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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 437 of 2002
Cuttack, this the 17th day of December, 2004.


Choudhury Tapasa Sahu. Applicant.

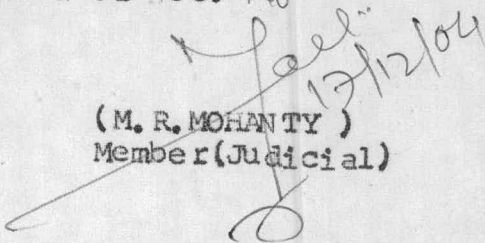
- Versus-

Union of India & Others. 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*


(B.N. SOM)
Vice-Chairman

17/12/04

(M. R. MOHANTY)
Member (Judicial)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 437 of 2002
Cuttack, this the 17th day of December, 2004.

CORAM:

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

.....

CHOUDHURY TAPASA SAHU, aged about 21 years,
S/o. Late Gaganbehari Sahu, At/Po: Kumarpur,
PS: Gurudijhatia, Via: Charbatia, Pin-754028,
DISTRICT: CUTTACK.

.... Applicant.

By legal practitioners M/s. S. K. Mohanty,
S. P. Mohanty,
P. K. Lenka,
Advocates.

- Versus -

1. Union of India represented through the
Chief Postmaster General, Orissa Circle,
Bhubaneswar.
2. Superintendent of post Offices, Cuttack
South Division, Cuttack-753 001.
3. Smt. Sashmita Mohanty,
D/o. Satyabadi Mohanty,
At/Po: Kumarpur, PS: Gurudijhatia,
Via: Charbatia, Dist. Cuttack.

.... Respondents.

By legal practitioners: Mr. S. B. Jena, Addl. Standing Counsel
and

M/s. Ashok Mishra, S. C. Rath,
Counsel/Advocate for
Respondent No. 3.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL);

The post of GDSBPM of Kumarpur Branch Post Office (in account with Charbatia Sub post Office) fell vacant, due to retirement of regular incumbent, from 01-10-2000. To make a regular appointment of a Branch Postmaster for the Post Office, in question, selection process was started and public notice was issued on 11-09-2000 inviting applications from general candidates. In the said regard, the Employment Exchange at Athagarn was also consulted (in Office letter No. A-236/PF dated 11-09-2000) with request to furnish a list of candidates. Applicant was one of the candidates for the said post and, finally the Respondent No. 3 (another candidate) was selected for the post in question. The Applicant, being aggrieved by the same, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 (by assailing the selection of the said private Respondent No. 3) with prayer for a direction to the Respondents to consider his candidature for the post in question; because he secured the highest marks (in the matriculation examination) among the candidates.

2. Departmental Respondents, by filing a counter, have stated that, as the Applicant did not submit any documentary proof in support of his ownership over any landed property and that he merely furnished an affidavit showing existence of Joint properties standing in the name of his grand-father/father and that, as one of the conditions stipulated in the Advertisement was that the candidate must have adequate income from landed property and other sources and that he must possess immovable landed properties in his own name and that supporting particulars should be furnished in the enclosed proforma the candidature of Applicant was rejected; although he had secured highest marks (in the matriculation examination) among the candidates.

3. Respondent No. 3 by filing a counter, has also justified the action of the Departmental Respondents in selecting and appointing him in the post in question and in rejecting the case of the Applicant.

4. Heard learned counsel appearing for the parties and perused the materials placed on record. Learned counsel for the Applicant, by relying on various decisions of this Tribunal as also the decisions of the Hon'ble High Court of Orissa, has submitted that the Applicant has absolute right in the joint property standing in the names of his family members and that

