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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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CUTTACK BENCH

O.A. No.

315 of 1990

(FULL BENCH)

F.A. No.

Date of Decision 6th February, 1992.

RAGHUNATH NAIK

Petitioner

Mr. Deepak Misra

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent

Mr. Aswini Kumar Misra

Advocate for the Respondent(s)

C O R A M

The Hon'ble Justice Mrs. Pratibha Bonnerjea, Vice-Chairman.

The Hon'ble Mr. K. P. Acharya, Vice-Chairman.

The Hon'ble Mr. I. P. Gupta, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

[Signature]

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

In the matter of O/A 315 of 1990

Present : Hon'ble Justice Mrs. Pratibha Bonnerjea, Vice-Chairman.
Hon'ble Mr. K. P. Acharya, Vice-Chairman.
Hon'ble Mr. I. P. Gupta, Administrative Member

RAGHUNATH NAIK

Vs.

UNION OF INDIA & ORS.

For the applicant : Mr. Deepak Misra, counsel.

For the respondents: Mr. Aswini Kumar Misra, Sr. Standing Counsel.

Heard on : 23.9.1991

Judgement on :

J U D G E M E N T

FULL BENCH

Pratibha Bonnerjea, V.C.

In O/A 315 of 1990 (Raghunath Naik vs. Union of India & Ors.), the two Members of the Division Bench of C.A.T. at Cuttack, differed in opinion. Two questions arose in the said O/A 315 of 1990 for determination and the Hon'ble Chairman referred the said questions to this Full Bench. The said two questions are set out below :-

- 1) Whether a substitute of an E.D. Agent fills the character of a Casual Worker and as such the decisions with regard to absorption of casual workers can be made applicable to such substitutes.
- 2) Whether entitling the substitutes to be absorbed as of right to the exclusion of all others would offend Article 16 of the Constitution.

2. The case, in brief, is that the applicant was a substitute for one or the other of the three permanent E.D. Mail Men under the Office of SRO, Keonjhar Garh for different periods from 1983

to 1990 and he was continuing as such Mail Man at the time of filing of the application in September, 1990. It was alleged by the applicant that the Postal Authorities were going to terminate his services and to appoint another person in his place. The relief sought by the applicant was that as he had worked for considerable period as a substitute E.D. Mail Man, his services should be regularised.

3. The respondents stated that a substitute is provided by the E.D. Agent when he goes on leave or is temporarily unable to act as such Agent; therefore, such a person i.e. a substitute is not a Casual Worker appointed by the Postal Department. Hence, the question of regularisation of his services on the basis of analogy of casual workers does not arise.

4. During hearing of O/A 315 of 1990 before the Division Bench, the ld. counsel for the applicant had placed strong reliance on a decision of the Calcutta Bench of this Tribunal in the case of Smt. Durga Bhowmick and others vs. Union of India & Ors., reported in (1989) 11 ATC 255. The facts of that case were almost similar to those of the present. But the Division Bench of the Tribunal at Cuttack, made the following observations :

"The Calcutta Bench was of the view that a substitute who has worked for considerable time is entitled to be absorbed as a regular E.D. Agent. We regret our inability to concur with the view expressed by the Hon'ble Member of the Calcutta Bench. When an E.D. Agent goes on leave, he is to furnish particulars of a substitute to be provided by him for managing the work of the post he was holding and this is provided for in D.G.P.T.'s instructions in his letter No. 43/38/72-PEN dated 24.4.1972. From the form prescribed, it would appear that a substitute would work on the responsibility of the E.D. Agent whose substitute he is during the E.D. Agent's absence. No doubt the nomination is to be approved by the Postal Authorities, but approval can be withheld only in exceptional circumstances such as where the proposed substitute is known to be unfit or incompetent to manage the work or to hold any office, otherwise the Department is bound to accept the nomination made by the E.D. Agent and the substitute works on his responsibility. If only because somebody worked as a substitute of

an E.D. Agent he would be entitled to be absorbed as a regular Agent after the E.D. Agent demits office, it would give rise to the possibility of an absurd result of continuance of the successive nominees blocking the chances of all others having requisite qualification and eligibility to be appointed."

