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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 373 of 1991.

Date of decision: 5.1.93

Rabindra Kumar Nayak Applicant

Versus

Union of India and others Respondents

For the Applicant M/s Devanand Mishra,
Deepak Mishra,
R.N.Naik, A.Deo,
B.S.Tripathy,
Advocates.

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

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CORAM:

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

AND

THE HONOURABLE MR. C.S.PANDEY, MEMBER (ADMINISTRATIVE)

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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?
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA, VICE CHAIRMAN;

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays for a direction to the Opposite Parties to post the Petitioner as Extra Departmental Mail Carrier, Chhatra Bazar, Sub Post Office on regular basis.

2. Shortly stated the case of the Petitioner is that he had worked as E.D. Stamp Vendor in the Cuttack G.P.O. from 6th July, 1988 to 4th January, 1989 and again from 24th January, 1989 to 15th July, 1989. The E.D. Stamp Vendor attached to Arunodaya Market Sub Post Office (Shri Jiten Kumar Giri) got promotion to the cadre of Postman and the Petitioner worked in the said post as a substitute with effect from 17th July, 1989. While the Petitioner was continuing as such, he submitted an application on 20th July, 1989 to the Sub Divisional Inspector (Postal), Cuttack North Sub Division, Cuttack stating his experience as Stamp Vendor and prayed to appoint him on regular basis in the said post which would be evident from Annexure I. In response thereto, the Petitioner was allowed to work as E.D. Stamp Vendor in the Arunodaya Market Sub Post Office on 2nd August, 1989 and this appointment was on provisional basis with a stipulation that the petitioner will continue as such either till 14th October, 1989 or till a regular appointment is made. Even though, the services of the petitioner was not terminated, being apprehensive that his services may be terminated, the petitioner filed an application

under section 19 of the Administrative Tribunals Act, 1985, praying therein that his services should not be terminated until a regular appointment is made and in the process of selection for regular appointment, his candidature should be considered. This formed subject matter of Original Application No.25 of 1990. One Laxmidhar Behera filed an application for intervention in connection with Original Application No.25 of 1990 and the same was allowed. This Bench, by its judgment and order, passed in Original Application No.25 of 1990 dated 11th November, 1991 (Annexure 3) held that Shri Laxmidhar Behera had better right to be appointed as E.D. Stamp Vendor in Arunodaya Market. In the concluding portion of the judgment, the Bench observed that the post of E.D.M.C. having fallen vacant at Chhatrabazar Sub Post Office, the experience of the Petitioner should be considered and he should be absorbed as E.D. Stamp Vendor in the Chhatrabazar Sub Post Office. In accordance with the judgment, Shri Laxmidhar Behera was relieved from the Post of E.D.M.C., Chhatrabazar and was posted as E.D. Stamp Vendor at Arunodaya Market. Petitioner was relieved from the said post on 20th September, 1991 and no order of appointment having been issued in his favour as EDMC, Chhatrabazar Sub Post Office, though an application to the above effect has been made by him, no order of appointment has yet been issued. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that since the petitioner had served for less than three

years and his case does not come within the purview of retrenched candidates, and there being no specific instructions of this Bench in the said Judgment to give direct appointment to the applicant on submission of an application and the applicant not having been made application in the prescribed form, the competent authority has not issued any order of appointment and therefore, the case being devoid of merit is liable to be dismissed.

3. We have heard Mr. Deepak Misra learned Counsel appearing for the Petitioner and Mr. Aswini Kumar Misra, learned Standing Counsel for the Central Government on the merit of this case.

4. Vide order dated 10th October, 1991, it was directed that **status quo** as on date should be maintained and in case the post of E.D.M.C., Chhatra Bazar Sub Post Office is filled up, by then, the appointee, should be specifically informed that his appointment is subject to the ultimate result of this application. The stay matter came up before this Bench on 12th October, 1991 and 14th October, 1991. Counter to the stay matter was not filed and ultimately on 6th December, 1991, the interim stay order was made absolute till the final disposal of the application.

5. In their counter, the Opposite Parties have not pleaded a single word **stating** as to whether regular appointment in respect of the said post has since been made. However, keeping in view, the nature of interim order, we would repeat that in case any appointment is made the result of the application would govern the future service benefits of the present petitioner vis-a-vis the

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appointee if any.

6. From the pleadings of the parties and from the argument advanced by the counsel for both sides, it is evidently clear that the petitioner had served as E.D. Stamp Vendor in Cuttack G.P.O. for sometime and so also in the Arunodaya Market Sub Post Office. No doubt, the Petitioner has gained a goodbit of experience and therefore the Bench in its concluding paragraph of the judgment passed in Original Application No.25 of 1990 observed as follows:

" The learned Counsel for the applicant being faced with this situation has asked that as on the coming of the Respondent No.8 to Arunodaya market, the post of EDMC would fall vacant at Chhatra Bazar Sub Post Office, he should be appointed against that post. It is not the function of this Tribunal to make appointments but however, we would say since the applicant has rendered some service to the Postal Deptt. by working as an ED Stamp Vendor, on a making an application got appointment to the Post of ED Mail carrier of Chhatra Bazar Sub Post Office, his previous experience should be given due consideration and the preference that it deserves".

From the counter, it is apparently clear that the Petitioner had made an application in a plain paper. Certain technical objections have been raised in the counter, namely the petitioner has served for less than three years and his case does not come within the purview of the retrenched candidates and there was no instruction of the Bench in the said judgment to give a direct appointment to the applicant on submission of an application.

7. In paragraph 11 of the counter, it is stated that the process of recruitment to the post of E.D.M.C., Chhatra

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Bazar has not commenced. The case of the Petitioner will be considered at the time of appointment to the said post, Keeping inview the judgment of this Bench Tribunal in Original Application No.25 of 1990 if the applicant applies inthe prescribed form with required documents.

8. Taking into consideration the above mentioned statement made in the counter, we presume that the selection process hasnot yet commenced. Therefore, we would direct that the petitioner will be at liberty to file an application in the prescribed form within thirty days from today with the required documents and it shall be entertained by the Competent authority. The case of the Petitioner should be considered alongwith other candidates. Experience gained by the Petitioner shall be given due weightage in preference to other candidates who have not gathered similar experience and thereafter suitability would be adjudged and he who so-ever is found to be suitable, order of appointment should be issued in favour of suchcandidate.

9. We hope and trust, the selection process will be completed within 90 days from the date of receipt of a copy of this judgment.

10. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

G. Mohanty
MEMBER (ADMINISTRATIVE)

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



5/1/93
VICE CHAIRMAN