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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.167 OF 1992
Cuttack, this the 18th 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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Shri Bishnu Charan Das, aged about
22 years,
son of Babaji Charan Das,
Village/PO-Sridharpur,
P.S.Jajpur, District-Cuttack Applicant.

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

Vrs.

1. Union of India,
represented by Secretary in the Department
of Posts, Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Orissa Circle,
At/PO-Bhubaneswar, Dist.Puri.
3. Superintendent of Post Offices,
Cuttack North Division,
Cuttack

Respondents.

Advocate for respondents - Mr.A.K.Misra.

O R D E R

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 regularise his services

as Extra-Departmental Branch Post Master (E.D.B.P.M., for short), Sridharpur Branch Post Office, in the district of Cuttack. In the alternative, the applicant has prayed for a direction to consider his case for the post of E.D.B.P.M., Sridharpur Branch Post Office, taking into account his past experience and to allow him to work till such consideration is made. On 10.4.1992 when the application was admitted, by way of interim order, the respondents were directed that in case they proposed to appoint someone else on provisional basis, then the applicant should be allowed to continue in Sridharpur Branch Post Office. On 29.5.1992, this interim order was made absolute and it was further directed that in case the selection process had been completed in the meantime and a regular incumbent had been appointed, then the necessary information should be submitted to enable the Tribunal to pass orders declaring the stay order as ineffective after regular appointment. It seems that no such regular appointment has been made so far and for the last more than five years the applicant has ~~XXXX~~ continued to work as E.D.B.P.M., Sridharpur Branch Post Office. The facts of this case fall within a small compass and can be briefly stated.

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2. One Ganesh Chandra Behera, who was E.D.B.P.M., Sridharpur Branch Post Office, went on leave with effect from 27.6.1990 and in his place, the applicant joined vide Annexure-1. Shri Behera resigned from the post of

E.D.B.P.M., Sridharpur B.P.O. and his resignation was accepted on 2.4.1992. The departmental authorities called for names from the Employment Exchange for filling up the post in a regular manner and name of the applicant along with others was forwarded by the Employment Exchange. The applicant was also asked to submit the necessary documents in letter dated 6.6.1991 (Annexure-3). Even though the applicant submitted the necessary documents, the selection was not finalised and it was learnt by the applicant that the departmental authorities were going to call for names from the Employment Exchange once again. Apprehending that he would be relieved from his post, the applicant has approached the Tribunal with the prayers referred to earlier.

3. Respondents in their counter have pointed out that the earlier incumbent Shri Ganesh Chandra Behera went on leave from 27.6.1990 to 31.8.1990 providing the applicant as the substitute. Shri Behera resigned from the post of E.D.B.P.M. and his resignation was accepted on 2.4.1992. On a requisition from the departmental authorities, the Employment Exchange sent three names including the name of the applicant for being considered for regular appointment to the post of E.D.B.P.M. Subsequently, it was noticed that the other two persons, whose names were sent along with the name of the applicant, were not residents of the post village and thus the applicant became the sole candidate to be considered. According

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to the departmental instructions dated 1.5.1986, in case the Employment Exchange fails to sponsor less than thrice the number of posts notified to them, the vacancy is to be notified through public advertisement. This instruction is at Annexure-R/3. In the instant case, as the applicant's was the sole name, the resultant selection process became devoid of anyelement of competition and under the instruction referred to above, the Superintendent of Post Offices issued a public advertisement on 1.4.1992 (Annexure-R/5). It is submitted by the respondents in paragraph 3(i) of the counter (page 3) that fresh names were called for with a remark that candidature of the applicant would also be taken into consideration. It has been further submitted by the respondents that in order dated 2.4.1992 (Annexure-2 to the O.A.), resignation of previous incumbent, Shri Ganesh Cahndra Behera was accepted and he was ordered to be relieved by the E.D.D.A. of Sridharpur Branch Post Office. Apprehending that the applicant has to hand over charge to the E.D.D.A., he has approached the Tribunal in this O.A. The respondents have submitted that as the post has fallen vacant on acceptance of the resignation of the regular incumbent, the same has to be filled up by adopting the selection procedure and the applicant's service as a substitute cannot be regularised. On the above grounds, the respondents have opposed the prayers of the applicant.