In view of the aforesaid observations, the Cuttack Bench wished to refer two questions mentioned in para-1 for decision by a larger Bench and accordingly, the present reference has been made.

5. ~~On~~ a close perusal of the judgement of the Calcutta Bench of the Tribunal in D/A No.770 of 1987 (Smt.Durga Bhowmick and Ors. vs. Union of India & Ors.), it cannot be inferred from the said judgement that the Calcutta Bench was of the view that a substitute who had worked for considerable time was entitled to be absorbed as a regular E.D.Agent. The Calcutta Bench only referred to a communication dated 14.12.1987 issued by the Department of Posts in which it was decided that Extra Departmental Stamp Vendors along with other categories of Extra Departmental Agents should be employed in the Department of Posts. By letter dated 29.3.1988 issued by the Postmaster General, West Bengal Circle, it was clarified that only those who had worked as E.D. substitutes or partly as E.D. substitutes and partly as daily rated Mazdoor for a pretty long time i.e. not less than 240 days in a year from a date prior to 7.5.1985 and continued to work till 13.11.1987, should only come under the purview of consideration for appointment in the vacant post of E.D. Agent. The applicant in that case had fulfilled the requirement of the aforesaid letter and, therefore, the Tribunal decided that they were entitled to get themselves permanently absorbed as E.D. Agent when such vacant post would arise in the near future. The Calcutta Bench of the Tribunal also relied on the judgement passed by this

Tribunal in T/A 2060 of 1986 where it was held that some applicants who were equally circumstanced, should be allowed to continue as E.D. Stamp Vendors.

6. It is, therefore, clear from the aforesaid observations that the basis of the judgement of the Calcutta Bench in Smt. Durga Bhowmick's case regarding the entitlement of the applicants for permanent absorption, was the letter dated 29.3.1988 issued by the P.M.G., West Bengal, where, as a specific measure, it was decided by the P.M.G. that consequent upon the decision that the E.D. Stamp Vendors along with other categories of Extra-Departmental Agent, who came within the purview of that letter, should be regularised. The general issue that a substitute, who had worked for a considerable time, was entitled to be absorbed as a regular E.D. Agent on the analogy of casual labour was neither discussed nor any observation in that regard was made in this judgement. Therefore, the questions raised in the general term, referred to the Full Bench, do not really arise. However, we will be dealing with the two questionnaire framed and answer the same.

7. Regarding the facts of the present case in O/A 315 of 1990, the applicant also fulfils the conditions laid down by the P.M.G. in his letter dated 29.3.1988, having worked as a substitute from 1984 to 1990 in a vacant post with occasional breaks. Therefore, he is similarly circumstanced and is entitled to be regularised on the basis of Durga Bhowmick's case. We are bound by the judgement.

8. The ld. counsel for the respondents raised the point that the orders of the P.M.G., West Bengal could not be relevant to the cases of E.D. substitute in Orissa. However, in the absence of any instructions to the contrary from the concerned Department in Orissa and in view of the fact that certain benefits have been allowed to some categories of E.D. substitutes in one State, a differential treatment in another state in respect of the employees who are equally circumstanced, would be discriminatory and unjust. Therefore, in line with the judgement of the Calcutta

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Bench in D/A No.770 of 1987, the respondents are not entitled to terminate the services of the applicant from the present vacant post which he is holding and he is entitled to be regularised as E.D. Agent.

9. Let us now consider the two questions referred to the Full Bench. Question no.1 is :-

Whether a substitute of an E.D. Agent fills the character of a Casual Worker and as such the decisions with regard to absorption of Casual Workers can be made applicable to such substitutes.

(i) The appointment of substitute is provided for under D.G. P & T circular No.23 dated 24th February, 1970, letters No.43/63/69-Pen, dated the 27th May, 1970 and No.5-5/72 ED Cell, dated the 18th August, 1973, as quoted below as well as Rule 5 of the E.D. Agent Conduct and Service Rules. It has been stated that 'during leave, every E.D. Agent should arrange for his work being carried on by a substitute (emphasis supplied), who should be a person approved by the authority competent to sanction leave to him. Such approval should be obtained in writing."

