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21(2)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 106 OF 1992
Cuttack this the 4th day of August, 1999

Prasanta Kumar Patra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NO.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9.8.99

9.8.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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12 (22)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 106 OF 1992
Cutack this the 9th day of August, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)
...

Sri Prasanta Kumar Patra, Postman,
S/o. Late Adhikari Patra,
At/PO: Saluadahar,
P.S. Suliapada
Dist: Mayurbhanj

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Applicant

By the Advocates : M/s.B.S.Tripathy,
M.K.Rath
A.C.Pradhan

-Versus-

1. Union of India represented by the
Secretary, Department of Postal, Dak Bhawan
New Delhi-11001
2. Chief Post Master General,
Orissa Circle, At/PO: Bhubaneswar
Dist: Puri
3. Post Master General, Sambalpur Region
At/PO/Dist: Sambalpur
4. Superintendent of Post Offices,
Mayurbhanj Division, At/PO: Baripada
Dist: Mayurbhanj
5. Sub-Divisional Inspector
Postal, West Sub-Division,
At/Po: Baripada
Dist: Mayurbhanj

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Respondents

By the Advocates : Mr.S.B.Jena
Addl.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application filed in March, 1992 with a prayer for absorption and regularisation of the applicant as Extra Departmental Delivery Agent, Saluadahar Post Office, the case of the applicant is that on promotion of one Shri S.K.Patra to the cadre of Postman while serving as E.D.D.A. at Saluadahar Post Office, the applicant was posted temporarily to that vacant post. Accordingly he took charge of the said post from Shri S.K.Patra on 4.3.1991. During continuance of his service, respondents(Department) processed for recruitment of the post. Accordingly he offered himself as a candidate for that post by applying in proper form with necessary documents. However, no selection was made. Yet, suddenly, he was relieved from the post on 4.11.1991. As he continuously worked for more than 180 days, he is entitled to be regularised in that post in view of the decision of the Apex Court.

2. Respondents opposing this application submitted in their counter that the applicant was not temporarily appointed in the vacancy arising out of promotion of Shri S.K.Patra. As per the prevailing rules of the Department, Shri S.K.Patra provided the applicant as a substitute in his place by applying leave and made over charge to him on 4.3.1991, before joining as Postman. Such leave arrangement continued upto 3.11.1991 and was terminated on 4.11.1991 on the direction of the Superintendent of Post Offices. As per the relevant departmental provisions, in case of promotion of E.D.D.A. to the cadre

of Postman, he is free to provide a substitute at his risk and responsibility to work in his place till his regular appointment in the promotional post. Accordingly the principle of 180 days relied on by the applicant is not applicable to him as clarified in D.G.(P&T) letter dated 20.3.1971 (Annexure-R/5).

The applicant though applied for the post in response to notification dated 25.7.1991, did not furnish his own residential certificate as per the requirement in the notification and as such his candidature was rejected after due consideration.

In fact the selection for this post was under challenge before this Tribunal in Original Application No.516/91, the applicant in that case being one Birendranath Nayak. In that case continuance of the present applicant as substitute beyond 180 days was challenged and for his own posting as E.D.D.A. The Department filed counter on 25.6.1992 in that case opposing the application for his posting and clarified that the present applicant is under engagement in that post as substitute and not as a provisional appointee. This Tribunal disposed of that Original Application on 1.5.1992 by quashing the selection and directed the Department to give a requisition to the employment exchange ~~calling for names~~ of the candidates to fill up the post, and also to make advertisement from the Open Market and to consider cases of all the candidates including that of Birendranath Nayak and appoint whoever is found to be suitable. This order of the Tribunal being final is binding on the Department and accordingly they initiated fresh of selection process.

No rejoinder has been filed by the applicant.

3. We have heard Shri B.S.Tripathy, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Standing Counsel appearing for the Department. Also perused the records.

4. The applicant did not refute the version of the Department as to his status as a substitute E.D.D.A.

~~Shri~~ It was also the stand of the Department in O.A.516/91. It is clear from the Department circular dated 20.3.1971 (Annexure-R/5) that an E.D.Agent in the event of his appointment as Postman can proceed on leave without relinquishing his lien over his post of E.D.D.A. by engaging a substitute at his risk and responsibility and this arrangement can continue till he is not regularly appointed to the Departmental post and that instructions that an E.D.Agent ceased to be an E.D.Agent if he remains on leave for more than 180 days at a stretch is not applicable in such cases.

5. Thus a substitute given by a regular E.D.D.A. during his absence on leave cannot acquire the status of a casual or temporary or provisional appointee. Hence the principle of law enunciated by the Hon'ble Apex Court in Surindra Singh Case reported in AIR 1986 SC 584 as relied on by the applicant is not applicable in his case. We have also perused the copies of judgment of this Tribunal in O.A.313/88 and of the Hon'ble High Court in O.J.C. No.2123/88 filed by the applicant. These decisions do not deal with substitute E.D.D.A. and as such are not relevant.

6. At any rate the respondents(Department) is bound by the decision of this Tribunal in O.A.516/91 to

call for fresh selection through employment exchange and by issuing public notice and to consider all the candidates.

7. In the result we do not any merit in this application which is accordingly dismissed, but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO

(G.NARASIMHAM)
MEMBER(JUDICIAL)