

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 499 of 1990

Date of Decision: November 5, 1992.

Versus

Union of India & Others **Respondents**

For the applicant

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

For the respondent Nos. 1 to 5

Mr. A. K. Mishra,
Standing Counsel
(Central Government)

For the respondent No. 6

M/s .S .B .Jena &
S .K .Das,
Advocates

C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. K. J. RAMAN, MEMBER (ADMINISTRATIVE)

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

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JUDGMENT

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant, Subash Chandra Panda prays to quash the order issued vide Annexures 7 & 8 and to direct the respondents to release the salary of the applicant from 11.1.1991 till he was allowed to perform his duties.

2. Shortly stated, the case of the applicant is that he was working as Extra-Departmental Delivery Agent of Dhusuri Sub Office. His predecessor was one Balaram Hota. The said Balaram Hota asked for premature retirement on medical grounds. This was accepted on the basis of the certificate issued by the Sub-Divisional Medical Officer. Thereafter, the selection for appointment to the said post was conducted and after considering the cases of certain candidates the applicant was selected and appointed vide Annexure-2. Sometime later, according to the applicant, the said Balaram Hota came up to the Chief Postmaster General stating that he was perfectly alright and either he should be allowed to continue or his son should be appointed on compassionate grounds. The Chief Post Master General held that the medical certificate furnished by Balaram Hota was invalid as it was granted by the Sub-Divisional Medical Officer though it should have been granted by the Chief District Medical Officer and accordingly it was ordered that Balaram Hota should be placed in place of the applicant and function in the said post vide Annexure-R/7. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the medical certificate not having been issued by the competent authority, acceptance of it is illegal and retirement of Balaram Hota is illegal.

4. We have heard Mr. B. S. Tripathy, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Counsel for the respondents 1 to 5.

5. On a perusal of records we find that acceptance of the medical certificate granted by the Sub-Divisional Medical Officer may at best amount an irregularity but it is not an illegality for having acted on the same. We do appreciate that sympathetic attitude might have been taken over Balaram Hota but that cannot be at the cost of the plate of rice given to the applicant whose case was considered and he was duly selected. It was Balaram Hota who wanted to vacate the Office out of his own accord. Therefore, it would be most unjust, improper and illegal to deprive the applicant of the post in question in order to accommodate Balaram Hota. Therefore, the orders passed by the competent authority cancelling the appointment of the applicant is hereby quashed and consequently the order reinstating Balaram Hota is also quashed. ~~xxxix~~^{xxix} Annexure-R/7 terminating the services of the applicant is also quashed. It is directed that the applicant, Subash Chandra Panda should be reinstated to the post in question within 30 days from the date of receipt of a copy of this judgment. The allowance for the period for which claim has been put forward by the applicant, Subash Chandra Panda is disallowed on the principle of no work -

no pay.

(18)

6. Thus, this application stands allowed leaving the parties to bear their own costs.

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L.M.C
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MEMBER (ADMINISTRATIVE)

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L.G.C. D.P.
5/11/92
.....
VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 5, 1992/Sarangi.