(ii) The application for leave for E.D. Agents and the name of substitute during his leave is to be furnished by the E.D. Agent in the prescribed proforma :-

" Application for leave for Extra-departmental Agents
(to be filled in quadruplicate)

1. Name ...
2. Designation ...
3. Period for which leave is required ..
4. Date from which leave is required ...
5. Full address while on leave ...
6. Name, age and address of the substitute ...
7. Specimen signature of the substitute ...

I hereby propose Shri whose particulars are given above to work as my substitute during my leave on my responsibility according to the terms of the security bond executed by me."

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(iii) The sanctioning authority then issues sanction under the following proforma :-

" A charge report signed by myself and by my nominee will be submitted as prescribed in

Rule 50 of Rules for Branch Offices
 Rules 45 & 46 of P & T Manual, Volume IV.
 Necessary approval may kindly be accorded to this arrangement.

The allowance for the period of my leave may be paid to the above mentioned Shri

Station :

Date : Signature of Extra-Departmental Agent

(for use of the Sanctioning Authority)

Shri (designation).....

..... B.O./S.O.

Division has been permitted to proceed on leave for days from

The appointment of Shri as his substitute is approved on the clear understanding that the substitute may be discharged by the appointing authority at any time without assigning any reason.

Date : Signature of the Sanctioning Authority.

To

(1) Shri E D Agent

(2) Shri (Substitute)

(2) Clarifications - 1. In framing these instructions for the grant of leave to ED Agents it was kept in mind that there is greater need for the Divisional Superintendents to look into the affairs of the E.D. Agents than at present. The Directorate is in receipt of a large number of representations, suit notices and even writ petitions from E.D. Agents and the reports received in such cases from the subordinate authorities show that in general there is a tendency to leave the control of the work of E.D. Agents mainly to Inspectors or in some cases, even to Overseers. The Inspectors and Overseers quite often cause a lot of embarrassment to the department by acting in a manner not contemplated of laid down rules. It is for this reason that in the instructions that have been issued in regard to leave for E.D. Agents, we have specifically provided for certain duties to be performed by the Divisional Superintendents personally. The points raised in the various communications from the Circles for clarification of the orders may now be examined.

(iv) It would appear from the above that the choice of the substitute is left to the E.D. Agent himself. It is provided in the latest instructions of P & T that the substitute should be approved by the appointing authority; it is, however, not the intention that there should be any elaborate procedure to be followed for according such approval. In cases where leave is not got sanctioned in advance, the Department may not even insist upon prior approval of the substitute but the department should not be precluded from making such inquiries into the antecedents of the substitute as considered necessary and to ask an E.D. Agent to provide another substitute if it is found that the one actually proposed by the E.D. Agent is not acceptable.

(v) It is further provided by the DG P&T letter No.43/34/71-Pen dated 20th March, 1971 that if an E.D. Agent is appointed against a regular post (Departmental) and the vacancy is of a short duration, he may provide his own substitute subject to the same conditions as in the case of E.D. Agent proceeding on leave. If, however, an E.D. Agent is appointed to a regular departmental post for an indefinite period and there is no likelihood of his returning as E.D. Agent, then the appointing authority should make arrangements to fill up the post of E.D. Agent in the normal manner by calling for applications.

(vi) In the introduction to Extra-Departmental Agents System as provided in Service Rules for P & T staff the E.D. Agents in the judgement of Bangalore Bench of this Tribunal, Mr.L.H.A Rego, Administrative Member, in Peter J. D'Sa vs. Union of India, reported in 1983(3) SLJ (CAT) 407, (1989) 9 ATC 225 (Bangalore Bench) observed as follows :-

"An EDA unlike a casual labourer (emphasis supplied) who ekes out his existence, on employment opportunities coming to him in fits and starts, without other sources of stable income is in fact a hyphenated civil servant, with fair means of other income, who comes forward to assist the Department in postal service in rural and interior areas, in conditions not quite conducive with liberty given to him to pursue his private avocation in his leisure hours. His tenure is more stable than that of a casual worker, except that he may not have full-time duty as compared to

his regular counterpart in the Department, though the nature of duties performed by him, cannot be said to be wholly unallied to that of the latter".

