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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.156 of 1989.

Date of decision : November 23, 1990.

Madhabananda Mallik ... Applicant  
Versus  
Union of India and others ... Respondents.

For the applicant ... Mr. Pradipta Mohanty, Advocate.

For the respondents

1 to 3 ... Mr. Tahali Dalai,  
Addl. Standing Counsel (Central)

For the respondent No.4.. M/s. Devanand Misra,  
Deepak Misra,  
Anil Deo, R. N. Naik,  
R. N. Hota, Advocates.

C O R A M :

THE HONOURABLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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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.

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J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, Briefly stated, the facts are that the Respondent No.4 was provisionally appointed as Extra-Departmental Mail Carrier (E.D.M.C.) Chatia Post Office in the district of Cuttack with effect from 16.4.1984 vide Annexure-R-7 to the counter affidavit. Certain allegations were made against the conduct of Respondent No.4 and the services of Respondent No.4 were terminated with effect from 7.3.1985 vide Annexure-R-8. Thereafter the applicant was appointed in the vacancy with effect from 2.4.1985

*Pradipta Mohanty*

vide Annexure-1. The order terminating the services of Respondent No.4 was passed by the Sub-Divisional Inspector (Postal), Respondent No.3 who was the appointing authority. Later the Superintendent of Post Offices, Cuttack South Division quashed this order vide memo dated 19.12.1985 (vide Annexure-1-10) on the ground that the order of termination was issued unilaterally by the Sub-Divisional Inspector (Postal) and there was no record that it was actually delivered to Respondent No.4. Respondent No.4 was then reinstated in service with effect from 10.1.1986 ousting the applicant. The applicant has challenged his ouster.

2. Respondents 1 to 3 have maintained in their counter affidavit that no irregularity has been committed in replacing the applicant by Respondent No.4 as the latter was earlier appointed after observing the formalities. Though Respondent No.4 was provisionally appointed that is not the ground on which the application should be allowed.

3. We have heard Mr. Pradipta Mohanty, learned counsel for the applicant, Mr. Tahali <sup>Dalai</sup>, learned Addl. Standing Counsel (Central) and Mr. A. Deo, learned counsel for the Respondent No.4 and very carefully at length perused the documents. We have found that Respondent No.4 had in fact been appointed earlier on provisional basis prior to the applicant. From the records we have further found that the order of termination of service of Respondent No.4 has been subsequently superseded by the order of the Superintendent of Post Offices, Cuttack South Division (Respondent No.2).

*R. M. Mohanty*

who is the departmental superior of Respondent No.3 and as such this order would prevail. Though both the applicant and Respondent No.4 have been appointed provisionally, Respondent No.4 has a better claim to the service than the applicant because of <sup>the</sup> ~~he~~ being earlier appointee. Moreover, after reinstatement, the charges against Respondent No.4 have been duly enquired into and the charges had not been substantiated. Mr. Pradipta Mohanty has submitted that no regular appointment to the post has yet been made, though this averment is controverted by Mr. Deo, Mr. Dalai has no instructions on this aspect of the case. We would therefore direct that the Department should take early steps for regular recruitment to the post, if ~~it~~ has not already been made.

4. The application is accordingly disposed of.

No costs.

*Mr. Eec/94*  
23/11/90  
Member (Judicial)



*Arshad*  
23/11/90  
Vice-Chairman

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
November 23, 1990/Sarangi.