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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. One Pradip Kumar Panda, whose name was forwarded by the Employment Exchange along with the names of the applicant and another in response to the requisition of the departmental authorities, has filed MA No.851/95 on 1.12.1995 praying for allowing him to be impleaded as an intervenor, but apparently no order on this M.A. had been passed. Even though this old case was put on the warning list, the learned lawyer filing the M.A. did not also appear at the time of hearing. We find from the M.A that no relief has been claimed against the applicant by Pradip Kumar Panda. On going through the intervention petition, it appears that he has submitted that he belongs to the post village Sridharpur and even though the minimum educational qualification for the post of E.D.B.P.M., according to Annexure-R/1, is Class-VIII, it has been mentioned that Matriculates will be preferred, and Pradip Kumar Panda has stated that he is a matriculate. We find that the letter dated 16.4.1991 (Annexure-R/2) in which the names of three candidates including the names of the applicant and Pradip Kumar Panda were sent to the departmental authorities, shows that Pradip Kumar Panda belongs to village Sridharpur. But the respondents in their counter have clearly mentioned that Pradip Kumar Panda does not belong to village Sridharpur and on that ground they

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have cancelled his candidature. Whatever may be the actual facts of this matter, Pradip Kumar Panda can have a grievance against the departmental authorities but not against the applicant. In view of this, we find no merit in allowing the intervention petition which is rejected on merits as also on the ground of not being pressed.

6. Coming to the prayer of the applicant, it is noted that the applicant came in as E.D.B.P.M., Sridharpur Branch Post Office, as the substitute of the original incumbent. It is the settled position of law that a substitute works at the risk and responsibility of the original incumbent and work as a substitute cannot give a person any right to hold the post on regular basis. It is also seen that as soon as the resignation of the original incumbent was accepted vide Annexure-2 to the O.A., in the memorandum of the same order the E.D.D.A. of the Branch Post Office was asked to take over charge. But the applicant did not hand over charge, approached the Tribunal and obtained an interim order which has been continued from 1992 till this date. Thus, even though the applicant has worked as E.D.B.P.M. for a number of years, the nature of his appointment was not even provisional or temporary. He came in as a substitute and continued under orders of the Tribunal. In view of this, we find no merit in his prayer for regularisation as E.D.B.P.M., Sridharpur Branch Post Office and the same is, therefore, rejected.

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7. As regards his alternative prayer for a direction to the respondents to consider his case along with others at the time of regular appointment to the post of E.D.B.P.M., Sridharpur Branch Post Office and for a direction allowing him to continue till regular appointment is made, we find from paragraph 3(i) of the counter (page 3) referred to earlier that the respondents have mentioned that while considering the names received in response to the notification issued on 1.4.1992 candidature of the applicant would also be taken into consideration. It is, however, seen that at the time the selection process was originally initiated, the minimum educational requirement for the post was passing of Class-VIII, with a further note that Matriculates will be preferred. It has been submitted by the learned lawyer for the applicant that from 1.1.1994 the minimum educational requirement has become Matriculation and unless the educational qualification is relaxed for the applicant, the respondents' statement that his candidature will be considered along with others would become meaningless as his candidature is liable to be thrown out at the threshold. In consideration of this, we direct that in pursuance of the submission of the respondents that the applicant's candidature will be considered along with others, the respondents should consider relaxing the educational qualification, taking into account his experience

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for long years in the post of E.D.B.P.M.

8. The third prayer of the applicant is that till a regular appointment is made, he should be allowed to continue in the post of E.D.B.P.M., Sridharpur Branch Post Office. It is noticed that by virtue of the order of the Tribunal, the applicant has continued in the post of E.D.B.P.M. from April 1992 till date in spite of an order of the departmental authorities to hand over charge to an existing regular E.D. employee. It is no doubt true that a provisional temporary employee cannot be replaced by another provisional temporary employee, but such an employee can always be replaced by a regular E.D. employee or a departmental employee. In consideration of this, it is ordered that in case the departmental authorities want to get the work of E.D.B.P.M. done, till the appointment of regular E.D.B.P.M., through another regular E.D. employee or a departmental employee, then the applicant cannot have any claim to continue as such and in such event his prayer to continue as E.D.B.P.M. till regular appointment is made, is rejected. It is, however, made clear that the departmental authorities will not require the applicant nor will the applicant be obliged to hand over charge to another provisional temporary E.D. employee who is appointed otherwise than through a selection process. The third prayer of the applicant is disposed of in terms of the direction given in this paragraph.

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9. In the result, therefore, the application is disposed of in terms of the direction given in paragraphs 7 and 8 of this order. There shall be no order as to costs.

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(A.K.MISRA)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
18/9/97

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