(vii) In respect of casual employment, the casual employees who acquire temporary status after the prescribed period of service are entitled to a scale of pay. An E.D. Agent, however, gets only a fixed wage far less than the scale of pay of regular employees of equated categories. In addition they are entitled to exgratia-gratuity only @ one month's allowance for every three completed years of service subject to a maximum of Rs.3,000/- with qualifying service of ten years. Also half month's gratuity is allowed for every completed year of service subject to a maximum of six and a half months emoluments last drawn. When an E.D. Agent himself is not entitled to a scale of pay and other benefits, it would be incongruous if his substitute (his nominee) gets better privileges by being treated as a casual worker whereby he can acquire temporary status after serving for a prescribed period.

10. In A.I.R. 1977 SC 1677 (Superintendent of Post Offices vs. P.K.Rajamma), the Supreme Court, in paragraph 4, clearly held :-

"It is thus clear than an extra-departmental agent is not a casual worker"

It is needless to say that when an E.D. Agent cannot be equated with a casual labourer/worker, his substitute cannot claim to be equal to a casual labourer/worker. He cannot claim higher rights.

11. In the conspectus of the aforesaid facts, the distinction between a casual worker and a substitute of E.D. Agent emerges as follows :-

(i) A substitute is appointed by an E.D. Agent himself with the approval of the Department. A substitute is only a nominee of the E.D. Agent who works as a sub-agent for a brief period in absence of the E.D. Agent and is responsible to him.

(ii) An E.D. Agent just gets some wage per month which may be less than even the minimum wage of a casual worker and he is never entitled to a pay scale. Therefore, his nominee/substitute cannot acquire rights or status higher than that of the E.D. Agent himself.

(iii) Moreover, the Supreme Court and the Bangalore Bench of this Tribunal have both held that E.D. Agents are not casual workers. We are bound by these decisions. Hence, a nominee/ substitute of an E.D. Agent cannot be equated with a casual worker.

12. The applicant's counsel strenuously argued that even if substitutes are not filling the character of casual workers, still they should be considered alongwith other substitutes for absorption as E.D. Agents on account of the fact of their total length of service. In support of his contention, he relied on the following cases :-

- (i) Miss Putul Das and another vs. Union of India & Ors., reported in II (1989) ATLT (CAT) 215.
- (ii) D.M.S. Employees Union vs. Union of India & Ors., reported in ATR 1988 (1) CAT 183.
- (iii) K.G.Sugunan vs. The Administrator U.T. of Lakshadweep & Another, reported in II (1990) ATLT (CAT) 96.
- (iv) Surinder Singh & Another vs. The Engineer in Chief, C.P.W.D. and Ors., reported in A.I.R. 1986 SC 584.


It is to be noted that in AIR 1977 SC 1677, the Supreme Court has clearly held that E.D. Agents are not casual workers. Hence, we refrain from dealing with the first three cases cited by the counsel for the applicant. Moreover, the facts of these cases are different. In AIR 1986 SC 584, the issue was whether the doctrine of equal pay for equal work would apply to persons employed on a daily basis. This case does not throw any light so far as the question framed for our decision is concerned. Under the circumstances, we are unable to accept the contention of the applicant's counsel. We, however, make it clear that the nominees/substitutes are entitled to be considered for appointment as E.D. Agents when the Department takes steps for such appointment.

13. Regarding the question no.2 referred to in paragraph 1 of this judgement, we do not think it is necessary to answer this question in detail in view of our finding regarding the first question.

14. In the premises aforesaid, our answer to the 1st question is "No".

Our answer to the 2nd question is not necessary in view of our answer to the 1st question.

15. We, however, allow the application on the basis of our finding that the applicant is covered by the letter dated 29.3.1988 issued by the P.M.G., West Bengal, and direct the respondents not to terminate his service and also to regularise him within 90 days from date either in the post held by him or in any existing post as E.D. Agent. There will be no order as to costs.


