

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

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ORIGINAL APPLICATION No.5 OF 1986

DATE OF DECISION : JULY 8, 1987

Bhagirathi Das ... Petitioner

Versus

Union of India and others ... Respondents.

Mr. P. V. Ramdas, Advocate : For Petitioner

For Petitioner

Mr. A. B. Misra, Sr. Standing
Counsel (Central)

For Respondents.

C O R A M :

HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

- 1 . Whether reporters of local papers may be allowed to see the judgment ? Yes .
2. To be referred to the Reporters or not ? No .
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

JUDGMENT

K.P.ACHARYA, MEMBER (J), This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The petitioner was the Sub-Post Master, Isan Nagar Sub-Post Office situated within the town of Balasore. While the petitioner was working as such, a disciplinary proceeding was initiated against the petitioner under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. After initiation of such a proceeding, the petitioner prayed before the Inquiry Officer to permit the petitioner to engage Sri Manmathnath Das, then stationed at Jaleswar to act as the Defence Assistant. The said petition was rejected by the Inquiry Officer on the ground that Sri Das was serving at a place outside Balasore town and therefore, it was directed by the Inquiry Officer that the petitioner should suggest the name of a defence assistant stationed at Balasore. Being aggrieved by this order, the petitioner had filed an application under Article 226 of the Constitution before the Hon'ble High Court of Orissa praying therein to quash the order and to command the respondents-Opposite Parties to permit the petitioner to engage Sri Manmathnath Das. This formed the subject-matter of O.J.C. No. 1930 of 1985. The case having been transferred under section 29 of the Administrative Tribunals Act, 1985, it came up before the Calcutta Bench on circuit at Cuttack and by judgment delivered by the Calcutta Bench at Cuttack on 23rd November 1985 in Miscellaneous Case No. 2851 of 1985, the Bench

directed that the Inquiry Officer should again reconsider the matter in the light of the observations made in the said judgment. Accordingly, the O.J.C. and the Misc. Case were disposed of. On a reconsideration of the matter, the Inquiry Officer maintained the same view and did not feel inclined to permit the petitioner to engage Sri Manmathnath Das. Being aggrieved by this order, the petitioner has again invoked the jurisdiction of this Bench by filing an application under Section 19 of the Administrative Tribunals Act, 1985 praying to allow the petitioner to engage Sri Das as Defence Assistant.

3. In their counter, the respondents-Opp. Parties maintained that as per the rule 14 (8) (A) of the Classification of Control (Appeal) Rules, discretion is always vested with the Inquiry Officer and there being no ^{legal} exercise of discretion, this Bench should not interfere.

4. We have heard Mr. P. V. Ramdas, learned counsel appearing for the petitioner and Mr. A. B. Misra, learned Sr. Standing Counsel (Central) for the respondents. Learned Sr. Standing Counsel repeated the stand taken by the respondents-Opp. Parties in the counter and further added that if the application of the petitioner is allowed, then it will create such precedent which may in future lead to the departmental authorities into awkward situation. Further submission of Mr. Misra was that in future the delinquent officer may suggest names of persons who are stationed at a place even outside the State. True, it may be so, but in

the peculiar facts and circumstances of the case, we feel inclined to take a different view because in the application under section 19 of the Act, it is averred that there are two rival unions existing in Balasore station amongst the postal employees and the petitioner belongs to one of those groups. It is not possible for the petitioner to engage a defence assistant from the counter group. So far as the group to which he belongs, it is stated that some of the postal employees who are capable to be defence assistant on being contacted refused to give any help to the petitioner as they were overburdened with cases- at least each of them has two cases and under the rules they are precluded from taking up other cases. In view of special circumstances, we think it just and proper to accede to the prayer of the petitioner specifically mentioning herein that this case should not be treated as a precedent. We feel more inclined to allow the prayer of the petitioner because Mr. Ramdas suggested before us that the travelling expenses and dearness allowance of Sri Manmanath Das would be borne by the petitioner. In view of this special concession made by Mr. Ramdas, we think it proper to accede to the request of the petitioner following the principles of natural justice that due opportunity should be given to the petitioner to adequately and effectively defend himself. Therefore, in the peculiar facts and circumstances of the case, we do hereby direct that the petitioner be permitted to engage Sri Manmathnath Das as Defence Assistant

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in the departmental proceeding in question and the Inquiry Officer is directed to make communications with the appropriate authority to spare Sri Manmathnath Das before him on the dates fixed for the enquiry. The petitioner should deposit in advance the T.A. and D.A. which would be chargeable by Sri Das.



5. Thus, the application is allowed leaving the parties to bear their own costs.

legally done
9/7/87

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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

I agree

Manmathnath
8.7.87
.....
Vice Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 8, 1987/Roy.