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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

Original Application No. 723 of 1993
Cuttack this the 12th day of January, 1999

Judhistira Samal ... Applicant(s)

- VERSUS -

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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
1999

L. — 12-1-55
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 723 of 1993
Cuttack this the 12th day of January, 1999

C O R A M :

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

...

Sri Judhistira Samal
S/o. Abhiram Samal
Extra Department Delivery Agent,
At/PO: Penthapal,
Via : Dhandisahi
Dist : Kendrapara

...

Applicant

By the Advocates:

Mr. U.K. Samal

Mr. N.N.Mohapatra-I

- Versus -

1. Sub-Divisional Inspector (Postal)
At/PO/P.S.: Battamundai
Dist : Kendrapara
2. Superintendent of Post Offices
Cuttack North Division,
Cantonment Road,
Dist: Cuttack
3. Bhagabat Behera,
Extra Departmental Devivery Agent
At/Po: Penthapal,
Via : Dandisahi
Dist : Kendrapara
4. Union of India represented by
Secretary, Department of Posts
Dak Bhawan, New Delhi

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Respondents

Mr. Ashok Mishra

Mr. Ashok Mohanty

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By the Advocates:

** Mr. Ashok Mishra

Corrected vide order
dated 17.2.1999.

...

17.2.1999
VICE-CHAIRMAN
MEMBER (JUDICIAL)

O R D E R

MR.G.NARASIMHAM, MEMBER (J): In this application filed on 14.9.1993, the case of the applicant, Judhistira Samal is that due to vacancy caused in the post of Extra Departmental Delivery Agent of Penthapal Branch Office in account with Dandisahi S.O., due to resignation of the then E.D.Agent, Ranjit Kumar Samal in October, 1990, he was provisionally appointed in that vacancy with effect from 1.11.1990. His appointment in this manner continued till 31.7.1992. Employment Exchange, Kendrapara was requested to sponsor the names of candidates for selection to fill up that post. The Employment Exchange sponsored names of some candidates including the applicant. In letter dated 23.9.1991, the Superintendent of Post Offices, Cuttack (N) Division, Cuttack, intimated the applicant with instruction to furnish certificates and other documents before 14.10.1991 and the applicant complied the same. However, on 31.8.1992, Respondent No.3, Bhagabat Behera was appointed in that post under Annexure-4, which according to applicant, was not according to law.

Hence this application for quashing of appointment of Respondent 3 under Annexure-4 and for regularisation of appointment of the applicant with consequential financial benefits.

2. Respondent No.3 though noticed had not entered appearance. The departmental respondents in their counter filed on 14.6.1994 stated that the applicant was

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provisionally appointed with effect from 1.11.1990 (Annexure-R/1). In the provisional appointment order it was made clear that the appointment would be terminated on regular appointment being made to the post and he would have no right for appointment to the post. The applicant accepted these conditions and signed on the appointment order in token of having accepted the conditions. Thereafter, while the process for regular selection was in progress, Respondent No.3 Bhagabat Behera, a retrenched E.D.Night-watchman of Alba S.O. moved this Tribunal in O.A.134/92 for consideration of his appointment. This Tribunal by judgment dated 23.4.1992 (Annexure-R/2) directed the respondents to consider the case of Shri Behera sympathetically keeping in view his long service to the department from 23.3.1984 to 11.1.1990 and adjust him in someother post either at Namouza S.O. or Sitaleswar S.O. or at Penthapal B.O. On the basis of this judgment of the Tribunal Shri Bhagabat Behera under Annexure-4 was appointed terminating the local arrangement.

No rejoinder to this counter has been filed.

3. After the conclusion of arguments the applicant has filed written note of submission introducing certain new facts covering the periods after filing of the Original Application and these facts have not been dealt in the pleading through any manner. Hence we cannot take notice of these facts.

4. We have heard Shri N.N.Mohapatra, learned counsel Ashok Mishra for the petitioner and Shri ~~Ashok~~ Mohanty, learned senior counsel appearing on behalf of the respondents. We have also perused the record in O.A.134/92. In course of arguments, learned counsel for the applicant submitted that the applicant in fact served as E.D.D.A. at Penthapal even prior to 1.11.1990, i.e. from 1.8.1989 onwards in place of Ranjit Samal, who ultimately resigned from that post. On the basis of this submission further contention was advanced that since he served more than three years as an E.D.Agent by 31.8.1992, his services could not have been terminated under E.D.Aagents(Conduct & Service)Rules, 1964. However, in the pleading there is no specific mention that the applicant was in fact under appointment from 1.8.1989 onwards. We may as well quote the ~~relief relevant~~ portion of the pleading in this connection mentioned in para-4(a) of the Original Application.

"One Shri Ranjit Kumar Samal was the Extra Departmental Delivery Agent of Pehtapal Post Office. Since Shri Samal got a service in the local M.E.School, he remained absent for the period from 1.8.1989 to 15.1.1990 and 1.8.1990 to 31.10.1990, when the service of Shri Samal was approved in the School, he submitted resignation in October, 1990. Since the petitioner was working against the temporary vacancy of Shri Samal, the S.D.I(P), Pattamundai appointed the petitioner as E.D.D.A. of Penthapal Post Office provisionally with effect from 1.11.1990."

These averments in the pleadings by no stretch of imagination can be intrepreted to mean that

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3 whenever Rajnit Samal was absent, the applicant worked in his place as E.D.D.A. From the pleadings it is clear that from 16.1.1990 to 31.7.1990 Shri Ranjit Kumar Samal was on duty as E.D.D.A. There is no specific mention that from 1.8.1989 to 31.10.1990 whenever Ranjit Kumar Samal was absent on duty the applicant worked in his place. Even if the applicant worked in his place, it must have been not on provisional basis, but on substituted arrangement made by Shri Ranjit Kumar Samal. We, therefore, do not attach any importance to this oral submission made during hearing which is without any basis.

The admitted fact is that the applicant served as E.D.D.A. on provisional basis from 1.11.1990 till 31.7.1992, i.e. 21months for rendering service for such period on provisional basis. There is no department rule or regulation for regularising the provisional services of 21 months; moreso, when the provisional appointment order under Annexure-R/1 contains the stipulation that the appointment would be terminated at any time and that the applicant has no right to hold that post.

5. Judgment dated 23.4.1992 passed by this Tribunal in O.A.134/92 filed by Bhagabat Behera is final. In view of the direction mentioned in that judgment the department had considered the case of the retrenched employee Bhagabat Behera, who rendered more than six years of service and appointed him to this post. We

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do not see any illegality in the appointment of Shri Bhagabat Behera to this post necessitating quashing of appointment under Annexure-4.

6. In the result, we do not see any merit in this application which is accordingly rejected, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

12-12-1991
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO