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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.320 OF 2006
CUTTACK, THIS THE DAY OF OCTOBER,2006

Bramhananda Rout Applicant

Vs.

Union of India & Others..... Respondents

FOR INSTRUCTIONS

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


(V.K.AGNIHOTRI)
MEMBER (ADMN.)


(M.A.KHAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.320 OF 2006
CUTTACK, THIS THE 26TH DAY OF OCTOBER, 2006

CORAM:

HON'BLE MR. JUSTICE M.A.KHAN, VICE-CHAIRMAN

HON'BLE MR. V.K.AGNOHOTRI, MEMBER (ADMN.)

Brahmananda Rout, aged about 45 years, S/o.- Magu Rout, of Village-
Alasudha, P.O.Piteipur, P.S./Dist.- Jagatsinghpur.

.....Applicant

Advocate(s) for the Applicant - Mr. Niranjan Panda.

VERSUS

1. Union of India, represented by its Chief Postmaster General (Orissa Circle), At/P.O.- Bhubaneswar, Dist.-Khurda.
2. Superintendent of Post Offices, Cuttack South Division, At- P.K.Parija Marg, P.O.-Cuttack G.P.O.-Dist.-Cuttack-1..
3. Assistant Superintendent of Post Officers, Jagatsinghpur Sub-Division, At/P.O./Dist.-Jagatsinghpur.
4. Shri Alok Kumar Biswal, aged about 32 years, Son of Rusi Kumar Biswal, of village- sogal, P.O.-Baharana, P.S./Via.- Balikuda, Dist.- Jagatsinghpur.

.....Respondents.

Advocate(s) for the Respondents - Mr. B.Mohapatra (for R-1 to 3),
Mr. D.P.Dhalsamant (for R-4).



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O.A. 320/2006

ORDER

Mr. Justice M.A.Khan, Vice-Chairman:

The Applicant has filed this O.A. for the following relief:

“ to quash the appointment order passed on 12.12.2002 in favour of Alok Kumar Biswal by the Postal Department for the post of Gramin Dak Sevak, Mail Carrier, Sithol Branch Post Office. Further this Hon’ble Tribunal may direct to appoint the applicant in the said post as he is the Solitary candidate.”

2. The relevant facts as stated in the O.A. are as follows:

One post of Gramin Dak Sevak Mail Carrier fell vacant in Sithol Branch Post Office for which Employment Exchange was approached by the Department for sponsoring the names of the suitable persons. The vacancies were also notified to the general public. 40 persons including the applicant was sponsored by the Employment Exchange and other 61 applications were received from open market. The educational qualification prescribed, as per the rule, was class 8 standard with preference to be given to the candidates with matriculation or equivalent qualification. The vacancy was unreserved. The department has selected the Respondent No.4, Shri Alok Kumar Biswal and has appointed him against the said vacancy. The applicant is aggrieved and is seeking quashment of the order of appointment of Respondent No.4 in this O.A.

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3. According to the Applicant when he came to know that Shri Alok Kumar Biswal, who had been working as part time casual labourer in the postal department would be selected though he had not applied for the post and that his name has also not been sponsored by the Employment Exchange he filed O.A.No. 948/02 before the Tribunal. The Tribunal holding that the O.A. was premature disposed it of. The Applicant filed a writ petition assailing that order. In that writ petition O.J.C.No. 5284/02 an interim order was passed that the post of GDS MC, Sithol shall not be filled up. Violating that order, the department appointed Shri Alok Kumar Biswal as GDS, Mail Carrier. A contempt petition number CONTC No. 579/03 was filed and in reply to the show cause notice, it was admitted that Shri Biswal's name was not sponsored by the Employment Exchange. It was also stated that the appointment was given to Shri Biswal in terms of DG Post Letter dated 06.06.1988 and that this Tribunal by order dated 07.08.2001 in O.A. No.91/2000 had given direction to consider the case of Shri Biswal as per the said DG circular dated 06.06.1988. Accordingly, Shri Biswal has been appointed.

