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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 434 OF 1992.
Cuttack, this the 15th day of July, 1997

Sukanta Kumar Patra ... 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) 15.7.97
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO.434 OF 1992
Cuttack, this the 15th day of July, 1997

CORAM:

HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN

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Sukanta Kumar Patra,
aged about 21 years,
son of Golakha Behari Patra,
C/o Trilochan Patra,
"Texex Tailor",
Saheed Nagar Marketing Building (Side),
Plot No.698, Bhubaneswar-751 007,
District-Puri Applicant.

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

1. Union of India, represented by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi.
2. Chief Post Master General,
Orissa Circle,
At/PO-Bhubaneswar,
District-Puri.
3. Director of Postal Services,
Office of the Chief Post Master General,
Orissa Circle, At/PO-Bhubaneswar,
District-Puri.
4. Senior Superintendent of Post Offices,
Bhubaneswar Division,
Bhubaneswar-751001,
District-Puri.
5. Assistant Superintendent of Post Offices,
North Sub-Division, Bhubaneswar,
District-Puri Respondents.
Advocate for respondents - Mr.Ashok Misra.

O R D E R

Somnath Som, Vice-Chairman

In this application, the petitioner has
prayed for a direction to adjust him as a Stamp Vendor
the respondents to

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in a regular manner at some place.

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2. According to the applicant, he joined on 1.5.1989 as a nominee in Vani Vihar Sub-Post Office and worked there for 206 days and in Orissa Assembly Post Office for 222 days. He has annexed some of the appointment letters at Annexure-1 series. As he was not allowed to function from 14.9.1991 he filed a representation before Senior Superintendent of Post Offices, Bhubaneswar Division, but that was not considered. On 25.10.1991 he filed a representation to Director, Postal Services, but that was also ignored. According to the applicant, he has worked for more than 240 days and in accordance with the circular dated 5.1.1980 of Director-General, Posts & Telegraphs, which is at Annexure-4 and according to the Rules notified on 16.11.1982 at Annexure-5, he is entitled to be regularised. In paragraph 5(viii) of the application, the petitioner has further submitted that one Niranjan Rout who had gathered only one and half months experience in the Department was allowed to function as E.D. Stamp Vendor in Assembly Sub-Post Office, whereas in spite of several representations of the applicant, his case has not been taken into consideration. Therefore, he has come up with the aforesaid prayer.

3. Respondents in their counter have submitted that the applicant has worked for 310 days in different spells from 1.7.1989 to 12.3.1991 as substitute of E.D. Stamp Vendor of Vani Vihar Sub-Post Office and Orissa Assembly Sub-Post Office as the regular incumbents went on leave from time to time. According to the Rules applicable to E.D. Agents, an Agent before proceeding on leave should arrange for a substitute to work in his place. Engaging of the substitute is at the sole risk and responsibility of the regular incumbent and to that

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effect, he also has to give an undertaking. The substitute is not required to furnish security bond, but the Department has to approve the substitute, for him to work in place of the regular incumbent. It has further been stated by the respondents in paragraph 5 of the counter that the applicant has worked as substitute for 115 days in 1989, 152 days in 1990 and 80 days in 1991. As such, his services cannot be regularised. Moreover, the departmental Rules do not provide for regularisation of services of substitutes.

As regards the assertion of hostile discrimination against the applicant, the respondents in paragraph 17 of the counter have submitted that one Niranjan Behera (not Niranjan Rout) has been selected for the post of E.D. Stamp Vendor in Orissa Assembly Sub-Post Office in the order at Annexure-R/7. The applicant was a candidate along with 23 others, but he could not be selected on merit. On the above grounds, they have opposed the prayer of the applicant.

4. I have considered the submissions made by the learned lawyer for the applicant and Sri Ashok Misra, the learned Senior Panel Counsel appearing on behalf of the respondents, and have also perused the records. It has been submitted by the learned lawyer for the petitioner that in a Full Bench decision of the Tribunal in O.A. No. 315 of 1990 (Raghunath Naik v.

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Union of India & ors) (Date of judgment 6.2.1992) it has been held that services of substitute can be regularised and as such the services of the applicant should be regularised in terms of the prayer made by him. Before referring to this decision, it would be worthwhile considering the two circulars relied upon by the applicant which are at Annexures 4 and 5. In the circular dated 5.1.1980, it has been laid down that normally a casual mazdoor who has completed 240 days of service in each year for two years should be considered for appointment to Group-D post. It has been further laid down that if casual workers with such length of service are not available, then ineligible casual workers whose services might have been less than 240 days each year for two years should be considered before resorting to nomination of outsiders from Employment Exchange, provided such casual workers are otherwise eligible for recruitment to the posts of Group-D. In this case, the applicant has not asked for appointment to a Group-D post. He has prayed for appointment as a regular E.D. Stamp Vendor and therefore, this circular is in no way applicable.

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5. As regards amended Indian Posts & Telegraphs (Class IV Posts) Recruitment Rules, 1970, which is at Annexure-5, this only lays down that casual labourer or a part-time casual labourer engaged through Employment Exchange would be eligible to be recruited to Group-D post

provided he has put in 240 days service in each of the preceding two years and for this purpose, broken period of service shall also be taken into account, provided that each such period of service is six months or more. To the extent of services rendered by him, he would also be eligible to get relaxation of age limit. Again this amended Rules apply to Group-D posts and therefore, in terms of the prayer of the applicant, this Rule is not applicable to him.

6. As regards the Full Bench decision decision in Raghunath Naik's case (supra), the following two questions were referred to the Full Bench:

"1) Whether a substitute of an E.D.Agent fills the character of a Casual Worker and as such the decisions with regard to absorption of casual workers can be made applicable to such substitutes.

2) Whether entitling the substitutes to be absorbed as of right to the exclusion of all others would offend Article 16 of the Constitution."

After elaborate discussion of the law, Rules as also the previous decisions of the Hon'ble Supreme Court, the Full Bench came to the decision mainly relying on the decision of the Hon'ble Supreme Court in the case of Superintendent of Post Offices v. P.K.Rajamma, AIR 1977 SC 1677 that an Extra-Departmental Agent is not a casual

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worker. The Full Bench took the ^{further} view that in view of their conclusion with regard to the first question, it is not necessary to consider the second question. The first question was answered in the negative. In Raghunath Naik's case (supra) the Full Bench by a majority decision ordered the respondents not to terminate the services of the applicant and also to regularise him within 90 days depending upon a letter dated 29.3.1988 issued by Post Master General, West Bengal. In this letter, Post Master General, West Bengal, had clarified that E.D. substitutes or those who have worked partly as E.D. substitutes and partly as daily rated mazdoors for a pretty long time, i.e., not less than 240 days in a year from a date prior to 7.5.1985 and continued to work till 13.11.1987 should be considered for the posts of E.D.A.. Even if it is taken for argument's sake, going by the Full Bench decision that this circular is applicable to substitutes of E.D. Agents in Orissa, the applicant's case is not covered by that circular because he was first appointed as a substitute of E.D. Agent only on 1.5.1989. As such, he cannot be given the benefit of the above circular. The Full Bench having decided that E.D. Agent is not a casual worker, the substitute of an E.D. Agent cannot also be held as a casual worker. Thirdly, the applicant has not put in

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240 days of service in each year for two years. Therefore, on all these grounds, his prayer is liable to be rejected.

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

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VICE-CHAIRMAN

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