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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 334 OF 1993.

Anama Jena. .... Applicant.  
Versus.  
Union of India & Others. .... Respondents.

ORIGINAL APPLICATION NO. 693 OF 1993.

Sanjay Kumar Jena. .... Applicant.  
Versus.  
Union of India & Others. .... Respondents.

CUTTACK THIS THE 22<sup>nd</sup> DAY OF OCTOBER, 1998.

( 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)  
VICE-CHAIRMAN  
*22.10.98*

*22.10.98*  
( G. NARASIMHAM )  
MEMBER (JUDICIAL)

....

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 334 OF 1993

AND

ORIGINAL APPLICATION NO. 693 OF 1993.

CUTTACK THIS the 22<sup>nd</sup> day of OCTOBER, 1998.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

ORIGINAL APPLICATION NO. 334 OF 1993

Anama Jena, aged about 28 years,  
Son of Dhaneswar Jena, At. Nuagaon,  
Via. Niali, Dist. Cuttack.

... Applicant.

By legal Practitioner :- M/s. S.K. Das, S.B. Jena, A.K. Guru,  
Advocates.

-Versus-

1. Union of India represented through its  
Secretary, Ministry of Communication,  
Department of Posts, Dak Bhawan,  
New Delhi.
  2. Chief Postmaster General,  
Orissa Circle, Bhubaneswar.
  3. Senior Superintendent of Post Offices,  
Cuttack City Division, Cuttack.
  4. The District Employment Officer,  
Jhanjirmangala, Cuttack.
  5. The Sub Divisional Inspector, West,  
Sub Division, Cuttack-I, Cuttack.
- ... Respondents.

By legal Practitioner :- Mr. Ashok Mishra, Senior Standing  
Counsel (Central).

M/s. A. Deo, B.S. Tripathy, PaPanda,  
D.K. Sahu, Advocates.

M/s. Ashok Mohanty, T. Rath, J. Sahoo,  
(For Respondent No. 5)

Mr. K.C. Mohanty, Government Advocate  
(For Respondent No. 4).

ORIGINAL APPLICATION NO.693 OF 1993.

Shri Sanjay Kumar Jena, 24 years,  
S/o. Kanhu Charan Jena,  
At-Nuagaon, Via-Niali, Dist. Cuttack. ... Applicant.

By legal Practitioner :- M/s. S.K. Das, S.B. Jena, J. Sengupta,  
A.K. Guru, Advocates.

- Versus -

1. Union of India represented through  
Secretary, Ministry of Communication  
Department of Posts, Dak Bhawan,  
New Delhi-1.
2. Chief postmaster General, Orissa Circle,  
Bhubaneswar.
3. Senior Superintendent of Post Offices,  
Cuttack City Division, Cuttack.
4. Shri Bipin Bihari Mohanty, S.D.I.P.  
Cuttack West Sub Division, Cuttack. ... Respondents.

By legal practitioner :- Mr. Ashok Mishra, Senior Standing  
Counsel (Central).

M/s. Ashok Mohanty, P.R. Dash,  
T. Rath, Advocates.  
(For Respondent No. 4)

M/s. B.S. Tripathy, M.K. Rath,  
Advocates (Intervenor).

5. Shri Dharendra Kumar Dutta, aged about 30  
years, S/o. Balaram Dutta, At/Po. Nuagaon,  
Via. Niali, District-Cuttack. INTERVENOR-Respondent.

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O R D E R

MR. G. NARASIMHAM, MEMBER(JUDICIAL) :-

These two cases relate to the selection of EDMC  
of Niali Sub post Office under Nuagaon Branch Post Office.  
Though these two applications were heard separately, for the  
purpose of convenience, we are disposing of both these cases

through this common order.

2. Vacancy for the Post of E.D.M.C., Niali Sub Post Office under Nuagam Branch Post Office arose in the early part of 1993 because of promotion of the then EDMC to the cadre of postman. On 30.4.1993, the District Employment Officer, Cuttack (Respondent No. 4 in Original Application No. 334/93) was addressed with a proforma requisition for sponsoring names of not less than three candidates for the above post. The District Employment Officer, ultimately, sponsored names of five persons including one Dhirendra Kumar Dutta, who applied for the post within the stipulated date fixed by the Postal Deptt.

