent to the S.D.I.(Postal),Nayagarh (East) Sub Division, for verification of the genuineness of the documents. The S.D.I.(P) confirmed the genuineness of the documents submitted by all the three candidates, but also forwarded one representation received from one candidate, namely, Puspalata Sahoo(respondent no.5) who had submitted her application within the stipulated date but whose candidature had been rejected in

preliminary scrutiny due to non-submission of income certificate in her own name. The representation of Puspalata Sahoo was considered by respondent no.3 and the income certificate in her name submitted subsequently was accepted, and ultimately, she was selected as EDBPM, having secured the highest percentage of marks in the H.S.C.Examination. The applicant, being aggrieved by the selection of Puspalata Sahoo (respondent no. 5), has filed this Original Application seeking the quashing of appointment of respondent no.5 and for a further direction to appoint him to the post of EDBPM.

3. The main contentions of the applicant are that the name of Puspalata Sahoo (respondent no.5) was not in the short-listed panel since she had submitted her husband's income certificate and not her income certificate, and accordingly, respondent no.5 was not in the shortlisted panel prepared by the official respondents and hence she should not have been considered. Further, the applicant had furnished all the required documents and had also secured 396 marks in his H.S.C.Examination and having secured the highest marks among the eligible candidates, he should have been appointed. It is his further contention that there is no provision for accepting an income certificate after the last date for receipt of applications is over.

4. Respondent no.5 has stated that she had applied for the

income certificate in her name. But the Tahasildar's office had furnished the certificate of income of her husband and this had been submitted along with her application for the post of EDBPM and it came to her notice only when all the applications were opened by the official respondents. Accordingly, respondent no.5 had taken action to obtain the income certificate from the Tahasildar's office and the Tahasildar's office had also confirmed that they had wrongly issued the certificate in respect of her husband instead of respondent no.5. This being the position, her application has been rightly accepted by the respondents and her name figures in the check list prepared by the official respondents, and having secured the highest marks among all the candidates, she has rightly been selected for the post of EDBPM.

5. During hearing, it was argued by the learned counsel appearing for respondent no.5 that she had submitted the property certificate and this was sufficient, and there is no need for an income certificate, because the instructions provide that the selected candidate must have adequate means of livelihood. Further, it was also argued that the instructions also state that applications which are not complete in all respects are liable to be rejected, and this being so, certain discretion is given to the departmental authorities, and in this case, the discretion has been exercised by the official respondents by accepting the income

certificate submitted by respondent no.5 in respect of her income subsequently. It was also argued that not only three but five applicants including respondent no.5 were considered, and the eligibility chart would bear this out and respondent no.5, having secured the highest marks in the H.S.C.Examination, was rightly selected. Finally, the setting aside of the appointment of respondent no.5 would lead to a less meritorious candidate being appointed.

6. The selection and appointment of E.D.Agents is governed by executive instructions and in the absence of rules, these hold the field. It is no doubt true that these instructions state that for purpose of selection, the applicants should have adequate means of livelihood. However, there are instructions also, which provide that income certificate and property certificate are also required to be furnished by the applicants. The mere submission of the property certificate will not indicate whether the applicant has sufficient means of livelihood as income from property may be nil. Accordingly, an income certificate is also necessary in addition to the property certificate. It has been argued that certain discretion is given to the departmental authorities to accept a certificate even after the last date for receipt of applications is over. This argument is not based on facts. In fact, the executive instructions state that such certificates can be accepted provided

they are furnished before the last date prescribed. In this connection, an extract of the Director-General, Posts' letter, dated 18.9.1995, is reproduced below:

"(3) Clarification regarding income and ownership of property conditions.-Attention is invited to letter of even number, dated 6.12.1993, on the above-mentioned subject. This office subsequent Letter No.17-366/91-ED & Trg., dated the 26th May, 1995, containing clarifications on certain points of doubts including the subject cited above also refers.

(2) In the context of the above instructions, references have been received from certain quarters seeking clarifications on the following two points:-

- (i) If a candidate for appointment to the post of EDBPM/EDSPM acquires landed property in his own name after submission of the application in response to the open advertisement but before verification of the bio-data including income/property, whether he should be considered eligible for consideration for appointment to the aforesaid post with regard to property qualification; and
- (ii) If a candidate for appointment to the post of EDSPM acquires landed property in his own name after sponsorship of his candidature by the Employment Exchange in response to the notification but before verification of educational qualification, income/property, etc., whether such a candidate should be considered eligible for consideration for appointment to the above post in relation to the property qualification.