(Pratibha Bonnerjea)
Vice-Chairman

(K.P.Acharya)
Vice-Chairman


(I.P.Gupta)
Administrative Member

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I had the privilege of going through the eloquent judgment prepared by my esteemed colleague Hon'ble Smt. Justice Pratibha Bonnerjea, Vice-Chairman Calcutta Bench agreed to by my learned brother Hon'ble Mr. I.P. Gupta and I respectfully agree with the findings reached with regard to question No.1 formulated by the Division Bench and respectfully I also agree with the answer given thereto, that a substitute of an E.D. Agent does not fill the character of a Casual Worker and as such the decisions with regard to absorption of Casual Workers cannot be made applicable to such substitute, but with my greatest of respect to the Hon'ble Vice-Chairman and my esteemed colleague Hon'ble Mr. I.P. Gupta, Member (Admn.), I am not able to agree with the directions given in the concluding paragraph of the judgment which runs thus:

" On the basis of our findings that the application is covered by the letter dated 29th March, 1983 issued by the Postmaster General, West Bengal Circle and direct the Respondents not to terminate his services and also to regularise him within 90 days from date either in the Post held by him or in any existing post as E.D. Agent."

Most respectfully, I disagree with this direction because of the following reasons:

The two limited questions on which reference was made to a Larger Bench has been stated in the main judgment and it needs no repetition. In my opinion, the

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Full Bench was required to answer those two questions. After having answered these two questions laying down the law on the subject, there was no further scope to consider any other aspect.

Once it is held that the substitute of an E.D. Agent does not fill the character of a Casual Worker and as such the decisions with regard to absorption of Casual Workers cannot be made applicable to such substitutes, it would not be proper to give a direction to regularise such substitutes. In my opinion instructions issued by the Postmaster General of a particular State would be applicable only to the Postal Employees of that particular State without having any application to any other State. Therefore, the instructions in question, in my opinion, will not be applicable to the Postal employees of the other States including State of Orissa.

Another aspect which needs serious consideration is that the Chief Postmaster General, West Bengal had issued one time relaxation without having any prospective effect after 14-11-1937 and therefore, this instruction would not have a general application for all time to come. The Chief Postmaster General, West Bengal in the Circular has said that those substitutes could come under the purview of consideration for appointment and Calcutta Bench of the Central Administrative Tribunal in the case of Smt. Durga

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Bhaumik and others at paragraph 5 have referred to the said Circular and stated as follows:

" By letter No.SFB/Z-14/ED(L) dated 29th March,1988,issued by the Postmaster General West Bengal Circle it was clarified that only those who have worked as E.D.Substitutes or partly as E.D.Substitutes and partly as daily rated Mazdoor for pretty long time i.e. not less than 240 days in a year from a date prior to 7-8-1985 and continued to work till 13-11-1987 should only come under the purview of consideration for appointment in the vacant post of E.D.Agent.".

(emphasis is mine)

Nowhere the Chief Postmaster General, West Bengal has stated that those substitutes could be automatically appointed/regularised. The only benefit given to those substitutes is that they will come under the purview of consideration evidently meaning that their suitability would be considered alongwith other candidates. Therefore, at the end of paragraph 12 of the judgment, the Honourable Vice-Chairman and the Honourable Member(Admn.) rightly observed as follows:

" We, however, make it clear that the nominees/substitutes are entitled to be considered for appointment as E.D.Agents when the Department takes step for appointment".

I respectfully agree with this view and at the cost of repetition, I would again say that to give a direction for regularisation is not consistent with the finding quoted above. I am of further opinion that regularisation will tantamount to appointment and

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the word 'appointment' is normally used even when the executive authority gives a promotion and therefore normally it is stated in the orders 'appointment by promotion'. Can the judiciary direct appointment or promotion without suitability being adjudged?. There are bedroll of judgments of the Apex Court on this subject. Of course the cases mentioned below relate to promotion but in my view suitability for appointment and/or promotions are to be adjudicated by the Executive Authority and not by the Judiciary. In a judgment of the Hon'ble Supreme Court reported in AIR 1974 SC 460 (State of Mysore Vs. C.R.Seshadri and others), Hon'ble Mr. Justice Krishna Iyer speaking for the Court was pleased to observe as follows:

" The power to promote an officer belongs to the Executive and the judicial power may control or review Government action but cannot extend to acting as if it were the Executive. The Court may issue directions but leave it to the executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of the Government or order reconsideration on correct principles xx xx."

