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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.151 OF 1992  
Cuttack, this the 18<sup>th</sup> day of September, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI A.K.MISRA, MEMBER (JUDICIAL)

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Zabar Shah, aged about 25 years,  
son of late Hayati Shah,  
At-Guachowka, P.O-Delang S.O.,  
Dist. Puri, at present working as  
E.D.Packer, Delang Sub-Post Office,  
District-Puri .....

Applicant.

Advocates for applicant -

M/s Devanand  
Misra,  
R.N.Naik, Anil  
Deo, B.S.Tripathy  
P.Panda &  
D.K.Sahoo.

Vrs.

1. Union of India, represented by  
its Secretary, Department of Posts,  
Dak Bhavan, New Delhi.
2. Chief Postmaster General, Orissa Circle,  
At/PO-Bhubaneswar, Dist. Puri.
3. Senior Superintendent of Post Offices,  
Puri Division, Puri-752 001, Dist. Puri.
4. Sub-Divisional Inspector (Postal),  
Jatni Sub-Division, At-Jatni, Dist. Puri... Respondents.

Advocate for respondents -

Shri A.K.Misra.

O R D E R

*Somnath Som*  
*18.9.97*

Somnath Som, Vice-Chairman

In this application under Section 19 of  
Administrative Tribunals Act, 1985, the applicant has prayed  
for a direction to the respondents to appoint him to the post  
of Extra-Departmental Packer on compassionate ground and for

quashing the order dated 1.4.1992 terminating his services as Extra-Departmental Packer. There is also a prayer for a direction to the respondents to allow the applicant to function as Extra-Departmental Packer in Delang S.O. on regular basis. On the date of admission of this application on 9.4.1992 it was ordered that in case the post of Extra-Departmental Packer was proposed to be filled up on regular basis, the case of the applicant should be considered along with others and in case it was sought to be filled up temporarily, the applicant should continue on temporary basis till the vacancy was regularly filled up on regular basis. It has been submitted by the respondents in paragraph 5(e) of the counter that before receipt of the order dated 9.4.1992, another person was appointed as Extra-Departmental Packer of Delang S.O. and he joined the said post on 8.4.1992. This prayer of the applicant has, therefore, become infructuous.

2. According to the applicant, his father, Hayati Shah was working as Extra-Departmental Packer, Delang S.O. During his illness, the applicant worked as a substitute in the post of Extra-Departmental Packer. His father died on 13.11.1990 and on 14.11.1990 the applicant made a representation to appoint him as Extra-Departmental Packer in place of his father. On 14.11.1990 he was given a provisional appointment and accordingly he took over charge on the same

*Sumit Singh*  
*18.9.92*



date vide Annexure-2. In order dated 17.11.1990(Annexure-3) he was given provisional appointment. But without considering his case for compassionate appointment, in order dated 1.4.1992 (Annexure-5) his provisional appointment has been terminated prompting him to come to the Tribunal with the prayers referred to earlier.

3.Respondents in their counter have opposed the prayers of the applicant and have submitted that the applicant's father while working as Extra-Departmental Packer, applied for leave from 1.10.1990 to 31.10.1990 providing the applicant as a substitute in his place. He extended his leave further from 1.11.1990 and passed away on 13.11.1990. The applicant filed a petition for compassionate appointment in place of his father and pending consideration of his case and filling up of the post on regular basis, he was provisionally appointed as Extra-Departmental Packer, Delang S.O., in order dated 17.11.1990 for a period of three months, or till the regular appointment was made. Details were obtained from the applicant for consideration of his case for compassionate appointment. But the Circle Relaxation Committee rejected his case for compassionate appointment on the ground that the applicant's elder brother, who is a member of the joint family, is already in service of the Department. The Department of Posts have in the meantime abolished the posts of Night-watchman attached to Extra-Departmental Branch Offices

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and it was ordered that the existing Night-watchmen should be adjusted against other posts. In accordance with this order, Extra-Departmental Night-watchman, Loco-settlement, was absorbed as Extra-Departmental Packer of Delang S.O. in place of the applicant. The respondents have claimed that as the case of the applicant for compassionate appointment had been rejected by the Circle Relaxation Committee and as he was appointed only on provisional basis, his appointment was terminated according to the terms of the provisional appointment and the applicant, therefore, cannot in law claim to be regularised against the post.

4. We have heard the learned lawyer for the applicant and the learned Senior Panel Counsel appearing on behalf of the respondents and have also perused the records.

5. As regards the prayer of the applicant for compassionate appointment, the Circle Relaxation Committee has rejected his case on the ground that the elder brother of the applicant with whom he is in one joint family is serving in the Department. The applicant has not contested the submission of the respondents in the counter that he is in joint family with his elder brother who is serving in the Department. At the time of hearing, it was no doubt submitted by the learned lawyer for the applicant that the elder brother of the applicant has separated from the joint family. But in view of the fact that

*Submitted  
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no such averment has been made in the pleadings, it is not possible for us to go by the statement of the learned lawyer for the applicant. Under the circumstances, it is not possible to hold that the decision of the Circle Relaxation Committee is based on an incorrect statement of fact and therefore, it must be held that the applicant's prayer for compassionate appointment has been rightly rejected by the Circle Relaxation Committee.


6.As regards the applicant's prayer for his regularisation in the post of Extra-Departmental Packer, it is seen that initially he was brought in by his father as his substitute. Substitute is provided by the existing incumbent at his own risk and responsibility and a substitute cannot claim regularisation on the basis of his functioning as such. The applicant was no doubt given an appointment vide Annexure-3. But from this appointment order, it is seen that it was only for a period of three months from 14.11.1990 to 13.2.1991, or till regular appointment was made whichever was sooner. In this appointment order, it has been specifically mentioned that the applicant shall have no claim for appointment to any post. It has been further mentioned that in case the above conditions were acceptable to the applicant, he should join the post offered. Accordingly, the applicant had joined on 14.11.1990 vide Annexure-2. He was apparently continued in the post of

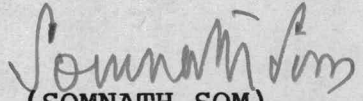
*Sanjay M Jha*  
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Extra-Departmental Packer till 8.4.1992, but as per the terms contained in Annexure-3, his appointment continued to be provisional till the regular incumbent joined. With the abolition of posts of Night-watchman, a regular Extra-Departmental Night-watchman of another office was posted in his place and that person joined on 8.4.1992. In view of this, it is clear that the applicant went out of the post of Extra-Departmental Packer on joining of a regular E.D. employee in the post and the disengagement of the applicant must, therefore, be held to be strictly in accordance with the terms of his provisional appointment. In consideration of the above, we hold that the applicant has no right to claim regularisation in the post of Extra-Departmental Packer, Delang S.O.

7. In the result, therefore, the application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

  
(A.K. MISRA)  
MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN 18/9/92

AN/PS