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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.333 OF 2002
Cuttack this the 27th day of June/2003

Dukhishyam Sethi ... Applicant(s)

VERSUS

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

(FOR INSTRUCTIONS)

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

[Signature]
(B.N. SOM)
VICE_CHAIRMAN

[Signature]
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO.333 OF 2002
Cuttack this the 27th day of June/2003

CORAM:

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

Dukhishyam Sethi, aged about 24 years,
S/o. Benudhar Sethi
At/PO-Binayakpur
Via-Pipili, District-Puri

...

Applicant

By the Advocates

Mr.D.P.Dhalasamant

-VERSUS-

1. Union of India represented through Chief Post Master General, Orissa Circle, Bhubaneswar
2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, District-Khurda
3. Sub-Divisional Inspector (Postal), Bhubaneswar South Division, Bhubaneswar, Dist-Khurda
4. Md.Riyaz Uddin, E.D.M.C. G.D.S.M.C., B.J.B.Nagar S.O., Bhubaneswar, District-Khurda

...

Respondents

By the Advocates

Mr.A.K.Bose, S.S.C.
(Res. 1 to 3)

M/s.A.K.Mishra,
J.Sengupta,
D.K.Panda
P.R.J.Dash
G.Sinha
(Res.No.4)

O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL): Applicant, Dukhishyam Sethi (while engaged as a contingent paid worker in Bhubaneswar B.J.B.Nagar Sub Post Office from 2.3.1994 to 2.6.1997) was selected and appointed as a Stemp Vendor (in extra Department Postal Organisation) of Dayan Marg Sub Post Office; where he joined on 2.6.1997. The said engagement of the applicant

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as (E.D.) Stamp Vendor was discontinued, for administrative reasons (and without attaching any stigma on him) on 12.3.1999. Thus, after serving the postal organisation of the Government of India (both in Extra-Departmental and Departmental Establishment) for over long five years, the Applicant came to be unemployed and, in the said premises, he filed an Original Application (No.526 of 1999) in this Bench of the Central Administrative Tribunal, under Section 19 of the Administrative Tribunals Act, 1985. By order dated 16.3.2001, rendered in the said O.A.No.526 of 1999, direction was issued for inclusion of the name of the Applicant in the common panel (as required in Director General (Posts) Circular dated 20.10.1984) to be, ultimately, taken to Gr.D post and, while doing so, this Tribunal also observed as follows :-

"xx xx xx. He has only prayed that his name should be included in the common panel and we have already ordered to include his name in the common panel. In this circular, the Director General (Posts) has noted that as number of vacancies in Group-D post is limited and the number of eligible ED employees, who occupy a higher order of preference is large, casual labourers and part-time casual labourers hardly get any chance of being absorbed in Gr.D post. In view of this, in this circular, it has been ordered that casual labourers, whether full time or part-time, who are willing to be appointed to ED posts, should be given preference in the matter of recruitment to ED posts provided they fulfil the eligibility criteria and have put in minimum service of one year. In the light of this circular, the Respondents are directed that in case the petitioner applies for an ED post and in case he has the eligibility for the post his case should be considered and he should be given preference in the light of the circular dated 6.6.1998 of Director General, Posts".

Thus, this Tribunal, being conscious of the circumstances that may stand on the way of the Applicant, to take an entry to regular postal establishment as a Gr.D staff, asked the Department to give preference to the

Applicant (in the light of the D.G.(Posts) Circular dated 06.06.1998) in the matter of recruitment to any ED post, for which he is eligible. Relevant portion of said D.G. circular dated 06.06.1998 reads as follows :

"(28) Preference to Casual labourers in the matter of appointment as E.D. Agents:-

xx xx xx

(4) The suggestion has been examined in detail and it has been decided that casual labourers, whether full-time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to E.D. Posts, provided they fulfil all the conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a year may be reckoned as one year's service. It should be ensured that nominations are called for from Employment Exchange to fillup the vacancies of casual labourers so that ultimately the casual labourers who are considered for ED vacancies have initially been sponsored by Employment Exchange".

The Applicant, who offered his candidature for the post of ED Mail Delivery Agent/Carrier of B.N.B.Nagar Sub Post Office (in response to Departmental Notification dated 13.2.2002) by 12.3.2002 (i.e. within the last date fixed in those notification) has filed the present Original Application (under Section 19 of the Administrative Tribunals Act, 1985) by raising allegation that he is not being given any preferential treatment in the matter of recruitment to the post of EDAs.

2. By filing a counter, the Respondents-Department has contested the matter and, at the same time, they disclosed as under (pertaining to recruitment prayer made by the Applicant) in Para-3 of the said counter ; -

"x x x



"x x x no vacancy reserved for S.C. candidates. However, the applicant applied for the post of G.D.S.-M.C., BJB Nagar Sub-Post Office, an un-reserved post, and for the post of G.D.S.-MD Binayakpur Branch Post Office, reserved for S.T. community; even though he belongs to S.C. community. x x x since there was no reservation for S.C. Community, his candidature was not considered either for the post of GDS-MC, BJB Nagar Sub Post Office or for the post of GDS-MD, Binayakpur Branch Post Office for which he applied for".

3. While a general caste candidate is not to be considered for a post reserved for reserved category candidate; a candidate belonging to reserved category can be considered for an un-reserved post. In the said premises, non consideration of the Applicant for the unreserved G.D.S.-MC post of B.J.B.Nagar Sub-Post Office, simply because he belongs to S.C./reserved community, (as disclosed in the counter) was bad and, as such, such action (of non-consideration of the case of the Applicant) of the Respondents was un-constitutional.
4. In Para-5 of the counter filed by the Respondents, it has, further, been disclosed as under :-


"x x x there was/is no full time Contingent-paid worker ever engaged in B.J.B.Nagar Sub-Post Office, but the work relating to sweeping and supply of water to the office has been done by part-time contingent-paid worker only".

Applicant was a contingent paid worker in BJB Nagar Sub-Post Office; before his engagement as an E.D. Stamp Vendor in Udayanmarg Post Office. Upon his retrenchment from the said post of E.D. Stamp Vendor, he should at least have been restored back to the status of a contingent-paid worker; instead of being thrown to total un-employed status; especially when the job (of a contingent-paid worker) is still available in BJB Nagar Sub Post Office; as has been

admitted by the Respondents in Para-5 of their counter.

5. After hearing the counsel appearing for the parties and in the above-said circumstances, the Respondents are hereby called upon to provide an engagement/employment to the Applicant at an early date and, while doing so, the Respondents should keep in mind the Departmental Circulars; orders of the Tribunal (dated 16.03.2001) rendered in O.A.526/99 and the observations made in the foregoing paragraphs of this order. With these observations and directions, this Original Application is disposed of. No costs.


(B.N. SOM)
VICE_CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

KNM.