Further in paragraph 7 it has been observed as follows:

" While we agree that the High Court has been impelled by a right judicial instinct to undo injustice to an individual, we feel that a finer perception of the limits of judicial review would have forbidden it from going beyond directing the Executive to reconsider and doing it on its own, venturing into an area of surmise and speculation in regard to possibilities of escalation in service of the

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of the appellant. Judicial espansionism like allowing the judicial sword to rust in its armoury where it needs to be used, can upset the constitutional symmetry and damage the constitutional design of our founding documents".

In another case reported in 1968 (Vol. II), SLR 333 (State of Mysore and another Vs. Syed Mahamood and another) at paragraph 2 of the judgment Their Lordships observed as follows:

" In the circumstances, the High Court could issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to their seniority and fitness. They should have been promoted on the relevant dates when Officers junior to them were promoted. Instead ordering such a writ, the High Court wrongly issued writs directing the State Government to promote them with retrospective effect".

(emphasis is mine)

The very same view has been repeated and quoted with approval in the case of State of Mysore and another Vs. P. N. Nanjundiah and another reported in 1969 (Vol. III) SLR 346.

In the case of Dr. Jai Narain Misra Vs. State of Bihar and others reported in 1970 (Vol. IV) SLR 923 at paragraph 4 of the judgment Their Lordships observed as follows:

" So far as the question of suitability is concerned, the decision entirely vests with the Government in other words the Government is sole judge to decide as to

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who is the most suitable candidate for being appointed as the Director of Agriculture".

Being of the firm view that substitutes cannot be regularised, yet conceding for the sake of argument that they could be regularised, it is subject to adjudication of one's suitability and applying the law laid down in the above mentioned judgments adjudication of one's suitability, lies completely within the province of the concerned Executive Authority and not the judiciary and therefore in my opinion it would not be justifiable to direct regularisation of the Petitioner. Before concluding this aspect, I also feel just and proper to discuss another important aspect that would arise in the country which will have far reaching consequences.

In many Post offices several substitutes are being employed or engaged by the regular employees and ultimately this practice would be adopted invariably in order to make the office a hereditary one as far as possible thereby closing the gate for other competent unemployed people on the street. The Department would be deprived of recruiting the best amongst the lot. There would be no question of applying the rules framed for adjudicating the suitability of a particular incumbent to the Post of an E.D. Agent because automatically

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orders
would be passed regularising the substitute who has managed to work for a long time in place of the regular employee who would intentionally avail leave at different spells(not exceeding 180 days in one spell)in order to bring benefit to the substitute working for 240 days and then becoming eligible automatically for regularisation or appointment. This situation would be disastrous.

So far as violation of the provisions contained under Articles 14 and 16 of the Constitution is concerned (discussed in the main judgment) the Petitioner has not breathed a single word in his pleadings that he is aggrieved by the violation of the said provisions. Law is well settled that courts are to confine themselves strictly to the pleadings of the parties and cannot travel beyond the pleadings. Therefore, in my opinion this aspect does not warrant any opinion to be expressed.

Before I part with this case I would respectfully state that this case was not referred to a Larger Bench because of difference of opinion between two members of the Division Bench. Both the learned Members of the Cuttack Bench did not agree with view of the Calcutta Bench and therefore, they were of unanimous view that the questions framed by

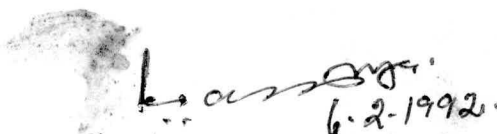
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the Bench should be decided by a Larger Bench. Hence there was no difference of opinion between the learned members of the Cuttack Bench in the judgment passed on 27th March, 1991 in O.A. 315 of 1990.

Even though, I have respectfully differed with the opinion of my esteemed colleagues Hon'ble Justice Mrs. Pratibha Bonnerjea and Hon'ble Shri I.P. Gupta, yet the majority view has to be carried out.


