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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 996 OF 2002
Cuttack, this the 10th day of August, 2005.

NABAKISHORE MALLICK

APPLICANT.

VERSUS

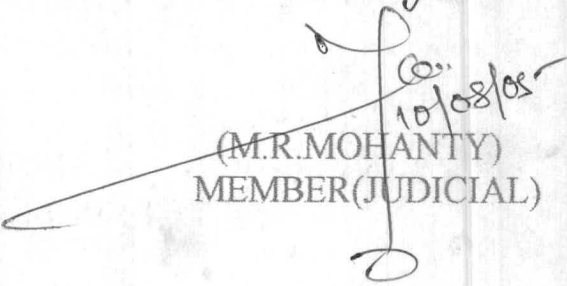
UNION OF INDIA & ORS.

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of CAT or not? *yes.*


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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C O R A M:-

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

Shri Naba Kishor Mallick, aged about 21 years,
Son of Bansidhar Mallick, resident of Vill./Po:
Mahukhand, PS: Baliana, Dist: Khurda.

..... APPLICANT.

For the Applicant: M/s.K.C.Kanungo,S.Behera,R.N.Singh,
Advocates.

VERSUS

1. Union of India represented through the Secretary Cum
Director General of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Orissa Bhubaneswar,
New capital- 751 001.
3. The Senior Superintendent of Post Offices,
Bhubaneswar Division, Forest Park Area,
New Capital-751 009.
4. Shri Krushna Ch. Mallick, S/o. Anu Mallick,
Vill./Po. Palasahi, PS-Balilanta, Dist.Khurda.
5. Mrs.Lily Bhoi, W/o.Sukanta Kumar Bhoi,
Vill./Po- Mahukhand,PS: Baliana,Dist.Khurda.

.....RESPONDENTS.

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By the Respondents : Mr.U.B.Mohapatra, SSC.
M/s. B.K.Mohanty,B.K.Mohanty,
N.K.Praharaj,Advocates.

O R D E R

MR.M.R.MOHANTY, MEMBER(JUDL.):

Being aggrieved by his non selection and challenging the selection of the Respondent No.4 Krushna Chandra Mallick, AS Gramin Dak Sevak Branch Post Master of Mahukhand Branch Post Office, the Applicant Nabakishore Mallick has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

- “(a) To hold that the condition of adequate means of livelihood from landed property/immovable assets be declared ultra vires and struck down from the recruitment rule at Annexures 1, 2 and 3 and to direct the departmental Respondent No.1 to modify the Recruitment Rule deleting the same condition and/or make provisions of higher security in shape of fidelity bond;
- (b) To direct the Respondent No.1 to strike down the condition of income derived from landed property made in para 4(ii) of Annexure-4 and further direct the Respondent No.3 to make selection to the post of EDBPM, Mahukhand on the basis of merit in matriculation of the candidate who has submitted documents of landed property owned on his name

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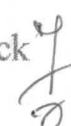
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irrespective of quantum in view of provision of Annexure-3.;

- (c) The condition of furnishing income certificate made in para 6(5) of the Annexure 4 be similarly struck down and direction issued to Respondent No.3 to make selection on the basis of merit in matriculation of candidate who has furnished document of landed property;
- (d) Direction be issued to Respondent No.3 to appoint the Applicant as EDBPM, Mahukhand ED branch Office as he has fulfilled all the conditions of eligibility and stands the tallest in merit;
- (e) To quash the order of any appointment if made other than the Applicant;
- (f) Grant any other relief/reliefs as the Tribunal deems fit and proper."

2. Respondents have filed a counter stating therein that the post of Gramin Dak Sevak Branch Post Master (in short ' GDS BPM') of Mahukhanda Branch Post Office was lying vacant since 12.05.2001; due to promotion of the regular incumbent to the cadre of Postman. Being the recruiting and appointing authority , Respondent No.3 notified the vacancy on 15.02.2002 (inviting applications from intending candidates) by giving 30 days time. The vacancy was earmarked for "SC" community. 16 (sixteen) applications were received within the last date fixed; out of which 11 (eleven) applications were from SC candidates, 2(two) applications were from OBC candidates and 3(three) applications were from general (OC) candidates which included the application of the Applicant, Respondent Nos. 4 and 5 who were SC candidates. It has been disclosed in the counter that the Applicant Naba Kishore Mallick



