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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 653 OF 1992  
Cuttack, this the 29th day of June, 1999

Murali Mohan Hota .... 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*

*.....*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*29.6.99*

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 653 OF 1992  
Cuttack, this the 29th day of June, 1992

**CORAM:**

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Murali Mohan Hota, aged about 28 years,  
son of Balaram Hota,  
Village-Narasinghapur,  
PO-Dhusuri, PS-Dhusuri,  
District-Balasore .....

Applicant

Advocates for applicant - M/s A.R.Dash  
N.Lenka.

Vrs.

1. Union of India, represented through the Secretary, Department of Post & Telegraph, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa, Bhubaneswar, District-Puri.
3. Superintendent of Post Offices, Bhadrak Division, District-Balasore.
4. Sub-Divisional Inspector (Postal), West Sub-Division, Bhadrak, District-Balasore.
5. Subash Chandra Panda, aged about 29 years, son of Gopal Chandra Panda of village-Pandapatna, PS-Dhusuri, District-Balasore ...

Respondents

Advocate for respondents - Mr.S.B.Jena,  
ASC  
& Mr.A.Deo  
for R-5.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order of appointment of Subash Chandra Panda (respondent no.5) at Annexure-2, in the post of EDDA, Dhusuri and for ordering fresh selection for the post.

2. Facts of this case, according to the petitioner, are that his father Balaram Hota was working as EDDA, Dhusuri S.O. He was forced to submit

his resignation on the ground of invalidation and his resignation was accepted. The applicant's father moved the higher authorities against the forced resignation taken from him and acceptance thereof, and the Chief Post Master General directed his reinstatement. In the meantime, respondent no.5 Subash Chandra Panda had been appointed as EDDA, Dhusuri SO and the Chief Post Master General directed that services of Shri Panda should be terminated to make way for the father of the applicant. At this

point, Subash Chandra Panda came to the Tribunal in OA No. 499 of 1990 which was allowed in order dated 5.11.1992 (Annexure-3). The Tribunal quashed the order of reinstatement of the father of the applicant to the post of EDDA, Dhusuri and also quashed the order of termination of appointment of Subash Chandra Panda, and directed that Subash Chandra Panda should be reinstated in the post within thirty days. The applicant has stated that he has worked for considerable length of time as substitute in place of his father also other EDDAs, namely, Manmohan Nayak and Jitendra Kumar Panda. Annexures 1 series are documents in support of working of the applicant as substitute EDDA. The applicant has stated that he is a permanent resident of village Narasinghpur, has immovable property and has read upto Class IX. After acceptance of the resignation of the applicant's father on 31.1.1990, SDI(P), Bhadrak West Sub-Division (respondent no.4) directed the applicant to work as a substitute in that post for two months till names from Employment Exchange are received and permanent appointment is made. The applicant states that on being moved by the departmental authorities the Employment Exchange at Bhadrak in their letter no. 341, dated 15.3.1990 sponsored names of

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candidates including the applicant. But respondent no.4 indicated to the applicant that he has not received any list from the Employment Exchange and he would call for applications from open market. The applicant has further stated that respondent no.4 without holding any selection, without verifying the conditions of appointment, and in contravention of the relevant rules gave appointment to respondent no.5 in order dated 2.5.1990 and terminated the ad hoc appointment of the applicant. It is stated that respondent no.5 belongs to village Pandapatna and his name was not sponsored by Employment Exchange. In view of this, the departmental authorities should not have called for applications from general public and selected respondent no.5. The applicant filed representation to higher authorities indicating the illegalities committed in the appointment of respondent no.5 but without any result. That is why he has come up in this petition with the prayers referred to earlier.

3. Departmental respondents in their counter have stated that father of the applicant submitted a representation on 16.1.1990 seeking retirement from the post of EDDA, Dhusuri SO on invalidation ground. This was accompanied by a medical certificate of unfitness granted by the Medical Officer. The resignation of the father of the applicant was accepted and he was relieved on 31.1.1990. The departmental respondents have stated that there is no record that respondent no.4 had directed the applicant to work as substitute EDDA. They have, however, stated that in the past the applicant has worked on many occasions as substitute EDDA for his father and also for Manmohan Nayak and Jitendra Kumar Panda, the other EDDAs. The Sub-Post Master, Dhusuri S.O. was directed by respondent no.4 to relieve the father of the applicant on 31.1.1990 and get his work done through one willing ED

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official of his office who would go on leave from his post providing substitute in his post. Accordingly, Man Mohan Nayak, EDDA-II, Dhusuri SO availed leave from his post providing the applicant to work in his place as substitute on his responsibility and he himself worked in place of Shri Balaram Hota. S.D.I(P), Bhadrak West Sub-Division, requested Junior Employment Officer, Bhadrak to sponsor names of candidates for the post of EDDA, Dhusuri S.O. so as to reach him latest by 29.3.1990. But no list of the candidates was received by SDI(P) by the last date fixed and therefore, SDI(P) in his note dated 9.4.1990 at Annexure-R/8 directed notification of the vacancy through public advertisement. The departmental respondents have stated that a complaint was later on received by Superintendent of Post Offices, Bhadrak alleging irregularity in selection. It was duly enquired into and during enquiry it was known that Employment Exchange, hadrak, had sent three lists for three posts of EDDAs to SDI(P), Bhadrak West Sub-Division on 16.3.1990 in their letter Nos. 340,342 and 344 dated 15.3.1990. The names of ten candidates including the applicant were sponsored for the post of EDDA, Dhusuri S.O. in letter No.344 dated 15.3.1990 and the name of the applicant figured at serial no.2. These three lists were sent through ordinary post in one envelope and on the envelope the three letter numbers were not noted. The departmental respondents have stated that two lists bearing letter Nos. 340 and 342 dated 15.3.1990 were received by S.D.I(P) on 26.3.1990. But the list bearing letter No.344 dated 15.3.1990 was not received by S.D.I(P), Bhadrak West Sub-Division. This letter in which three lists were allegedly sent by Employment Exchange authorities was received in Bhadrak H.O. on 19.3.1990. But S.D.I.(P) was on training from 17.3.1990 to 25.3.1990 and on his return he received the