(K. P. ACHARYA)
VICE CHAIRMAN
CUTTACK BENCH

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 315 OF 1990

Date of decision: March, 27, 1991

Raghunath Naik : Applicants

Versus

Union of India and others : Respondents

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

For the Respondents : Mr. A.K.Misra, Senior Standing
Counsel (Central)

C O R A M:

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

AND

THE HON'BLE MR .N.SENGUPTA, 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 Lordship wish to see the fair copy of the judgment? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (JUDICIAL): The relief that the applicant has sought for is to regularise the services of the applicant as an Extra Departmental Mailman, SRO, Keonjhar Garh.

2. The averments in the application are that the applicant worked as a substitute for one or the other of the three permanent E.D. Mail Men of that Office for different periods from 1983 till 1990 and he was continuing as such Mail Man at the time of filling of the application in September, 1990. It has been alleged by the applicant that the Postal Authorities are going to terminate his services and to appoint another person in his place. The ground stated by the applicant for his relief is that as he has worked for considerable period as a substitute E.D. Mail Man, his services should be regularised.

3. The Respondents in their counter have stated that a substitute is provided by the E.D. Agents when he goes on leave or is temporarily unable to act as such Agent, therefore, such a person i.e. a substitute is not a Casual Worker appointed by the Postal Department and to him the decisions with regard

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regularisation of the services of Casual workers cannot apply.

4. We have heard the learned Counsel for the applicant and Mr. A. K. Misra the learned Senior Standing Counsel (CAT) for the Respondents. The learned Counsel for the applicant has placed ^{- stamp -} ~~from~~ reliance on a decision of the Calcutta Bench of this Tribunal in the case of Smt. Durga Bhowmick and others Vs. Union of India and others reported in (1989) 11 ATC 255. The learned Counsel has drawn our attention to ^{the} ~~be~~ observations of the learned Members of the said Bench in para-5 of their judgment. That was a case where the question of regularisation of the services of the substitutes of Extra Departmental Stamp Vendors came up for consideration and in that case also the applicant before that Bench worked with intermittent breaks. The facts are almost similar to those of the present case in hand. The Calcutta Bench was of the view that a substitute who has worked for considerable time is entitled to be absorbed as a regular E.D. Agent. After having heard the learned Counsel for the parties and gone through the rules with regard to E.D. Agents and their substitute, we regret our inability to concur with the view expressed by the Hon'ble Members of the Calcutta Bench: When an E.D. Agent goes on leave he is to furnish particulars of a substitute to be provided by him for managing the work of the posts he was holding and this is provided for in DG PTs instructions in his

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Heard Encl
22.3.91

letter No. 43/38/72-PEN dated 24.4.1972. From the form prescribed it would appear that a substitute would work on the responsibility of the E.D.Agent whose substitute he is during the E.D.Agent's absence. No doubt the nomination is to be approved by the Postal Authorities but approval can be withheld only in exceptional circumstances such as where the proposed substitute is known to be unfit or incompetent to manage the work or to hold any office, otherwise the Department is bound to accept the nomination made by the E.D.Agent as the substitute works on his responsibility. If only because somebody worked as a substitute of an E.D.Agent he would be entitled to be absorbed as a regular Agent after the E.D.Agent demits office, it would give rise to the possibility of an absurd result of continuance of the successive nominees blocking the chances of all others having requisite qualification and eligibility to be appointed.

5. Since there is a decision of another Bench of the Tribunal with which we are unable to agree we would like to refer the matter to the Hon'ble Chairman for decision of the questions mentioned below by a larger Bench:

- 1) Whether a substitute of an E.D.Agent falls the character of a Casual Worker and as such the decisions with regard to absorption of casual workers can be made applicable to

*As per Encl.
22.3.91.*

such substitutes.

2) Whether entitling the substitutes to be absorbed as of right to the exclusion of all others would offend Article 16 of the Constitution.

B. Mohan
.....
VICE-CHAIRMAN



Central Administrative Tribunal,
Cuttack Bench/K. Mohan

M. S. S. S.
..... 23.91
MEMBER (JUDICIAL)