the Applicant has also submitted an affidavit alongwith application form showing details of landed properties standing in the name of others; where he has the interest and that, although subsequently (on 07.04.2002 i.e. before the selection was finalised) Applicant had submitted a representation (alongwith sale-deed showing some of the lands to have been recorded in his own name) the Respondents/Authorities unjustly did not take the same into consideration. Learned Counsel for the Applicant has also, by relying on the decision of a FULL BENCH of this Tribunal, submitted that such non-consideration of the documents (submitted on 07.04.2002) is against the decisions of the Full Bench of this Tribunal and, as such, rejection of the candidature is nothing but colourable exercise of power and, in the said premises, he has prayed to set aside the selection and appointment of Respondent No. 3 and for issuance of a direction for reconsideration of the candidature of the Applicant for the post in question. Learned Counsel appearing for the Respondents on the other hand, have submitted that since in the Advertisement it was clearly

asked that one has to produce documentary proof in support of the landed property exclusively in his own name, and the Applicant having no such landed property as on the last date of submission of application, his candidature was rightly rejected and since the Respondent No.3 was found more acceptable having secured highest marks in the matriculation examination among the candidates fulfilling all other conditions, he was rightly selected for the post. It has further been submitted by the Respondents side that the documents submitted by the Applicant on 07.04.2002 were rightly not taken into consideration; for the same were placed on record beyond the last date of submission of application and as such, no interference of this Tribunal is called for.

5. Having considered various submissions advanced by rival parties and having perused the materials placed on record, we gave our anxious thought to the issues in hand. It is undoubtedly true that a co-parcener has an interest in the paternal properties as per mitakshara law; but the person who claims his interest on the properties has to establish by independent legally valid documents that he has a particular percentage of interest over such properties. It is not for the postal Department to find out what are the percentage of interest over the joint/paternal

properties. This Tribunal rendered a decision in the case of Antaryami Sahoo VRS. Union of India and others (O.A.No.300/1998) that was disposed of on 13-08-1993 ;wherein the Applicant placed deed of family settlement, in which certain properties were allotted to his share and, yet, the candidature of the said Applicant was not considered by the Postal Department and, in that event this Tribunal held that rejection of the candidature of Applicant was illegal. In the case of Union of India and others Vrs. Harish Chandra Sahu (OJC No. 1426 of 2002 disposed of on 02-12-2002) the Hon'ble High Court of Orissa also took the same view. Similarly, in the case of Rana Ram vrs. Union of India and others (reported in 2004(1)ATJ-1) the Full Bench of this Tribunal at Jodhpur held that candidates need not be asked to submit the proof of income/property alongwith his application; which he/she can be asked to prove only after his/her selection and the selection be based on the marks obtained in the matriculation examination. But here in the instant case, the Advertisement specifically envisages as under:-

"ELIGIBILITY FOR THE POST OF EDBRM/GDSBPM

1. Must have passed matriculation or equivalent examination;

2. Must be within 18 to 65 years of age on the date of application;
3. The applicant must on selection will reside at the post village and work as EDSBPM/EDBPM;
4. Must provide a rent-free accommodation for the post office in the post village before appointment;
5. Must have adequate income from landed property and other sources which will prove that the candidate is as solvent as having got independent sources of income;
6. Must possess immovable landed property in his own name and the particulars should be furnished".

6. The Advertisement putting the above said terms not being under challenge in this O.A. possession of landed properties in own name makes one eligible only. It is an admitted fact that the Applicant failed to produce the documents as required in the advertisement to be eligible for consideration for the post in question. The Hon'ble High Court of Orissa in the case of Purusottam Kandi vrs. Union of India and others (IN OJC No.10093/2000 decided on 02-05-2001) held that one has to fulfil the conditions laid down in the Advertisement for selection as parties cannot be permitted to by-pass or deviate from the said conditions. The selecting Authority is also not bound to accept any documents (filed after the cut-off date for submission of the same) which may lead to opening of doors for show of favouritism;

apart from leading to a situation un-ending.

7. In the aforesaid view of the matter,
we find no merit in this O.A.; which is accordingly
dismissed. No costs.

B.N. Som
(B.N. Som)
Vice-Chairman

M. R. Mohanty
17/12/64
(M. R. MOHANTY)
Member (Judicial)