

V  
 CENTRAL ADMINISTRATIVE TRIBUNAL,  
 CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 108/92

Cuttack, this the 11th day of July, 1997

Akhaya Kumar Mallik ..... Applicant.

Vrs.

Union of India and others .... Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the 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) 11.7.97  
 VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL,**

**CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO.108 OF 1992  
Cuttack, this the 11th day of July, 1997

**C O R A M:**

**HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN**

....

Akhaya Kumar Mallik,  
aged about 20 years,  
son of Duryodhan Mallik,  
At/PO-Chhaderh, Via-Olavavar,  
PS-Rajkanika, District-Cuttack ...      Applicant.

-versus-

1. Union of India, represented through its Secretary in the Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Orissa, Bhubaneswar, District-Puri.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack.
4. Sub-Divisional Inspector (Postal),  
Pattamundai Sub-Division, Pattamundai,  
District-Cuttack ....      Respondents.

Advocates for applicant -      M/s Devanand Misra  
R.N.Naik,  
A.Deo,  
B.S.Tripathy &  
P.Panda

Advocate for respondents -      Mr.Aswini Kr. Misra,  
Sr.Panel Counsel.

O   R   D   E   R

Somnath Som, Vice-Chairman

In this Original Application of 1992, even after  
passage of five years, no counter has been filed and stay  
on 25.3.1992  
granted on the date of admission / has been continuing. In

spite of giving four adjournments between April and June 1997, counter was not filed by the respondents. Therefore, it was ordered on 20.6.1997 that the matter would be heard on 30.6.1997 and counter, if any, should be filed by that date. In spite of this, counter was not filed and the matter was taken up for hearing on 30.6.1997.

2. In this application, the petitioner has prayed for a direction to be issued to the respondents to regularise his services as Extra-Departmental Mail Carrier(E.D.M.C., for short), Olavar Post Office. The facts of this case, according to the applicant, are that the petitioner has been working in the post from 1.10.1990 and a provisional appointment was issued to him vide Annexure-1. Unfortunately, the important portion of Annexure-1 is not readable, but whatever can be deciphered from this shows that a provisional appointment was made in his favour for certain months from 1.10.1990 to some date or till regular appointment was made whichever period was shorter. It was also mentioned that the petitioner should clearly understand that the provisional appointment would be terminated when regular appointment was made and he should have no claim for appointment to any post. It was further laid down that the appointing authority reserved the right to terminate the provisional appointment at any time before the period mentioned earlier without notice and without assigning any

*Sanmukhi J.M  
11.7.97*

reason. It was also stated that the appointee would be governed by E.D.Conduct & Service Rules, 1964. It is stated by the applicant that he is a man of village Chhederh and he has been working as E.D.M.C. since 1.10.1990. It has been submitted by him that the respondents are contemplating to terminate his services and bring in another person who will be working on provisional basis. It is submitted by him that as he has put in 240 days of service, he is entitled to be regularised and on that ground, he has come up with the aforesaid prayer.

3. In the absence of any counter from the respondents, it is not possible to know the stand of the departmental respondents vis-a-vis the above averments made in the Original Application. But even in the absence of any counter by the respondents, on the averments in the Original Application itself, I am afraid the application is bound to fail for the following reasons. The Department has no doubt a Scheme for regularising casual workers who have put in continuous period of service for 240 days in a year. But an Extra-Departmental Agent is not a casual worker. This has been laid down by the Hon'ble Supreme Court in the case of The Superintendent of Post Offices, etc., etc. v.

observation of their Lordships is quoted below:

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"4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time...."

As the applicant cannot be treated as a casual worker, his services cannot be regularised in accordance with the Scheme relating to regularisation of casual workers. The applicant's service conditions are governed by the terms of his appointment which have been mentioned in Annexure-1 to the O.A. and have been referred to by me earlier. Condition 2 clearly lays down that the appointment is provisional and is liable to be terminated when regular appointment is made and he will not have any claim for appointment to any post. In view of this, there is no merit in the prayer of the applicant for regularisation of his services against a regular post of E.D.Agent. It is submitted by the learned lawyer for the applicant that he has been continuing as E.D.M.C., Olavar Post Office, till date. It is to be noted in this connection that on the date of admission of this Original Application on 25.3.1992, the stay order was issued on the following terms:

*Committom 11.7.97*

"4. After hearing learned counsel for both sides, it is hereby

directed that nobody else should be appointed to the post of E.D.M.C. on provisional basis. In case there is any contemplation of appointing somebody else (other than the petitioner) on provisional basis, the opposite parties are restrained from doing so. In case the process for final selection for the post in question has been completed and it is intended to appoint a particular incumbent on regular basis, the opposite parties are at liberty to do so and in that case the present petitioner has to vacate the said post if he is not being appointed regularly by the competent authority."

From the above, it will be clear that the departmental respondents were injunctioned from replacing the applicant by another provisional appointee, but liberty was given to the respondents to appoint a regular incumbent to the post against which provisional appointment was given to the applicant. There are no materials available before me whether the departmental respondents have in the meantime made regular appointment and the applicant has gone out of office.

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In view of this, it is not possible to hold that the applicant is continuing from 25.3.1992 till date as E.D.M.C., Olavar Post Office. It is also the well settled position that in a litigation, the rights of parties are to be adjudicated as on date of initiation of the litigation. At the time of initiation of this Original Application, right of the applicant was governed by the terms of his appointment at Annexure-1 and according to this, he has no right or claim to be appointed to a regular post.

4. In consideration of the above, I hold that the application has no merit and the same is hereby dismissed, but, under the circumstances, without any order as to costs. The stay granted in order dated 25.3.1992 stands vacated.

5. Before parting with the case, I must record my dissatisfaction in the manner the respondents have defaulted in filing counter and in completing the pleadings in this case. As earlier noted, in this 1992 matter where a stay order has been continuing, in spite of passage of five years no counter was filed and subsequently, in spite of my giving four adjournments from April to June, 1997, counter could not be filed by the respondents. Let a copy of this order be sent to respondent no.1 by name to enable him to take such remedial action as he may deem proper to prevent recurrence of such inaction on the part of the Department.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 11.7.97