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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 47 OF 2001
Cuttack, this the 14th day of February, 2002.

Prakash Chandra Behera.

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Applicant.

Vrs.

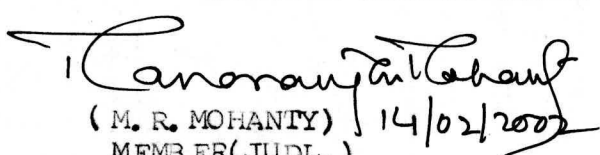
Union of India & Others.

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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


(M. R. MOHANTY)
MEMBER (JUDL.)

14/02/2002


(S. A. T. RIZVI)
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO. 47 of 2001
Cuttack, this the 14th day of February, 2002.

C O R A M

THE HONOURABLE MR. S .A.T. RI ZVI, MEMBER (ADMN.)
AND
THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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SRI PRAKASH CHANDRA BEHERA,
S/o. Sri Purnananda Behera,
Vill./Post: Bharatpur,
Dist: Kendrapara.

....

Applicant.

By legal practitioner : Mr. P.K. Padhi, Advocate.

-Vrs.-

1. Union of India represented by its
Chief Postmaster General (Orissa Circle),
At/Po: Bhubaneswar, Dist. Khurda-751 001.
2. Superintendent of Post Offices,
Cuttack North Division,
At: P.K. Parija Marg, Po: Cuttack GPO,
Dist. Cuttack-1.
3. Bijoy Kumar @ Kishore Das, EDBPM,
S/o. Sri Golak Chandra Das,
At/Po: Bharatpur, Dist. Kendrapara. Respondents.

By legal practitioner : Mr. A.K. Bose,
Sr. Standing Counsel (Central).

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O R D E R

(ORAL)

MR. S.A.T. RI ZVI, MEMBER (ADMN.):

Heard learned counsel at length.

The vacancy caused due to the removal from
service of the permanent incumbent, has led to the
issuance of a letter to the District Employment Exchange,
for sponsoring names of suitable candidates for filling

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up the post of E.D.B.P.M., Bharatpur Branch Post Office. In the aforesaid notice, the post was shown as reserved for ST community. In the note incorporated in Col. 9 of the form of notification, it has further been laid down that in the event of adequate number of ST candidates not becoming available, the candidates belonging to other reserved communities namely OBC and SC could be sponsored in the order of deficiency in the representation of these communities. Out of 14 ST candidates sponsored by the District Employment Exchange, in pursuance of the aforesaid letter, 9(nine) candidates responded but none of them ~~was~~ found to be eligible. Hence, the Respondents proceeded to issue another letter dated 17.6.1999 (Annexure-R/2) along with public notice inviting applications from both ^{the} sources. Here again the post was shown as reserved for ST category and alternatively for the OBC and SC categories in that order. ~~A~~ A total of 9(nine) applications were received in response to the aforesaid letter/public notice. The present applicant was one of the candidates. After preliminary scrutiny, nine got reduced to only two as only two candidates were found to have fulfilled all the qualifications and had filed their applications complete in all respects. One of these was a SC community candidate and other was a General (OC) category candidate. Since only two candidates were left in the field, the Res. No. 2 referred the matter to the Chief Postmaster General, Orissa Circle, Respondent No. 1 herein for orders on the question whether the number of eligible candidates having been reduced to

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less than three, and appointment could be made from amongst them or a fresh notification will need to be issued. The matter was clarified by the Res. No. 1 (Annexure-R/5) by stating as under:

With reference to above, I am directed to intimate that there is no need for renotification. Since there are eligible candidates, you may send a proposal selecting the eligible candidate as per short fall, provided he has submitted all requisite documents and the same have been verified for appointment.

(emphasis supplied)

3. Learned counsel appearing on behalf of Applicant submits that by emphasizing that the appointment is to be made as per the shortfall, the Respondent No. 1 had duly clarified that the vacancy in question was to be filled up by a reserved category candidate and since no OBC candidate was in the field, the Respondents ought to have appointed the applicant who is a SC category candidate to the aforesaid post. Despite this position, the Respondents have appointed the private Respondent No. 3 on the ground of superior merit and not by relying on the policy of reservation clearly and firmly indicated in the notices and the letter issued by the Respondents themselves calling for applications and the policy circular dated 27-11-1997 (Annexure-R/9).

4. Learned Senior Standing Counsel for the Respondents has drawn our attention to clause 2(b) of the Notification issued on 17.6.1999 which permits the OC candidate-s also to file applications along with the reserved category candidates and has gone on to say that since an OC category candidate was rendered eligible for filing an application for

the said post, he could as well be considered for appointment on being found to be meritorious enough. In the process, according to him, the Respondents have not committed any breach of the policy of reservation. The matter has been decided purely in terms of merit.

5. The private Respondent No. 3 possessed superior merit has not been disputed. In view of this according to the Learned SSC, the present O.A. deserves to be dismissed.

6. We have given our anxious thought to the policy of reservation currently in force which is postbased implying thereby that, ^{for filling up} in any cadre, posts ^{are} the ~~prescribed~~ ^{prescribed} percentages of reservation/ to be followed. The relevant percentages laid down by the Government and currently in force are 27% in favour of OBC; 22% in favour of SC and 7½% in favour of ST communities.

At present a much larger number ~~than~~ ^{stated to} is permissible under the policy is ~~held~~ held by ~~the~~ ^{the} OBC category candidates. The Respondents, have, therefore, in order to give effect to the policy of reservation, determined the extent of deficiency in respect of SC, ST and OBC categories separately. Based on the extent of deficiency in each case shown in terms of percentage, vacancies arising from time to time are filled by candidates belonging to ^{the} respective categories starting with the category showing highest deficiency ~~as~~ in terms of percentage. Learned counsel appearing for ~~the~~ ^{the} applicant submits that in the Postal Division in question, the highest deficiency is in respect of ST community and

2) that is why the Respondents have notified the aforesaid vacancy

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to be filled up by ST community. Extent of deficiency-wise the other categories are OBC and SC. It is for this reason, according to him, that the Respondents have in the aforesaid notification dt. 17.6.1999 clearly indicated that in the event of ST category candidate not becoming available, the post in question will be required to be filled by OBC or ST category candidate in that order. It is not his contention that the said post could never be filled by an OC category candidate. However, for an OC category candidate to be appointed, the Respondents will have to reach a conclusion that none in the categories of SC, ST and OBC was available. That is not the case in the present OA, as, according to him, the applicant is eligible as well as suitable for appointment to the post of EDBPM, Bharatpur BO. The fact that he stands lower in merit compared to private Respondent No. 3 can-not stand in his way in view of the policy of reservation. On a careful consideration of the rival contentions raised in this OA, we find ourselves in agreement with the views expressed by the learned counsel for the applicant. The O.A. thus succeeds and is allowed. The order dated 5.2.2001 by which the present Respondent No. 3 has been appointed is quashed and set aside. There being no alternative, the present applicant, who was the only other suitable candidate available, will have to be appointed in the post of EDBPM, Bharatpur BO. We order accordingly. The Respondents are further directed to comply with the aforesaid direction/order within a

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period of 15 days from the date of receipt of a copy of
this order. There shall be no order as to costs.

Manoraj Chakraborty
(M. R. MOHANTY) | 14.02.2002
MEMBER (JUDL.)

S. A. T. Rizvi
(S. A. T. RI ZVI)
MEMBER (ADMN.)

KNM/CM.