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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.551 OF 1993
Cuttack, this the 31st day of July, 1998

Shri Ananta Kumar Nayak 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)
VICE-CHAIRMAN

31.7.98

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Shri Ananta Kumar Nayak,
aged about 34 years,
son of late Karunakar Nayak,
Village-Odang,
P.O-Akhuadakhini,
Via-Patkura (Pin-754 288),
P.S-Patkura, Dist.Kendrapara Respondents

By the Advocates - M/s Antaryami Rath
&A.C.Rath.

Vrs.

1. Union of India, represented through the Secretary, Ministry of Communications, Department of Posts, Dak Bhavan, New Delhi-110 001.
2. Superintendent of Post Offices, Cuttack North Division, Cuttack-753 001.
3. Inspector of Post Offices, At/PO/Dist.Kendrapara-754 211 ...Respondents

By the Advocate - Mr.Ashok Misra,
Sr.Panel Counsel.

O R D E R

S. Som
SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a declaration that the removal of the applicant from service on 16.5.1986 is illegal and he has asked for consequential service benefits including back wages. There is also a prayer to provide the applicant with an employment in E.D.post that may come up hereafter giving due weightage to his educational

qualification, training and past satisfactory service as E.D.D.A-cum-E.D.M.C., Bagada, from 16.4.1983 to 16.5.1986.

2. The petitioner's case is that he was appointed as E.D.D.A-cum-E.D.M.C. of Bagada E.D.Branch Post Office on 16.4.1983 in the vacancy caused due to the regular incumebent Sanatan Swain having been put off duty from 16.4.1983. Shri Swain was finally removed from service in order dated 31.7.1984. The applicant continued to work in the post even after the put off vacancy became a clear vacancy from 31.7.1984 on the original incumbent being removed from service. On 16.5.1986 his services were terminated and he was asked to hand over charge of office to one Rama Chandra Mallik. The reports of his joining on 16.4.1983 and handing over charge to Rama Chandra Mallik on 16.5.1986 are at Annexures 1 and 2. He came to know later on that Rama Chandra Mallik has been appointed as E.D.D.A-cum-E.D.M.C., Bagada E.D.B.O. from 16.5.1986 in order dated 5.6.1986, which is at Annexure-3. In this order, it has been mentioned that as the post of E.D.D.A-cum-E.D.M.C. has become vacant and it is not possible to make regular appointment, Shri Rama Chandra Mallik is given provisional appointment which will be terminated when a regular appointment is made. It is also mentioned that Rama Chandra Mallik shall have no claim for appointment to any post. It is submitted by the petitioner that he successfully completed the training. His work and conduct were also found satisfactory and a testimonial was given to him by the Inspector of Post Offices, which is at Annexure-4. The local people including the Sarpanch also wrote about

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his satisfactory service. But in spite of all this, after rendering three years of service from 16.4.1983 to 16.5.1986, without any genuine reason his services were terminated. He made several representations before the departmental authorities, but without any result. He also submitted that in the meantime several vacancies of E.D.posts came up, but the applicant was not considered and appointed to any of these posts. In view of this, he has come up in the present application with the prayers referred to earlier.

3. Respondents in their counter have submitted that the original incumbent of the post of E.D.D.A-cum-E.D.M.C., Bagada E.D.B.O., was put off duty and in the vacancy caused thereby, the applicant was engaged provisionally vide order at Annexure-R/2 from 16.4.1983. In this order, it was clearly indicated that his services could be terminated either on reinstatement of the original incumbent or on appointment of a regular incumbent to that post. On conclusion of the disciplinary proceedings against the original incumbent Sanatan Swain, he was removed from service with effect from 31.7.1984 and the Employment Exchange Officer was asked to sponsor names for making a regular selection for the post. In the list of 21 names sent by the Employment Exchange Officer, the applicant's name was not there. The selection was finalised and Rama Chandra Mallik was selected provisionally and was appointed as E.D.D.A-cum-E.D.M.C., Bagada E.D.B.O., terminating the engagement of the petitioner. Sanatan Swain, the