(whose name appeared at Sl. No.15 of the check sheet at Annexure R/1 to the Counter) secured 376 marks (out of the total aggregate mark of 750) i.e. 50.13% in the HSC Examination which was/is the highest amongst the remaining SC candidates. As per the income certificate issued by the Tahasildar of Bhubaneswar, the annual income of the Applicant was Rs.10, 000/- and that was derived by him from tuition; whereas it is the case of the Respondent-Department that in order to be eligible one must have the income from landed property and/or immovable assets as per the requirement of rules. Further the applicant submitted the Xerox copy of unregistered sale deed transferring some land to his own name; which, as per the Counter, cannot confirm acquisition of landed property by the Applicant and that, therefore, the candidature of the Applicant was considered and rejected. It is also the case in the counter that the Respondent No.5 (Krushna Chandra Mallick) having been found as the next available meritorious candidate (having secured 45.2% in the HSC Examination) and he having fulfilled all the eligibility conditions, was selected and offered with the provisional appointment subject to the result of this Original Application. By stating so, the Respondents have opposed the prayers of the Applicant made in this Original Application.

3. We have heard learned counsel appearing for the parties and perused the materials placed on record. During oral hearing, learned counsel appearing for the parties have reiterated their respective stand

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“CONDITIONS:

- (i) The applicant selected as GDS BPM must take up residence at the village where the post Office is located before appointment;
- (ii) The applicant must have adequate means of livelihood . Preference will be given to those applicants whose income is derived from landed property and/or immovable assets, owned independently;
- (iii)

In column 6 of the said advertisement it has also been mentioned that the candidates will have to submit attested copies of certain documents along with their applications, the relevant portion of which is indicated herein below:-

“ XX XX XXX .

(5) Income certificate issued by the competent authority in applicant's own name;

(6) Registered document of landed property and/or immovable assets in applicant's own name in case income is derived from such sources;

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4. From the above, it is evident that one has to file the registered document of landed property in case income is derived from that source. As regards adequate means of livelihood it has been mentioned that preference will be given to those candidates whose income is derived from landed property and/or immovable assets, owned independently. It is a settled position of Law that selection to the post in question should be based, primarily, on the marks secured by a candidate in the HSC Examination; subject to fulfillment of other conditions. It is equally the settled position of law that question of preference will come to play only where two candidates stand in a similar footing. There is no dispute that the Applicant had secured more marks in the HSC Examination than the selected candidate (Respondent No.4). Applicant had also more income than the selected candidate; as is shown in the check sheet He also fulfilled all the required conditions for being appointed as GDS BPM. It is the specific case of the Applicant that he had submitted the Sale deed dated 13.3.2002 along with the tickets issued by the registering authority . He has also submitted the income certificate issued by the competent authority showing adequate means of his livelihood from a source other than from landed property . Therefore, the ground on which the candidature of the Applicant was rejected is not sustainable. When the case of the Applicant was that he had adequate income from a source other than landed property sources, non submission

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of ROR/Regd. Sale deed in support of possession of landed property was of least importance . Since the Applicant secured more marks than the selected candidate and had more amount of income than the selected candidate; there were no question of giving any preferential treatment to the person having landed property.

5. It is to be noted here that the question of submission of proof of income/property along with application while applying for the post of GDSs was under consideration before the **FULL BENCH** of the Central Administrative Tribunal, Jodhpur in the case of **RANA RAM vs. UNON OF INDIA AND OTHERS** (reported in ATJ 2004 (I) page-1). The **FULL BENCH** in consideration of the matter held that a candidate applying for the post of EDBPM/GDSBPM need not submit the proof of income/property along with his application, nor the said proof is required at the time of interview/selection/appointment as the same has to be made on the basis of marks obtained in the matriculation examination. Thereafter the person selected can be given a reasonable time to submit proof of income/property as per rules/instructions on the subject and in case he failed to submit the same within the permissible/reasonable time, the offer could be given to the next eligible/selected candidate.

6. Having regard to the above said position of law as propounded by the Full Bench of C.A.T. rendered at its Jodhpur Bench,

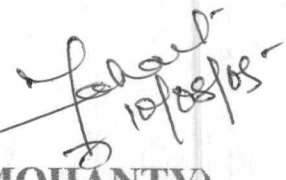
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we have no hesitation to hold that the candidature of the Applicant ought not to have been rejected on the ground that his income was derived from other sources or that for non submission of the registered sale deed. Non-submission of Regd. Sale deed did not, in any way, make the applicant ineligible for being considered. In the circumstances, we quash the entire selection and, consequently, the appointment of Respondent No.4 and remit the matter back to the Respondents -Department to reconsider the candidature of the Applicant along with others (those who were in fray of selection) keeping in view the above observations made by us and select the best candidate as per the rules. The entire process should be completed within a period of 30 (thirty) days from the date of receipt of a copy of this order.

7. With the foregoing observations and directions, this O.A. is disposed of, leaving the parties to bear their own costs.


(B.N.SOM)

VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)