3. The issues raised above have been examined in this office. Although in the notification issued to the Employment Exchange, specific mention about the broad eligibility conditions required to be satisfied by the prospective candidates are mentioned excepting

residence, the Employment Exchange cannot be expected to know whether the candidate sponsored fulfils the income/property condition inasmuch as candidates are not required to apply to the Employment Exchange with this information. In case the Employment Exchange sponsors the minimum prescribed number of suitable candidates within the stipulated date and upon being addressed by the recruiting authorities, not less than three candidates respond with documentary proof with regard to fulfilment of prescribed eligibility conditions, the question of issue of open advertisement would not arise. In this case, the nominated candidates are required to be addressed through registered post calling for application within the date to be stipulated by the recruitment authorities. In the rarest case, if a candidate at the time of making an application does not satisfy the income/property condition but acquires this qualification subsequent to the submission of the application and sends a written request enclosing documentary evidence in continuation of his application and the same is received within the stipulated date, the recruiting authorities should entertain the same. However, if such an intimation is received after the last date prescribed or the development regarding acquisition of this qualification itself takes place after the last date prescribed is over, the same should not be entertained. Similar procedure may also be followed in case it becomes necessary to fill in the post of EDBPM/EDSPM through open advertisement. In other words, in this case also, if an intimation accompanied by documentary proof is received subsequent to the submission of the application within the stipulated date, the same should be entertained and acted upon.”

In this view of the matter, the official respondents had no discretion to accept the application submitted by respondent no.5 after the last date for receipt of applications and hence, respondent no.5 was not eligible for being considered for appointment to the post of EDBPM.

7. Respondent nos. 1 to 4 have also furnished their reply, and in their reply, they have stated that since complaints were received against the selection and appointment of respondent no.5, the same was enquired into by respondent no.2, who, after scrutiny, declared the selection of respondent no. 5 as irregular and issued direction vide letter, dated 11.5.2001(Annexure R/8) to terminate the appointment of respondent no.5 after usual formalities and accordingly, notice for termination of service under Rule 6 of the Extra Departmental Agents (Conduct & Service)Rules, 1964 , was issued to respondent no.5 on 30.5.2001. However, respondent no.5 has challenged this notice before this Tribunal in O.A.No.244 of 2001 and this Tribunal has passed an interim order staying the operation of this notice.

8. During hearing, the official respondents have produced the checklist and it is seen therefrom that five applicants, including the applicant in this O.A. and respondent no.5 had been considered, and respondent no.5 had been selected, having secured the highest marks in the H.S.C.Examination. However, in view of the fact that respondent no.5 submitted her income certificate much after the last date fixed for receipt of applications and in terms of the executive instructions, her application should not have been considered and the selection should have been confined to the remaining eligible applicants, accordingly respondent no.3

has committed irregularity in the appointment of respondent no.5 and rightly, respondent no.2 has directed the termination of appointment of respondent no.5. In this view of the matter, appointment of respondent no. 5 made vide Annexure R/6 to the reply filed by respondent nos. 1 to 4 is not tenable and the same is required to be quashed.

9. The applicant has also sought for a direction to the official respondents to appoint him as EDBPM in the place of respondent no.5. It would be beyond our powers to direct the appointment of the applicant and therefore, respondent nos. 1 to 4 are directed to consider the case of the applicant for appointment to the post of EDBPM, Kalikaprasad B.O., based on his eligibility subject to the applicant fulfilling the required conditions.

10. For the above reasons, this Original Application is allowed in part and Annexure R/6 is quashed, and the official respondents are directed to consider the case of the applicant for appointment to the post of EDBPM, Kalikaprasad B.O., as per rules. This direction should be complied with within three months from the date of receipt of copy of this order. No costs.

*sent out
29/08/2022*
(M.R.MOHANTY)
MEMBER(JUDICIAL)

V. Srikantan
(V.SRIKANTAN)
MEMBER(ADMN.)

AN/PS