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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 111/1992

Cuttack this the 19th day of Sept., 1997.

CORAM :

THE HONOURABLE MR. SOMNATH SOM, VICE CHAIRMAN
THE HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER

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Haradhan Mohapatra, Village/Post - Bhadigaon, Via - Barodol,
District - Sambalpur.

..... Applicant

V.

1. Union of India, represented through the Chief Postmaster General, Orissa Circle, Bhubaneswar.
2. Senior Superintendent of Post Offices, Sambalpur Division, Sambalpur.

..... Respondents

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Mr. D.P. Dhalsamant, Advocate, for the Applicant.

Mr. A.K. Misra, Advocate, for the Respondents.

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PER HONOURABLE MR. A.K. MISRA :

The Applicant has filed this Original Application with the prayer that the Order Annex.A-1 be ordered to be treated as of regular appointment and respondents may be restrained from making any irregular appointment and not to disturb the applicant.

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2. Notice of this O.A. was given to the respondents who have filed their Counter in which they have briefly said that applicant was appointed provisionally on the post of Extra Departmental Branch Post Master (E.D.B.P.M.) and he has no right to continue on the post. The Original Application deserves to be dismissed.

3. We have heard the learned counsels for the parties and gone through the record.

4. The undisputed facts are that one Shri Sankarsan Patel, E.D.B.P.M., Bhadigaon Branch Office, in account with Bardol S.O., was appointed as Postman on promotion at Sambalpur. The applicant worked as nominee of Shri Shankarsan Patel from 29.2.1991 to 14.3.1991 and from 20.4.1991 to 30.9.1991 and thereafter the applicant was appointed provisionally as E.D.B.P.M., Bhadigaon with effect from 1.10.1991 till further orders. The appointment order is Annex.A-1 dated 1.10.1991, on which both the parties rely. The applicant is still continuing on the said post.

5. It was argued by the learned counsel for the applicant that the order of appointment (Annex.A-1) does not indicate any date till which the applicant was provisionally appointed, therefore, this appointment order be taken to be a regular appointment. We have considered this argument but we are unable to agree to this proposition. The appointment was made provisionally, which is very clearly mentioned in the appointment order. It is further mentioned in the same order that

applicant should clearly understand that provisional appointment will be terminated when regular appointment is made and that applicant shall have no claim for appointment to the post. Further, the order says that Senior Superintendent of Post Offices, Sambalpur Division, Sambalpur, also reserves the right to terminate the provisional appointment at any time before the period mentioned in para above without notice and without assigning any reason. In view of these conditions of provisional appointment, it cannot be said that applicant was regularly appointed candidate on the post of E.D.B.P.M. Simply because the date upto which, the applicant was appointed is not mentioned in the order, it cannot be termed as regular appointment. In our opinion, in the appointment order, "till further orders", has been mentioned only to avoid the necessity of issuing provisional appointment letters time and again. The contention of the learned Advocate on this point is, therefore, rejected.

6. It was argued by the learned counsel for the respondents that under the orders of the Chief Post Master General, Orissa Circle, Bhubaneswar, Shri Subodh Kumar Panda S/o Late Shri Pitabas Panda, Deogaon, was appointed as E.D.B.P.M., Bhadigaon, on compassionate ground, therefore, the applicant has no right to remain on the post and he should make room for Shri Subodh Kumar Panda, who has been appointed on compassionate ground.

7. We have considered this argument. In the Application, the applicant has alleged that one Shri Subodh Kumar Panda,

is being appointed who does not belonging to Village Bhadigaon and, therefore, cannot be appointed as E.D.B.P.M. But as against this contention, no specific prayer has been made against Shri Panda. Further, on the contention of the respondents and on showing documents relating to compassionate appointment of Shri Subodh Kumar Panda, the prayer for issuance of interim relief was dismissed on 7.5.1992 by this Tribunal. Thereafter, morethan five years have passed. Neither the respondent-department took any step to instal Shri Subodh Kumar Panda, S/o Shri Pitabas Panda, Ex.E.D.B.P.M., nor he ever approached the Tribunal with the prayer that applicant be ordered to handover charge to him. Earlier, on 25.3.1992, an interim order to the following effect was passed :-

"In case the competent authority wants to appoint somebody else other than the petitioner on provisional basis, as EDBPM of the said post office, Opposite Party No.2 is restrained from doing so. In case person other than the petitioner has been considered in the selection process and has been found to be suitable and a regular appointment order is being issued in favour of such person, O.P.No.2 is free to act and the present petitioner must vacate the post. Otherwise, the present petitioner should continue in the said post until further orders."

If Shri Panda was a regular appointee, there was no obstruction before the Department in installing him on the said post in place of the applicant but as we see from the letter of the Chief

Post Master General, Orissa Circle, Bhubaneswar, dated 20.2.1992 (Annex.R-2), the compassionate appointment of Shri Subodh Kumar Panda was to be made if he fulfilled the minimum educational qualification and other qualifications as prescribed for the post of ~~EDBPM~~ in the relevant recruitment rules. Therefore, appointing authority was to see the educational qualification of the said Shri Panda and was also to see fulfillment of other relevant conditions under the rules. But there is nothing on record to show that the appointing authority carried-out the instructions as contained in Annex.R-2, while making the appointment of Shri Subodh Kumar Panda. Even in the appointment letter (Annex.R-3), there is a mention that appointment is subject to the condition that he (Shri Subodh Kumar Panda) fulfills the minimum educational qualification and other qualifications as prescribed for the post in the relevant recruitment rules. This mechanical reproduction of the condition in the appointment order of Shri Panda, in our opinion, does not help the Department. This appointment letter mentions that Shri Subodh Kumar Panda is to produce all the relevant documents as indicated in Page 2 but whether he produced all these documents before the authorities is not available on record.

8. From the above discussion, we conclude that the appointment of the applicant on the post of E.D.B.P.M., Bhadigaon Branch Office, was only provisional. Since the applicant is working on that post since 1.10.1991, he may not be replaced by another provisionally appointed candidate. However, the applicant shall

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have no right or claim to continue on that post if the Postal Authorities appoint some person in regular manner following the relevant Rules, on the post of Extra Departmental Branch Post Master, Bhadigaon Branch Office. It is further ordered that if the authorities proceed to undertake the process of such selection and appointment then the candidature of the applicant should also be considered.

9. With these observations, the Original Application is disposed of. However, the parties are left to bear their own costs.

3/9/97
(A.K.MISRA)
Judicial Member

Somnath Som
(SOMNATH SOM)
Vice Chairman *9.9.97*

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