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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 301 of 1989.

Date of decision : August 28, 1990.

Narahari Sahoo ...

Applicant

Versus

Union of India and others ...

Respondents.

For the applicant :: M/s. Devanand Misra,  
Deepak Misra,  
A. Deo, B.S. Tripathy,  
R.N. Naik, Advocates.

For the respondents :: Mr. Aswini Kumar Misra  
Sr. Standing Counsel (CAT)

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 fair copy of the judgment ? Yes.

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JUDGMENT

N. SENGUPTA, MEMBER (J) The applicant was appointed as an Extra-Departmental Branch Post Master of Bansh Branch Post Office on 2.11.1983 in the vacancy caused on account of the then Extra-Departmental Branch Post Master, Shri Siba Prasad Parida being put off duty. On 9.6.1988 the Respondent No. 3 directed the applicant to handover charge to Siba Prasad Parida as the order putting the said Siba Prasad Parida off duty was recalled. In obedience to this order dated

*Expt  
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9.6.1988, he ( the applicant) made over the charge. The applicant's prayer is for the issuance of a direction to the respondents to give him an alternative posting in the category of Extra-Departmental DeliveryAgent at Sikhar Branch Office or at any other nearby place, stating that as he had put in more than 3 years of continuous service, he qualified for permanent absorption in the Postal Department.

2. The respondents in their counter have stated that the appointment of the applicant was against <sup>a</sup> purely temporary vacancy and on the express condition that the appointment of the applicant was to ensure till the disciplinary proceeding against Siba Prasad Parida was finally disposed of. Therefore, the applicant cannot possibly have a claim for being appointed as Extra-Departmental Delivery Agent.

3. We have heard learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents. The facts are undisputed and from the narration of facts made above there can be absolutely no doubt about the fortuitous nature of appointment of the applicant. Mr. Tripathy, learned counsel for the applicant has sought reliance on two decisions of this Tribunal, one of Calcutta Bench, in the case of Smt. Durga Bhowmick and others *versus* Union of India and others reported in (1989)11 ATC 255 and the other of the Ernakulam Bench reported II(1990)ATLT (CAT) 16 ( K.G. Sugunan *versus* Administrator, U.T. of Lakshadweep.

*Neeraj*

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The facts of the first case i.e. of Durga Bhowmick were some what different. In that case what the Calcutta Bench decided was that even a substitute working for not less than 240 days per year was entitled to permanent absorption in future vacancies in accordance with a letter of the Post Master General, West Bengal Circle. For applying that decision there ~~cannot~~ <sup>was to</sup> be a vacancy and in the instant case, after the order putting a regular incumbent off duty was recalled, the vacancy ceased to exist. Therefore, in our opinion this case has no application. In the case of K.G.Sugunan, the facts were that the applicant was working as a Graduate Asst. Teacher in a Government High School, for being a Teacher in the School a degree in Education was essential. But the applicant had not acquired the B.A. degree. So, he was appointed on a d hoc basis for a period of one year or till necessity ceased <sup>was</sup> whichever <sup>was</sup> earlier. As there was a shortage of trained Graduate Teachers, so the services of the applicant were extended from time to time for six months and three months but without any break for a period of 8 years. The services of the applicant of that case were terminated, the applicant's grievance was that he was never warned that acquisition of B.Ed. degree was necessary for his continuance in the post. From the facts it would be found that infact he had applied for permission to get himself admitted in the B.Ed.course much prior to the date of termination of his services but the School authorities did not forward his application

*Neelam  
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nor grant him necessary permission. It is also noteworthy that the applicant in the very next year of his termination of service passed the examination for the B.Ed. in the first ~~examination~~ <sup>division</sup>. In these circumstances, the Ernakulam Bench of the Tribunal stated that they were not able to reconcile themselves to the position that a Graduate Teacher who had been working satisfactorily and continuously for more than 10 years though on ad hoc basis to be thrown out of employment. In that reported case the School authorities reaped the advantage of having a competent teacher but in ~~the turn the~~ <sup>return</sup> threw him out of employment, this was against all canons of justice, equity and fair play. This being the facts we are unable to agree with learned counsel for the applicant that any assistance could be had from that case in the face of the facts of the one in hand.

4. To repeat, the applicant knew that his tenure in the post was a precarious one liable to be terminated on the regular incumbent being put back into service. When the applicant knowingly accepted the post and the incumbency was for little more than 3 years, we would say that the applicant could not have any claim to continue in the said post but however he be kept on the waiting list for one year from this day for being considered for appointment ~~to~~ any Extra-Departmental Delivery Agent vacancies arising within that period.

*Meenakshi*

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 5. This application is accordingly disposed of  
 but however there would be no order as to costs.

*Banerjee* ..... 28.8.90  
 Vice-Chairman

*Res. Engrs* ..... 28.8.90  
 Member (Judicial)



Central Administrative Tribunal,  
 Cuttack Bench, Cuttack.  
 August 28, 1990/Sarangi.