3. Anama Jena, who filed Original Application No. 334/93 on 9.7.1993 is neither an applicant nor sponsored by the Employment Exchange. His grievance is that the District Employment Officer, in turn, issued requisition to the concerned BDO and others which is contrary to law and beyond his jurisdiction. There has been no wide publicity for this post, as some of the employees in the Postal Department are interested to adjust their relations. Through this Application, he seeks a relief to direct the Departmental Respondents<sup>and</sup> to consider the names sponsored by Employment Exchange and to consider the case of all eligible candidates allowing them a chance to apply for the post and to quash the selection if made.



On 9.7.1993 itself, on the basis of his prayer, the then Bench of this Tribunal, directed the Respondents not to appoint any person without leave of the Tribunal and this direction is still in force. On 29.8.1993 one Dharendra Kumar Dutta entered appearance as an intervenor claiming that he has been duly selected on 5.7.1993.

4. Original Application No. 693/93 was filed on 21.12.1993. Applicant Shri S.K.Jena is one of the sponsored candidates of the Employment Exchange. He has worked as a substitute EDMC under Nuagaon Branch Post Office from 1.7.1987 to 31.8.1987, 1.8.1990 to 29.10.1990 and from 16.4.1993 to 31.5.1993 as stated in the counter by the Departmental Respondents, (applicant however, claims that he worked as substitute from 6.7.1989 to 31.5.1993). On 31.5.1993, on the direction of the Sub Divisional Inspector of Posts, he was forced to make over charge as substitute E.D.M.C. This S.D.I.P., according to him, demanded an illegal gratification from his mother to select him for that post and on refusal he gave such direction. Accordingly, in this Original Application, he prayed that this SDIP be restrained from participating in the selection process and to quash the selection if it has been over in the meanwhile. In this application also Shri Dharendra Ku. Dutta entered appearance as an intervenor.

5. The District Employment Officer, who has been impleaded in Original Application No. 334/93 as Respondent No. 4 entered appearance and justified his action in sending requisition to the concerned B.D.O. The relevant Recruitment Rules prevailing then provide that the selected candidate must be a permanent resident of the post Village and his office having no such information in this regard, he had issued the requisition, as per the instructions of the Director of Employment, Orissa issued on 2-9-1992 (Annexure-R/7). Even assuming, there is no such circular, we do not find any illegality or irregularity in the action of the Employment Officer in sending requisition to the concerned B.D.O. in this regard.

6. While denying the case of demand of illegal gratification as mentioned in Original Application No. 334/93 and bias of SDIP in Original Application No. 693/93, the stand of the Respondents is that the selection was over by 5.7.1993 in due process, according to prevailing rules without any illegality or irregularity and that one Dharendra Kumar Dutta, on that date was duly selected. Applicant, S.K. Jena (Original Application No. 693/93) was directed to hand over charge as substitute E.D.M.C. as he was one of the candidates sponsored by the Employment Exchange and was an applicant to the post and in order to ensure impartial selection, he was asked to step down and not for any other purpose.

7. Thus, it is clear that the selection was over and one Shri Dharendra Kumar Dutta was duly selected on 5.7.1993. Hence Original Application No.693/93 filed on 21.12.1993 for a direction that the S.D.I.P. be retained in making the selection process was infructuous from the very beginning. Excepting alleged bias against the S.D.I.P., no further plea has been taken in Original Application No. 693/93 for cancellation of the selection. As indicated, the version of the Departmental Respondents is that in order to ensure impartial selection, this applicant who was a substitute E.D.M.C. was asked to step down. This explanation of the Respondents appear to be convincing.

This apart, law is well settled that once malice is pleaded against an authority, he has to be impleaded by name and the fact of malice must be satisfactorily established on proof or on admitted facts vide I.K.MISHRA VRS. UNION OF INDIA AND OTHERS Reported in 1997(6) SCC 228. Admittedly, the applicant Sanjaya Kumar Jena has not impleaded the then S.D.I.P. by name. There is also no satisfactory proof on record that he, in fact, demanded illegal gratification. Moreover, this application was filed on 21.12.1993. There is no guarantee, that particular SDIP is still continuing at that station. There has also been no mention during the hearing. We, therefore, do not accept this story of demand of illegal gratification advanced by the applicant Sanjaya Kumar Jena in this connection.

8. There is no dispute that the Employment Exchange sponsored five names although relevant Recruitment Rules lay down atleast three names have to be sponsored. Hence, we are not prepared to accept the pleadings of Shri Anama Jena that for want of wide publication the entire selection process has to be quashed.

9. In the result, we do not see any merit in these two applications, which are dismissed but without any order as to costs. Order of stay passed on 9-7-93 in OA 234293 stands vacated.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

*G. Narasimham* 22.10.98  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

KNM/CM.