4. The Respondents have rebutted the allegation of the Applicant that Shri Biswal has not submitted his application for the post. It is submitted that Shri Alok Kumar Biswal Respondent No.4 was matriculate and he had worked as part time casual worker in the postal department. As per rules the prescribed qualification for the post is that the candidate must have passed 8 standard but the preference shall be given to the matriculate or equivalent qualification and that the vacancy was unreserved. Accordingly, the Respondent Shri Biswal who was matriculate was appointed.

5. At the time of hearing Ld. Counsel for the respondents refuting the contention of the applicant that Shri Alok Kumar Biswal had not applied

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for the recruitment to the post, has drawn our attention to the check list of the candidates who had submitted their applications either on being sponsored by Employment Exchange or from the open market which is at Annexure-R/3 to the Counter reply of the official respondents. The name of Shri Alok Kumar Biswal, Respondent No.4 is mentioned at Sl.No. 39 and that of the applicant is mentioned at Sl.No. 77.

6. The Ld. Counsel for the Respondents further submitted that not only Respondent No.4 had better educational qualification of matriculation as compared to the Applicant who was only 8th standard pass Shri Biswal has also been working for over 8 years as part time casual worker in the postal department. It has been stated that in the O.A.No. 91/2000 filed by Shri Biswal the Tribunal had directed that in case he applied for any ED post in response to an advertisement then his case would be considered by the Respondents along with others and accordingly in accordance with the rules and in accordance with the circular dated 06.06.1988 and in compliance of this direction also the candidature of the Respondent No.4 was considered and since fulfilled all the eligibility conditions and had better educational qualification of matriculation, he was given appointment. It is not disputed that if the two candidates with educational qualification of 8th standard and other with educational qualification of matriculation were eligible and other thing remaining the same, then as per the recruitment rules, the candidate having matriculate education qualification would get preference in the matter of appointment to the post of GDS, Mail Carrier. This has been done by the Respondents.

7. The contention of the applicant that Respondent No.4 was appointed on misconstruction of the order of this Tribunal dated 07.08.2001 to our view is misconceived. The check list produced by the official

respondents shows that the applicant was one of the candidate who had applied for the post as general candidate from the open market. No other candidate out of 101 persons who had applied for the appointment had grievance against the appointment of Respondent No.4 or that they were not considered by the official respondents before the appointment of Respondent No.4 against the advertised vacancy.

8. Ld. Counsel for the Respondents produced before us an order of the Hon'ble High Court of Orissa in W.P.C.No. 4205/03, Union of India and others vs Umakanta Swain and another decided on 30th September, 2004. The writ petition was filed against an order of this Bench in which the Tribunal has held that ignoring the prescribed qualification of class 8th and selection on the basis of the result of the matriculation examination was illegal. Hon'ble High Court observed where as the prescribed qualification for the EDDA post and ED Stamp Vendor was class 8th standard, preference to be given to the candidate with matriculation qualification. Therefore, in view of the above clear position of the rule preference may be given to the candidate with matriculation qualification, there is no scope for any contrary interpretation as has been done by the Tribunal. A candidate having matriculation qualification fulfilling other qualification can be given preference even though minimum prescribed qualification is 8th standard. As such the impugned order is not sustainable.

The fact of the present O.A. are identical to the facts of the case of Union of India and others vs. Umakanta Swain and another (Supra). In this case also the prescribed educational qualification is 8th standard with preference to be given to the candidate with matriculation qualification. Respondent No.4 as is a matriculate and, therefore, has rightly been given

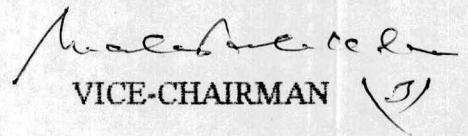
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the preference. He was one of the candidates who had applied for the post and fulfilled all other eligibility conditions.

We find no merit in this O.A., which is dismissed. No costs.



MEMBER (ADMN.)



VICE-CHAIRMAN