regular incumbent was reinstated in service as per the directive of the Tribunal on 24.12.1987 in T.A.No.52/87. As Shri Swain came back to his post, Rama Chandra Mallik was relieved of the post. The respondents have stated that as the applicant was appointed in the put off duty vacancy and as he was succeeded by a regular appointee Rama Chandra Mallik, termination of service of the applicant was legal. It is further submitted that Rama Chandra Mallik though regularly selected was given provisional appointment and on reinstatement of Sanatan Swain, the original incumbent, Rama Chandra Mallik also went out of the post. The respondents have stated that there is no illegality in terminating the service of the petitioner. On the above grounds, they have opposed the prayers of the petitioner.

4. We have heard Shri Antaryami Rath, the learned lawyer for the petitioner and Shri Ashok Mishra, the learned Senior Panel Counsel appearing on behalf of the respondents, and have also perused the records.

5. The admitted position is that originally the petitioner was appointed in a suspension vacancy and according to the order, his appointment was till the disciplinary proceeding against Sanatan Swain was finally decided or till the regular appointment was made. As the original incumbent Shri Sanatan Swain was removed from service, the departmental authorities took up the process of regular selection and selected one Rama Chandra Mallik. On his joining, the petitioner's services were terminated. It has been submitted by the learned lawyer for the petitioner that even though he was appointed in a put off duty vacancy on 16.4.1983,

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it became a regular vacancy from 31.7.1984 when Sanatan Swain was removed from service. But his original appointment was subject to the conclusion of the disciplinary proceeding or till the regular appointment was made. Therefore, on removal of Sanatan Swain from service, the appointment of the petitioner could not have been treated as a regular appointment. The departmental authorities did the correct thing by taking up regular selection procedure for filling up of the post. Unfortunately, in that selection the petitioner's name did not come from the Employment Exchange and therefore, he could not be considered. As such, appointment of Rama Chandra Mallik to the post, which was done through a regular selection, cannot be termed illegal. The termination of service of the petitioner was thus strictly in accordance with his terms of appointment and therefore, it cannot be held to be illegal. Ultimately, Santan Swain was reinstated in service and came back, and Rama Chandra Mallik was made ^{also} to go out of the post. In view of this, the prayer of the petitioner to declare his termination of service as illegal is held to be without any merit and is rejected. The prayer for consequential financial benefits and back wages also fails.

6. The third prayer of the petitioner is for a direction to the respondents to provide him employment in any E.D. post. It is noted that the petitioner worked for more than three years in the post of E.D.D.A-cum-E.D.M.C., Bagada and according to the departmental instructions, if the services of an E.D.Agent are terminated because of reasons unconnected with his conduct and in case he has completed three

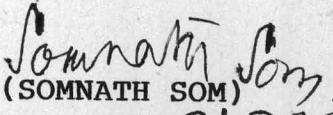
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years in the job, then his name has to be kept in the waiting list for one year and he should be offered some other appointment. The respondents in their counter have not indicated if the petitioner's name was kept in the waiting list and if he was offered any other appointment. It is submitted by the learned counsel for the petitioner that in near future a post of E.D.D.A. in Akhuadakhini E.D.B.O. would fall vacant and a direction should be issued to the respondents to consider his candidature. In view of the fact that the petitioner has worked for more than three years as E.D.D.A-cum-E.D.M.C., Bagada E.D.B.O., it is directed that in case the petitioner applies to the departmental authorities for the post of E.D.D.A. in Akhuadakhini E.D.B.O. or any other E.D.Branch Office, then the departmental authorities should consider his candidature along with other candidates and take into account his past service in accordance with law as laid down by the Full Bench of Central Administrative Tribunal at Ernakulam, reported in 1992 (3) SLR 190 (G.S.Parvathy v. Sub-Divisional Inspector (Postal) and others.)

7. In the result, therefore, the Original Application is partly allowed, but, under the circumstances, without any order as to costs.


 (G.NARASIMHAM)
 MEMBER (JUDICIAL)


 (SOMNATH SOM)
 VICE-CHAIRMAN 7.98