

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO: 367 OF 1989

Date of decision: 5.4.1991.

Prasanta Kumar Nayak : Applicant

Versus

Union of India and others : Respondents

For the Applicant : Mr.Pradipta Kumar Mohanty
Advocate.

For the Respondent Nos.1 to 4 : Mr. Aswini Kumar Misra,
Sr.Standing Counsel (CAT)

For the Respondent No.5. : M/s.Susanta Ku.Das,
Sashibhusan Jena,
Advocates.

C O R A M:

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

A N D

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

1. Whether reporters of local papers may be permitted to see the judgment?yes.
2. To be referred to the reportes or not? *yes*.
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: The facts briefly stated are that the Post of Extra Departmental Night Watcher in Mahimagadi Sub-Post Office in the district of Dhenkanal held by the applicant was abolished. In pursuance of the instructions of the Director General issued in letter No.41/434/87-PE-II dated 14.12.1987 (Annexure-1) the applicant was appointed as the Extra Departmental Delivery Agent (EDDA) in Gondipatna Sub Post Office as the incumbent of the post was appointed as Postman in the Sub-divisional Inspector (P) Talcher Unit. As Gondipatna was far away from his place of residence, the applicant represented that the posting caused him considerable hardship and he could not properly discharge his responsibility. When, therefore, a post of E.D.D.A. fell vacant in Mahimagadi Sub Post Office he applied to the appropriate authority to favour him with appointment to that post vide his representation copies of which are at Annexure-4 dated 12.12.1988 and Annexure-5 dated 28.2.1989 but the authorities

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instead of appointing him, appointment Respondent No.5. He has therefore, moved this Tribunal to quash the appointment of Respondent No.5 in the post of EDDA , Mahimagadi and appoint him to the post of EDDA in Mahimagadi.

2. Respondents No.5 in his counter affidavit has maintained that the applicant has been made permanent in the post of E.D.DA, Gondiapatna and as such has no claim on the post of EDDA, Mahimagadi. He has further averred in paragraph-10 of his counter that this Bench of the Tribunal in para-4 of their judgment dated 17.8.1989 in OA 14 of 1989 have agreed to this appointment as EDDA, Mahimagadi and as such the applicant has no case and his application should be rejected.

3. The Respondents Nos. 1 to 4 in a separate reply have maintained that as soon as the post of Extra Departmental Delivery Agent, Mahimagadi fell vacant action was initiated to fill it up and this fact was mentioned in the course of hearing in OA 14/89 and on receipt of the judgment of the Tribunal

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on 24.8.1989 orders of appointment has been issued to one Shri Dilip Kumar Mohanty i.e. Respondent No.5 on 9.9.1989 and the said Dilip Kumar Mohanty had joined the Post on 11.9.1989 and has since been continuing in the said post. They have further stated in paragraph-4 of their counter that no copy of the instructions issued by the Director General(Posts), New Delhi to Heads of circles vide Annexure-3 have been received in the office of the Superintendednet of Post Offices, Dhenkanal Division, Dhenkanal, i.e. Respondent No.2.

of which

The circular, copy/is at Annexure-3 bears No. 43-27/85Pen(EDC & Trg) to Heads of Circles dated 12.9.1988.

The portion of this letter relevant to the case in hand is reproduced below:

"In cases where EDAs become surplus due to abolition of posts and they are offered alternate appointments in a place other than the place where they were originally holding the post to mitigate hardship they ~~may be~~ allowed to be appointed in a post that may subsequently occur in the place where they were originally working without coming through Employment Exchange".

The Respondents in their counter have maintained as

follows:

"With great respect, it is pointed out before the Hon'ble CAT that the selection procedure as was made was not in any manner irregular due to ignorance and due

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to non-receipt of such orders as in Annexure-3, the selection was conducted and orders of appointment were issued in favour of Shri Dilip Kumar Mohanty".

It is strange that a copy of this important circular is not available in the office of the Superintendent of Post Offices when the Superintendent is the appointing and punishing authority of the E.D. Agents and without being aware of the instructions issued by the Competent Authority, in this case the Director General (Posts) he has been carrying on the work of the appointing E.D. Agents. What is still more strange is that the Superintendent of Post Offices Dhenkanal Division has taken advantage of his ignorance to justify a wrong action. We would like to bring this pointedly to the notice of the Chief Post Master General, Orissa Circle and request him to cause necessary enquiry to fix up responsibility. What we apprehend the most is that this state of affair may not be confined to the Postal Division of Dhenkanal alone but such important circulars might not have been supplied to other divisions also and the resultant illegality may be more rampant than notice so far. We hold that for the ignorance of the Superintendent of Post Offices, Dhenkanal Division, Respondent No. 2 the applicant should not suffer and he should be given the due as per the orders of the Director General (Posts)

R. S. Mohanty

Vide Annexure-3 quoted above. In regard to the plea of Respondent No.5 that we have agreed to his appointment as E.D.D.A., Mahimagadi, we would like to say that it is only a bland assertion without pointing out the exact expression we have used in the judgment dated 17.3.1989 in O.A. 14 of 1989. Paragraph-4 of the judgment is a long paragraph which we have perused carefully. According to us the relevant portion of this paragraph is as follows:

"Mr. Mohanty informed us that one such post is available in Mahimagadi Post Office. Mr. Dalai however submitted that steps have already been taken by the Competent Authority to fillup the vacancy at Mahimagadi post office and in fact applications have been invited and have since been scrutinised and a decision has already been taken to fillup this vacancy. He produced a copy of the letter written by the Supdt. of Post Offices, Dhenkanal Division Dated 4.7.1989 addressed to him. This letter reads as follows:

"Kindly refer to this office letter counter dated 23.2.1989 regarding the above case and it is submitted that the Assistant Superintendent of Post Offices, Dhenkanal I/c Dhenkanal Sub-Dn, has already made selection among the candidates sponsored by the Employment exchange for the post of Extra Departmental Delivery Agent, Mahimagadi ".

In view of this, Mr. Dalai has submitted that it would not be possible for the Department to adjust the applicant against the vacancy at Mahimagadi Post Office. We agree with Mr. Dalai".

The portion deals with the question whether the

applicant in OA 14 of 1989 could be adjusted against

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the vacancy at Mahimagadi, Post Office. Mr. Dalai ~~and~~ had averred on the basis of the letter written by the Superintendent of Post Offices, that it was not possible for the Department to adjust the applicant against the vacancy and we agreed with Mr. Dalai so far as that submission was concerned. We never agreed to the appointment of Respondent No.5 of this case i.e. Mr. Dilip Kumar Mohanty to the post of E.D.D.A., Mahimagadi in preference to the applicant of this case i.e. Prasant Kumar Nayak. In fact that was not the issue before us in O.A. 14 of 1989.

4. In view of the clear instructions of the Director General vide Annexure-3 and the fact that the applicant did make a representation to the Director of Postal Services through the Assistant Superintendent of Post Offices, Dhenkanal (Annexure-5) on 28.2.1989 (the Post of E.D.D.A., Mahimagadi fell vacant sometime in the first week of February, 1989 as mentioned in the application) to consider his case for appointment to the post of E.D.D.A. at Mahimagadi, we have no hesitation in holding that the applicant has a right to be appointed in the Post of E.D.D.A., Mahimagadi.

5. We therefore quash the appointment of Respondent No.5 and direct that the applicant should be appointed as E.D.D.A., Mahimagadi sub Post Office within one month from the date of receipt of a copy of this judgment.

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6. The application is accordingly disposed of leaving the parties to bear their own costs.

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MEMBER (JUDICIAL)

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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench: Cuttack. K. Mohanty.