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letter on 26.3.1990 containing two lists and not the list meant for the post of EDDA, Dhusuri S.O. In response to public notice three candidates applied and amongst them, respondent no.5 Subash Chandra Panda was selected and he joined on 8.5.1990. The departmental respondents have also stated that name of respondent no.5 was not sponsored by Employment Exchange. He applied only in response to public advertisement. They have stated that candidature of the applicant was also considered but the applicant had read upto Class IX. He had appeared in HSC Examination 1987 but the result was cancelled. Respondent no.5 has passed H.S.C.Examination in 1981. The rules provide for giving preference to matriculates even though the minimum qualification is Class VIII, and accordingly the departmental respondents have stated that they have correctly selected respondent no.5.

4. The applicant in his rejoinder has stated that he has already explained the circumstances under which he has filed OA on 22.12.1992 and the same is not barred by limitation. The applicant has stated that the list furnished by the Employment Exchange was actually received by S.D.I.(P), Bhadrak West Sub-Division. But this was deliberately suppressed and public notice was issued. It is stated that the purpose of issuing public notice was only to show favouritism to respondent no.5 and in order to avoid giving appointment to the applicant. The other averments are repetitions of the assertions made by the applicant in his OA and it is not necessary to repeat the same. On the above grounds, the applicant has reiterated his prayer in his rejoinder.

5. Respondent no.5 in his counter has stated that mere working as a substitute does not confer any right for consideration of the substitute for regular appointment. Respondent no.5 has stated that in response

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 to the public notice he applied within the stipulated date with necessary documentation. The petitioner also submitted his application and the candidature of the applicant was considered along with respondent no.5 who was found more suitable and was appointed as EDDA, Dhusuri SO. Rest of the submissions of respondent no.5 are repetitions of the averments made by the departmental respondents in their counter, and it is not necessary to repeat the same.

6. We have heard Shri A.R.Dash, the learned counsel appearing for the applicant and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the departmental respondents. Learned counsel for respondent no.5 Shri A.Deo was not present on the date of hearing on 26.3.1999. Subsequently on a mention being made by Shri Deo, we have heard Shri Deo, learned counsel appearing for respondent no.5 on 7.5.1999. We have also perused the records. On 26.3.1999 the learned Additional Standing Counsel, Shri S.B.Jena was directed to produce the selection file dealing with appointment for the post of EDDA, Dhusuri S.O. in which respondent no.5 was selected. After two adjournments on 7.5.1999 the learned Additional Standing Counsel filed a memo indicating that the selection file relating to the year 1990 was not available. It was also stated that Superintendent of Post Offices, Bhadrak has intimated that he had deputed one of his officers to the office of Post Master General, Sambalpur. But after thorough search this file could not be located. As such we have not had the benefit of looking through the contemporaneous documents relating to this selection.

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7. We have considered the contentions of the learned counsels for both sides carefully. The main contention of the learned counsel for the applicant is

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 that in the process of selection for the post of EDDA, Dhusuri, the applicant's admitted experience for long periods as substitute of different EDDAs has not been taken into account. We do not think that any illegality has been caused by not taking the applicant's experience as substitute into account. This is because a substitute is not selected through any process of selection. A substitute is given by an incumbent ED official at his risk and responsibility. If weightage is given to the experience of a substitute, then it will always be possible for an ED official to get one of his relatives engaged as substitute by going on leave and thereby giving an advantage over other candidates at the time of regular selection. In view of this, we hold that the experience as substitute cannot be taken into consideration at the time of regular selection for the post.

8. The second point urged by the learned counsel for the applicant is that the departmental authorities were wrong in calling for applications through public advertisement when Employment Exchange authorities did sponsor ten candidates including the applicant within time for the post of EDDA, Dhusuri. It is also submitted that the name of respondent no.5 was not sponsored by Employment Exchange and public advertisement was issued only for the purpose of showing favouritism to respondent no.5. The departmental respondents in their counter have stated that this matter was enquired into and even though the Employment Exchange asserted that they did send ten names for the post of EDDA, Dhusuri SO, this letter was not received by SDI(P), Bhadrak West Sub-Division, under the circumstances recorded earlier. In view of this, issuing of public advertisement cannot be faulted. In any case public advertisement in the instant case has only widened the field of choice. The applicant cannot have any

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grievance because his candidature has been considered along with respondent no.5. The rules indeed provide that even though minimum qualification is Class VIII, Matriculates will be preferred and the applicant has read upto Class IX whereas respondent no.5's qualification is Matriculation. Therefore, he has been rightly selected.

9. In view of the above, we hold that the applicant has not been able to make out a case for quashing the appointment of respondent no.5. This prayer is therefore held to be without any merit and is rejected. Consequently, the prayer of the applicant for ordering fresh selection for the post of EDDA, Dhusuri, is also rejected.

10. In the result, the Original Application is dismissed but under the circumstances without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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VICE-CHAIRMAN

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